THE PEOPLE'S REPUBLIC OF CHINA,
INTERNATIONAL LAW AND
ARMS CONTROL

David Salem

School of Law
University of Maryland
Occasional Papers/Reprint Series
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THE PEOPLE'S REPUBLIC OF CHINA, INTERNATIONAL LAW, AND ARMS CONTROL

by

David I. Salem

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SERIES

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# TABLE OF CONTENTS

**Preface** .................................................. i  
**Note on Transliteration** ................................... ii  
**Wade-Giles—Pinyin Conversion Table** ....................... iii  
**Introduction** .............................................. 1  

**Part I: ARMS INSPECTION IN THE CONTEXT OF THE CHINESE SYSTEM** .................. 9  
**Chapter 1: The People's Republic of China: The Legal Framework for Participation in an Arms Control Agreement** .......................... 9  
   A. The PRC and the Concept of Sovereignty .................... 9  
   B. The Chinese Attitude Toward International Organizations .......... 11  
   C. Individuals as Subjects of International Law ................ 13  
   D. Sources of International Law .............................. 13  
   E. The Relationship of International Law and Municipal Law .......... 18  
   F. The Scope of Treaty Law in the PRC ........................ 19  
   G. The Relationship of Treaty Law and Municipal Law ................ 21  

**Chapter 2: The Chinese System as a Potential Facilitator or Obstructor of an Arms Inspection Arrangement** .......................... 25  
   A. General Implications ...................................... 25  
   B. Systemic Variables ....................................... 27  
      1) The Chinese Communist Party ............................ 27  
          a) The Role of the Party in the Policy-Making Process .... 27  
          b) The Role of the Party in the Policy-Execution Process .... 29  
          c) Party Control of Quasi-Legal Organizations .......... 30  
      2) Chinese Communist Ideology ............................. 34  
      3) The Governmental System of the PRC ........................ 36  
          a) Organs of State Power .............................. 36  
          b) Arms Inspection and the Legislative Process .......... 38  
          c) Arms Inspection and the Procuratorates, Judicial Organs, and Public Security Departments .......... 42  
   4) The Chinese Attitude Toward Disarmament .................... 47
Part II: LEGAL PROBLEMS ASSOCIATED WITH THE EXISTENCE AND OPERATION OF AN INSPECTORATE ON PRC SOIL

Chapter 3. The Status of Foreign Nationals on Chinese Territory

A. Disputes Arising Out of the Activities of an Inspectorate
B. General Procedural Application of the PRC Criminal Law to an Inspectorate
C. The Criminal Justice System in the PRC and its Application to an Inspectorate
  1) Arrest and Detention
  2) Legal Assistance
D. Vexatious Criminal Statutory Provisions
E. Informal Social Control of Inspectorate Functions

Chapter 4. Diplomatic Privileges and Immunities Under Existing Chinese Law

A. General Observations
B. Privileges and Immunities Under the Diplomatic Convention
C. Privileges and Immunities of Consular Officials and Personnel of International Organizations
D. Chinese Reaction to Privileges and Immunities
E. Conclusion

Chapter 5. Freedom of Movement and Operations in the PRC: Specific Privileges, Immunities and Arms Control Agreement Provisions Necessary to an Inspectorate

A. Entry Into and Exit From the PRC
B. Customs
C. Housing, Accomodations and Services
D. Communications
E. Freedom of Movement of Personnel, Equipment and Supplies in the PRC
  1) General Observations
  2) Movement of Personnel
  3) Means of Transportation in the PRC and the Movement of Personnel and Supplies
     a) Chinese Transportation
     b) Inspectorate-Supplied Transportation
     c) Transportation of Inanimate Cargo

Part III: LEGAL PROBLEMS DIRECTLY CONFRONTING AN INSPECTORATE DURING THE COURSE OF VERIFICATION PROCEDURES

Chapter 6. Collection of Information

A. Gathering Information in Light of Chinese Secrecy Laws
B. Observation by Direct Access, Photography, and Sampling Restrictions
Preface

The preparation of this work was a long and arduous task. I am greatly indebted to those whose help went a long way in bringing this manuscript to fruition. First, I would like to thank Professor William Reynolds for his individual criticism of my drafts, the time and effort he put into my study, despite his taxing schedule, his own enduring support of my research, and the financial support secured from the University of Maryland Law School in printing the manuscript. Second, I would like to thank Professor Bernard Auerbach for his patience, guidance and valuable suggestions for the style and content of the material herein. The author would also like to extend his indebtedness to Mitchell Silk, a law student at the University of Maryland Law School, whose painstaking review of this manuscript and expertise in Mandarin Chinese added so much to the final draft. I would also like to thank Dr. Lyushen Shen and Mrs. Shirley Lay for their valuable time in helping me to better understand the nuances of the Chinese language. I am grateful to Lu Ann Young, Lynn O'Neil, Gail Batts, Ann Garrett, Sandralee Morris, Eileen Gretes, Gloria Brown, and Frances Marshall for their timely secretarial assistance.

Above all, I am indebted to Professor Hungdah Chiu, for his valuable assistance in securing Chinese materials, for his counsel in various aspects of international law, for the references that were always at his fingertips, for his moral and financial support of my project, and for his encouragement of and faith in my work.

Finally, I wish to note that this book owes part of its existence to Sally and Thurman, whose enthusiastic endorsement of my research and writing was a constant source of inspiration.
Note on Transliteration

Until January 1, 1979, all Chinese-English publications and Western studies on China used the Wade-Giles system for transliterating Chinese names, places, and publications. Since then, the People's Republic of China has converted to the Pinyin (transcription) system. Throughout this study, the reader will note the use of both systems. Since many names, places, and events referred to in this study cover the period before 1979, they appear in the Wade-Giles system. This, I believe, is particularly important for the scholar who wishes to refer to my sources and would be required to reconvert Pinyin to Wade-Giles. But, with respect to recent sources, as well as recent laws translated by the author, they will appear in their original Pinyin transcriptions. Certain proper names, such as Mao Zedong (Mao Tse-tung), and places such as Beijing (Peking) may be referenced in this study in both systems to facilitate understanding. For the convenience of readers, I have included a table on the Wade-Giles - Pinyin conversion.

About the Author

David Salem received his J.D. and M.B.A. from the University of Maryland in 1982 and was a Research Associate in East Asian Legal Studies of the University of Maryland School of Law in 1982-1983. Between 1980 and 1983, he was Executive Editor of the Occasional Papers/Reprints Series in Contemporary Asian Studies.
Wade-Giles ↔ Pinyin
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I. INTRODUCTION

Before arms control and disarmament\(^1\) can make any significant contribution to the international legal order, it is necessary for the strategic studies community to be fully apprised not only of provisions in disarmament agreements controlling the use, manufacture, stockpiling, or testing of arms, but also of the conceptual foundation of disarmament -- the receptiveness of each of the major legal systems of the world to mandatory provisions for verification of disarmament procedures.\(^2\)

Direct monitoring of compliance with arms control and disarmament (ACD) measures is an essential ingredient in defusing suspicion and instilling confidence in the parties to such agreements. Currently, the procedures for direct monitoring take two major forms: human intelligence means, including covert operations and intelligence analysis of published materials, and national technical means, in which sophisticated electronic and seismic equipment verifies compliance from outside the nation being monitored.\(^3\) Regardless of the means employed, the objective remains the same: insuring verification of arms control and disarmament agreements. But verification techniques cannot be decisive where the means are somehow inadequate. In essence, it is this issue which upset SALT II and which squelched START negotiations.\(^4\) It also hampered recent U.S.-Chinese talks on a nuclear cooperation agreement.\(^5\) The refusal of the People's Republic of China (PRC) to join the International Atomic Energy Agency or ratify the 1968 nuclear non-proliferation treaty has made the United States reluctant to sell nuclear technology to the Chinese since there are no means to permit inspection to ensure non-military use of component parts.\(^6\)

The numerous verification techniques are designed with three purposes in mind: (1) insuring compliance; (2) detecting violations in time to construct a comparable weapon; and (3) detecting violations in time to permit defensive countermeasures.\(^7\) As indicated in the recent controversies regarding an alleged detonation of a nuclear weapon by South Africa,\(^8\) Soviet use of chemical weapons in Afghanistan,\(^9\) and the supposed chemical warfare accident in Sverdlovsk in 1979,\(^10\) national technical means of verification are often insufficient for detecting military violations.\(^11\) To ferret out evidence of suspected non-compliance or to document proof of cooperation appears to require a more reliable, albeit more intrusive, procedure, such as on-site verification.\(^12\) The technique of on-site inspection is designed to verify compliance through first-hand observation of facilities and weapons processes, revealed presumably through a type of "military blueprint," voluntarily offered by a party to an ACD agreement as part of its verification obligation or ascertained through sophisticated satellite reconnaissance.

That on-site inspection procedures have been a thorn in the side of ACD negotiations comes as no surprise, particularly since they so dramatically clash with the international legal principle of sovereignty\(^13\) and threaten to disrupt the intricate processes
of control and discipline common to totalitarian bureaucracies. Yet, mandatory provisions for on-site verification of disarmament procedures are crucial to the execution of an effective ACD measure. By insuring verification, the parties are establishing and sustaining a confidence factor, the degree of which will vary directly with the ability to obtain and maintain direct and accurate information on compliance or non-compliance as the case may be. Simply put, on-site inspection in most situations generates the highest level of confidence.

The case for the efficacy of on-site inspection is best articulated in the context of the receptiveness of the parties' legal systems to verification provisions, for once within the borders of a country, an inspectorate is subject to its jurisdiction. Issues regarding the composition of an ACD inspectorate, as well as its powers, safety, and physical limitations within the territory of a party to an arms control agreement, are paramount to effective inspection and unquestionably subject to sovereign juridical constraints. Implementation of disarmament provisions will invariably require the direct acquiescence, if not direct participation, of each of the domestic legal systems involved.

The People's Republic of China, despite a reluctance to engage in direct, genuine ACD negotiations, has gradually increased its influential capacity in the international community. Its induction into the United States in 1971 has been followed by normalization of relations with the United States in 1979 and increased recognition as the sole legal representative of China in the international community. Recently, the PRC has renewed normalization talks with the Soviet Union. The PRC has made technological advances in its military modernization program, including the very recent testing of a nuclear delivery system and the development of space technology (albeit for ostensibly peaceful use), that have brought the Chinese to the forefront of military potency.

However, the obvious relevance to the PRC, at least in theory, of ACD negotiations offers no justification for its participation in practice. Despite its military advances, the PRC has enforced a self-imposed exclusion from ACD negotiations for three decades. It is only with the confirmation of recent PRC overtures to the United States, Soviet Union, and the international community on ACD issues, developing Chinese military potency, and a growing concern for multilateral, rather than bilateral, ACD agreements, that the importance of studying the Chinese system has emerged.

The PRC offered its first principled positions on the entire concept of disarmament in 1979. Realizing the necessity of keeping abreast on ACD issues and of studying the positions of other nations, Chinese officials participated in the work of the UN Disarmament Committee in Geneva for the first time in 1980. The PRC has also kept abreast of, and condemned, the militarization of outer space by the superpowers. In truth, though, the appearance of Chinese interest in ACD issues did not offer any
encouragement for PRC acceptance of verification arrangements to ensure compliance, at least not until 1981.

It was in 1981 that the U.S. media announced that the Chinese had granted permission to American intelligence agents and advisors to operate a joint U.S.-PRC electronic intelligence gathering station in western China to monitor Soviet missile tests.26 Additionally, not quite a year later, in June 1982, the PRC modified its original 1979 disarmament program to include the requirement of "effective verification techniques" to monitor compliance with an ACD agreement,27 a suggestion alluded to earlier in a statement accompanying PRC ratification of the UN Conventional Weapons Convention.28

Such precedents in recent Chinese ACD policy suggest the potential for future active PRC participation in ACD negotiations. If that occurs, the question of on-site verification and concomitant procedures will definitely become an important issue, and will illustrate the necessity for familiarizing other nuclear powers with the Chinese system.

It is the purpose of this study to address the mainland Chinese legal system and the related legal problems that may arise as a result of the presence of an arms inspectorate on Chinese territory, including the interplay of the PRC criminal system, the Chinese penchant for secrecy, and the Chinese treatment of official representatives of foreign states and international organizations.

Arrangements for on-site inspection would undoubtedly require lengthy negotiations among the parties to an ACD agreement. Although it is not inconceivable that the first true efforts in effective verification would utilize more indirect surveillance techniques, such as sensitive and sophisticated seismic and photographic monitoring, an examination of relevant aspects of the PRC legal system and Chinese perceptions of international law will illuminate some of the issues that will arise in negotiating an arms inspection arrangement of any kind with the PRC. More importantly, this study will analyze the major legal problems that would confront third party negotiators in preparing a territorial inspection arrangement in China which, to many, constitutes the only effective verification method.29 By addressing verification issues with a firm knowledge of the PRC policy-implementation process, negotiators can promote the kind of confidence and understanding that breeds cooperation and improves considerably the chances for a continuing nuclear peace.
FOOTNOTES

1. A number of authors have noted that certain nations have drawn distinctions between the concepts of "disarmament" and "arms control." To the Soviets, for example, the latter term has a perjorative connotation, associated with such alleged Western purposes as the attempt to legalize nuclear war. Only disarmament is said to constitute a genuine step towards peace. See, Z. ZILE, R. SHARLET AND J. LOVE, THE SOVIET LEGAL SYSTEM AND ARMS INSPECTION: A CASE STUDY IN POLICY IMPLEMENTATION (1972) (hereafter cited as ZILE, SHARLET AND LOVE).

According to another author, the difference is definitional. Disarmament is said to refer to a "quantitative reduction or elimination of armaments and military forces." Arms control denotes "measures designed to regulate and restrict armaments so as to maintain a measure of military power balance and to reduce the probability of accidental war." See Leng, Arms Control and Disarmament in Chinese Global Policy in CHINA AND THE GLOBAL COMMUNITY 164-96 (Hsiung and Kim ed. 1980). Leng stated that the PRC has called for nuclear disarmament but has treated arms control measures with utter contempt. Id.

Based on my research, recent Chinese pronouncements on disarmament have included references to measures for partial disarmament, which are conceptually close to arms control measures. As such, the difference has become somewhat blurred. Since this study in large part assumes Chinese participation in an arrangement requiring verification procedures and examines inspection with respect to PRC law, it is not crucial whether the arrangement contemplated is designated as "arms control" or "disarmament." Therefore, the terms will be used interchangeably. I recognize, however, that nuances in meaning do exist and that the PRC may be more likely to participate in one form as opposed to the other.


Neither of these agreements provides for mandatory on-site inspection. The absence of such provisions has caused U.S. reluctance to extend the substance of these treaties to the 1974 Threshold Test Ban Treaty or the 1976 Peaceful Nuclear Explosions Treaty. See Miller, U.S. Decision Near on Nuclear Tests, N.Y. Times, Nov. 28, 1982, at A15.
3. See Gelb, *Keeping an Eye on Russia*, N.Y. Times, Nov. 29, 1981, Section 6 (Magazine), at 148. See also *Keeping Everybody Honest*, Newsweek, Jan. 31, 1983, at 20. Note also in this regard that 5-10 kiloton tests are about the minimal blast force requirements for detection under current state of the art technology, although the October 1982 issue of *Scientific American* reported that new developments in seismic equipment now make it possible to detect 1 kiloton blasts. See Sykes and Evernden, *The Verification of a Comprehensive Nuclear Test Ban*, *Scientific American*, Vol. 247, No. 4 (Oct. 1982), pp. 47-55.

4. START is the acronym for the Strategic Arms Reduction Talks, bilateral arms control negotiations between the United States and the Soviet Union, which have been taking place in Geneva since June 29, 1982. See *The Negotiating Scorecard*, Newsweek, Jan. 31, 1983, at 18.


6. Id.


11. See generally *Keeping Everybody Honest*, *supra* note 3. National technical means appear to be particularly inadequate where verification measures do not place concomitant restrictions on encryption (coding, for example, telemetry information that makes verification difficult to determine), where mobile weapons systems, like the MX, are employed, and where non-detectable weaponry (laser, particle beam weapons and the like) is used. See generally J. PRA­DOS, *THE SOVIET ESTIMATE* 269-90 (1982).

12. Other writers have reached the same conclusion. See, e.g., Safire, *Site Unseen*, N.Y. Times, Jan. 10, 1983, at A19. The current U.S. administration has also indicated its desire to ratify two treaties with the Soviet Union, contingent on mutual acceptance of on-site inspection procedures. See Miller, *supra* note 2.
13. Of paramount legal significance under the sovereignty is the absolute inviolability of a nation's territorial integrity.


15. See generally Gelb, supra note 3; Safire, supra note 12. Moreover, such confidence is not diluted by claims that geographic irregularities or underground installation reduce the likelihood of effective on-site inspection, at least where technical means are also employed to verify the existence of facilities in remote locations or to report on militarily suspicious activities that require on-site verification.

16. Chief among these constraints is the protection of national security interests.


No state officially recognizes both the PRC and the Republic of China on Taiwan (ROC). Just prior to and after U.S. PRC normalization, numerous other countries extended formal diplomatic recognition to the PRC and de-recognized the ROC. See THE TAIWAN EXPERIENCE 1950-1980, 386-89 (Hsiung ed. 1981).


In 1975, the PRC became the third nation to launch a reconnaissance satellite. See "New Rocket Now Being Developed - Scientists," China Daily, July 29, 1982, at 1.


After the 1980 ICBM test, a Wen Wei Po editorial reported that the ICBM test proved the Chinese could master advanced technology and create a peaceful environment for its four modernizations. See "Wen Wei Po Editorial on Upcoming ICBM Test," FBIS-CHI-80-093 (May 11, 1980), at U1.


On May 15, 1979, at the first session of the UN Disarmament Commission, which the PRC attended as an observer, the Chinese proposed their Comprehensive Programme of Disarmament, which has become the core of later PRC disarmament proposals. See Speech by the Chairman of the Chinese Delegation of the First Substantive Session of the UN Disarmament Commission, PRC Press Release (May 15, 1979) (Annex), reprinted in Beijing Review, No. 22 (June 1, 1979), at 17-19.

The Geneva Conference of the Committee on Disarmament, first held in 1968, was revamped in 1978 as the Committee on Disarmament, with a rotating chair and 39 member states, including the PRC. A new Disarmament Commission, composed of all UN members, was also established by the General Assembly to replace the previous commission, first formed in 1952. See Leng, supra note 1, at 171. The task of the Committee and the Commission was to study and discuss ACD matters and report to the General Assembly.

For the text of the final document of the Tenth Special Session of the UN General Assembly on Disarmament,
held in 1978, which revamped the Committee on Disarmament and established the UN Disarmament Commission, see 15 UN CHRONICLE 1-12 (annexed) (July 1978).


26. See U.S., China jointly run spy station, Baltimore Sun, June 18, 1981, at Al, col. 1. The establishment of the station may date back as far as 1979, when the Washington Post reported that the PRC was willing to monitor SALT data. Mathew, China Offers to Monitor SALT Data, Washington Post, April 20, 1979, at Al; "PRC Refuses Comment on U.S. Radar Stations," FBIS-CHI-81-118 (June 19, 1981), at K1. Note that the location of the station seems to correspond to areas listed as U.S. support base structures in the PRC in a 1979 Defense Department policy planning guidance document known as CG8. See Burt, Study Urges U.S. Aid to Chinese Military, N.Y. Times, Oct. 4, 1979, at Al. See also "Renmin Ribao Discusses Problem with SALT Verification," FBIS-CHI-79-127 (July 1, 1982), at Al.

27. See The UN: China's Disarmament Proposal, Beijing Review, No. 78 (July 12, 1982), at 11: "Text of PRC Proposal at UN Disarmament Session," FBIS-CHI-82-127 (July 1, 1982), at Al.

According to Provision 5 of the proposal, "Disarmament agreements should provide for strict and effective measures of international verification." An international organization under UN auspices was proposed by the Chinese as the arm in charge of verification procedures.


PART I: ARMS INSPECTION IN THE CONTEXT OF THE CHINESE SYSTEM

Chapter 1. The People's Republic of China: The Legal Framework for Participation in an Arms Control Agreement

A. The PRC and the Concept of Sovereignty

The basic principles governing international relations as perceived by the People's Republic of China (hereafter PRC or China) have served both as political instruments for states to utilize in adjusting their relations and implementing their policy objectives and as legal justifications for subsequent actions. Chinese jurists have long recognized and accepted the existence of general principles of international law which are binding on all countries. This, however, is not to say that Chinese perceptions of international law doctrines are well-grounded in Chinese jurisprudence. In fact, Chinese responses have rarely been considered a model of consistency. The PRC government recognizes no contradiction in adhering to or denouncing international agreements to suit its own political objectives, nor has it hesitated to invoke basic international law principles when convenient in order to condemn the policies of other nations or to support its own.

This is due, in part, to the Chinese view of the structure of international politics and its perceived role in international affairs. Until 1974, China often resorted to use of the term "upheaval" in describing the character of the international system. The trend most evident to the PRC in the mid-1970s was the "relative decline of the United States and the emergence to the front line of the Soviet Union as among the imperialist powers."

Nevertheless, numerous events persuaded the PRC that the international balance of power was not confined merely to an equipoise of the two superpowers. The Paris Agreements between the United States and the Democratic Republic of Vietnam, the abrogation by Egypt of the Egyptian-Soviet Peace and Friendship Treaty, the effectiveness of the OPEC cartel and the enlargement of the European Economic Community to include Denmark, Greece and Ireland convinced the Chinese that other nations -- particularly lesser developed ones -- were exercising their sovereign rights and resisting foreign control. This emerging structure of the international system crystallized in April 1974 when Vice-Premier Deng Xiaoping (Teng Hsiao-p'ing) announced the Chinese "Three Worlds Theory."

This theory of the present state of international relations was based on a division of the nations of the world into three camps. Based on "traditional geopolitics and a revised international version of the old Marxist united front tactic in domestic politics," the First World was comprised of the international ruling forces of imperialism (United States) and social-imperialism (Soviet Union). The "national bourgeois elements" of Canada, Western and Eastern European countries, Australia, and Japan comprised the Second World. The underdeveloped and exploited countries comprised the Third World: these countries
could preserve their interests by uniting with the Second World nations to oppose "superpower hegemony." By constantly decrying Soviet expansionism and relegating the Soviet Union to First World membership, the PRC rejected the unity of the socialist bloc. Such a negation implied the belief that China's national security ultimately depended on a united Third World bloc led by Beijing. As the vanguard of the Third World, China's objective was to aid the underdeveloped countries in their struggle to throw off the yoke of superpower "enslavement or control and [to safeguard] their national independence and the integrity of their sovereignty."

The concept of sovereignty (zhuquan) is crucial to an understanding of China's foreign policy and of China's interaction with the international community. The PRC has always championed the principle of sovereignty, both in theory and in practice. In the name of national sovereignty, the PRC has engaged in limited self-defense measures, resisted the concept of third-party judgment in the settlement of disputes between nations; opposed the use of UN emergency forces; supported the establishment of a new international economic order and a new regime of the law of the sea; opposed the use of force; justified economic aid to other countries; and objected to any movement toward a supranational world government. As Chou Heng-sheng argued in 1963, sovereignty had been the most basic principle of international law and the most valuable characteristic of the state, and modern states were faced with the problem of how to maintain, and not to relinquish or diminish, their sovereign rights.

The Chinese obsession with the concept of sovereignty is the residuum of China's past frustrations and grievances, most notably as they related to China's technological inferiority vis-a-vis the Soviet Union and United States, to Chinese efforts to gain legitimacy through recognition as a member of the United Nations, and to China's pervasive antipathy toward unequal treaties. The position of the PRC is, in large measure, an extension of what some scholars term the "Westphalia conception of international legal order" which stresses "the positivist notion of vesting national sovereignty with the highest authority in matters of international law and [holds] that the state could be legally bound only to the extent it had given its consent." Though national sovereignty is probably the most salient feature of the Chinese view of the international legal order, it is circumscribed by the practical necessities of foreign relations. The Chinese were compelled to reject the principles of limited and absolute sovereignty -- the two extremes of the principle of state sovereignty -- on the basis that the exercise of absolute sovereignty by one nation would infringe on the sovereignty of another. As the most logical consequence of this rejection, the PRC instead supported the principle of mutual respect for national sovereignty as the only proper interpretation of the sovereignty doctrine in modern international law. Mutual respect for territorial integrity and sovereignty formed the basis of China's Five Principles of Peaceful Coexistence,
have, in turn, served as the cornerstone of Chinese relations with other nations.33

These principles, particularly that of mutual respect for state sovereignty, are devoid of any "absolute or expansionist imperative."34 As viewed by the PRC, sovereignty is to some extent, a defensive concept used as an instrument to protect China's own national interests.35 In this respect, China's advocacy of the principle of mutual respect for national sovereignty is "both self-serving and self-limiting,"36 but it is undoubtedly designed to foster sovereign equality in the international community and preserve its rights under the maxim par in par non habet imperium (equals have no jurisdiction over one another).

B. The Chinese Attitude Toward International Organizations

When examining Chinese attitudes toward principles and sources of international law, one ought not to attach great significance to resolutions of the United Nations or other international organizations, which merely "formulate, refine, and embellish amorphous appeals for peace, disarmament, and amicable cooperation."37 The pronouncements of these international organizations, though often embraced by the Chinese and other communist countries when they serve contemporary communist and socialist goals, are simply too broad, too generalized and too easily ignored to be of probative or administrative value.

Though recent international legal writings in many countries have recognized international organizations as subjects of international law,38 the PRC has been hesitant to support the expanded roles, functions and recognition of such entities. Chinese hesitancy is probably the result of fear that these organizations may well encroach upon certain aspects of state sovereignty which have not been relinquished, either expressly or impliedly, by the nation-state. Chinese perceptions of international organizations, including the United Nations,39 are colored somewhat by past PRC opposition to the formulation of a unified world government.40 The result is that the PRC has historically favored a restricted role for international organizations. Within the past three years, however, the Chinese position has shifted. In late 1979, for example, the PRC acceded to the UN Convention on the Privileges and Immunities of the Specialized Agencies, [hereafter UN Convention on Privileges] a move which may have significant repercussions for the Chinese, who thereby granted recognized juridical status -- albeit limited -- to the representatives of international human and social services organizations.41

By and large, though, the Chinese view of international organizations continues to be somewhat ambiguous. For instance, PRC accession to the UN Convention on Privileges is colored both by its selectiveness (Chinese accession was with respect to only eight specialized agencies) and the fact that it has not yet been
accompanied by accession to the Convention of the Privileges and Immunities of the United Nations, which should, arguably, logically precede accession to a convention extending privileges and immunities to UN agencies and their personnel. Moreover, one might expect that, at least before 1979, the PRC would have denied the power of international organizations to issue pronouncements creating international legal principles. Such principles would generally be viewed as binding upon states and would thereby constitute implied acceptance of world government principles, something the Chinese had theretofore considered incompatible with their views of the international legal order. Yet, the Chinese often invoked General Assembly and Security Council resolutions, as well as resolutions passed by other international organizations, in support of Chinese positions or in condemnation of the policies of other nation states.

Since the PRC has recognized international custom as a source of international law, it is conceivable that UN resolutions unanimously adopted by diverse nation-states may acquire the significance of principles of international law. The problem, of course, is with the precise Chinese definition of the term "unanimity." International conventions, multilateral treaties and international adjudicatory decisions not adhered to by at least a significant majority of states will almost certainly not gain Chinese recognition as general principles of international law, though how close to absolute unanimity the PRC would require the consensus to be is uncertain.

PRC publicists have rarely referred to judicial decisions as evidence of international law. They have, in fact, resorted to accusations that the decisions of international tribunals were products of capitalist manipulation. The Chinese have also been hypercritical of "suggestions smacking of an expansion or even a liberal interpretation of the functions of the I(nternational) C(ourt) [of] J(ustice)."

Chinese indifference toward international judicial procedure is evidenced by Chinese avoidance of, and non-participation in, any organs and activities of a purely legal character within the United Nations system. The PRC has refused to advance candidates for judgeships on the ICJ, despite opportunities to do so in 1972 and 1975. Furthermore, the PRC has consistently refused to accept the compulsory jurisdiction of the World Court.

Chinese participation in affairs of the Sixth Committee of the UN General Assembly -- the main legal organ of that UN body -- has been limited to responses on such highly politicized legal issues as the definition of aggression, the question of Charter revision and international terrorism. The PRC has involved itself in the International Law Commission but has avoided active participation in the UN Commission on International Trade Law, though it appears to be interested in the result of such proceedings. Chinese indifference to legal issues presented in
the forum of the United Nations has also manifested itself in the refusal of the PRC to attend five major UN conferences on international law. The paucity of recognition by official media of Chinese adherence to specifically defined international law principles, the lack of any formal PRC pronouncement of Chinese international law doctrine and the dearth of properly qualified legal personnel in the PRC are the raison d'etre of China's calculated posture of noncommitment on international legal issues in the United Nations.

C. Individuals as Subjects of International Law

Because an acknowledgment of the principle that international organizations possess the totality of the rights accorded to states tends to diminish the sovereign quality of a nation, dispersal of national power to individuals should logically be viewed as equally attenuating. Recognition of individual responsibility for personal acts under international law would also clash with Marxist principles regarding the class struggle in international relations. Moreover, the Chinese rejection of the concept of individuals as subject of international law is an indisputable repudiation of the monist conception of law which, by casting individuals in the role of international entities, attempted to circumvent the internal sovereign rule of the state. To the PRC, the only legitimate instrument to ensure the rights of individuals is the nation state.

Though such an assumption would seem to lead ineluctably to the conclusion that individuals are protected by, and obligated to, domestic laws only, the PRC does recognize and accept the concept that certain individuals, in their capacity as state representatives, are subject to, and protected by, diplomatic and consular privileges and immunities. Any speculation that the conferment of international legal rights on diplomatic personnel constitutes an anomaly in Chinese jurisprudence would probably prove to be unwarranted on closer examination.

In the Chinese view, such acts as genocide, slave and narcotic traffic -- despite proscription under international law -- are prohibited only because of a multiplicity of bilateral and multilateral treaties and accords. Thus, it is essentially the act of the state which is responsible for the creation of such proscribed categories. In addition, within the context of treaties and accords, each signatory remains free to fashion a definition of what elements constitute a proscribed crime and each violator remains responsible for his actions, though not as a subject of international law. Any effort on the part of international organizations to bypass state-granted rights in order to confer or protect additional individual rights is likely to be viewed as an infringement of Chinese sovereignty and intervention in Chinese internal affairs.

D. Sources of International Law

- 13 -
Innumerable conceptual problems exist in researching Chinese law because of (1) gaps and discontinuity in both the coverage and sources of the theory and practice of international law in the PRC; (2) the paucity of official elaboration on international legal issues; and, (3) the difficulty in distinguishing the real from the rhetorical in available written materials as a result of Chinese Communist Party (CCP) control over the press. For the researcher, there is still no methodological panacea for examining Chinese legal material. As recently as 1958, the Office for Teaching and Research of International Law in the Institute of Diplomacy of the PRC published an anthology of selected reference materials. In them, the PRC listed three items as potential sources of international law: (1) Article 38 of the Statute of the ICJ; (2) the UN General Assembly Resolution on the Progressive Development of International Law and its Codification of December 11, 1946; and, (3) the UN General Assembly Resolution on the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal of December 11, 1946.

The problem with these sources is twofold. First, they are almost twenty-four years old. Second, even at the time of their issuance, the Chinese editor who published the sources stated that the documents were for reference only (emphasis added). Because the success or failure of the implementation of any arms control inspection arrangement will depend in large measure on the Chinese perception of international legal principles at the time the arrangement is implemented, wariness surfaces over predicting Chinese behavior on the basis of pronouncements over two decades old. From a methodological standpoint, the researcher is thus presented with the problem of attempting to fill in the gap in time.

In addition to the three sources of international law mentioned above, the PRC has occasionally advanced Chinese theories of "general principles of law." These principles have been limited to a small number of instances of actual use in legal treatises and arguments, however, including an occasion where the sovereignty of the PRC over Taiwan was defended by invoking from municipal law the maxim ex injuria jus non oritur (a person cannot acquire a right through an illegal act).

Hence, the Chinese perspective on international law and general principles of law cannot readily be gleaned from a mere examination of Chinese law and foreign policy. Rather, the fundamental consideration for the parties to an arms control agreement will be the consent, implicit or explicit, to international legal rules by the PRC within the agreement itself. This hypothesis is violated by Chinese perceptions on the system of international law.

Marxist-Leninist dogma postulates that the state superstructure, including all laws, reflects the economic base of society and serves the interests of the ruling class. International law, therefore, possesses class character. The literal
application of "international law" to an international community composed of states with diverse social systems is considered impossible, since uniformity of legal principles in diverse economic systems conceives the independence of law from the economic base, an untenable position to Marxist-Leninists.

Disenchantment with the perceived inequality between the PRC and its ideological adversaries in the West as well as Chinese understanding of its fundamental technological and economic inferiority vis-à-vis the Soviet Union and the United States resulted in a dialectical analysis of the international system, one that views it as composed of at least two camps, each of which holds diametrically opposed world views. The logical corollary of such analysis is a theoretical formulation of more than one system of international law. The three schools of thought that have been fashioned around the question of the universality of international law have contributed to the ambiguity of the current Chinese position.

The PRC, though, is quite aware of contradictions between ideology and practical necessity. The Chinese have asserted that international law is a "political instrument" and, as such, may be reformulated in terms of contemporary foreign policies and public interests. Thus, it appears that the PRC would be willing, in proper instances, to further its national goals by adapting Marxist principles to international exigencies.

The Chinese position on custom as a source of international law also illustrates the importance of procuring PRC consent in an arms control inspection agreement. Though the Soviets have apparently acceded to the principle that custom is a basic source of international law, the Chinese have devoted little attention to it. Although a 1963 People's Daily article listed "international treaties and international custom" as sources of international law, the Chinese more often resort to the use of other euphemisms for the term "custom." Moreover, where custom is applied, it is often used ad hoc to demonstrate the unreasonableness of actions by other nations. The PRC has, for example, charged other nations with having deviated from established patterns of conduct which had created some degree of continuity and consistency in foreign relations.

In view of the foregoing factors and the relative brevity of international law as an independent academic discipline in the PRC, consent will constitute the clearest basis for legal obligation in the international community. Though the PRC remains indifferent to many of the legal machinations of the international community, it is rarely disputed that treaties are recognized by the Chinese as an "important source of international law and an important form of expressing international law." The PRC tends to focus on the consensual quality of the arrangement as the ultimate source of its binding force upon the parties and tends to minimize differences which "accrue from the modality in which an agreement is contracted." Treaties are thus a major source of international law. This, though, is not to imply
that treaty law is viewed by the Chinese as sacrosanct. As a corollary to its policy-oriented approach to international law, it would hardly be surprising for the Chinese to put treaty obligations in a position subordinate to political considerations.

The PRC relies on treaties to assert its power and to promote internal economic development. The importance of treaties to the PRC can be gleaned from a quantitative standpoint alone: more than 1700 have been concluded by the Chinese between 1968 and 1980.

The position of importance the PRC ascribes to treaties must be punctuated with a caveat: only treaties regarded as "equal" (i.e., fairly negotiated and concluded) will be followed in letter and spirit and will be accorded the status of a legitimate source of international law by the Chinese. As such, Chinese international law scholars and jurists are probably destined to play a continuing role in appraising the substance of treaties concluded by the PRC.

With the exception of those treaties regarded by the Chinese as unequal, the PRC has, for the most part, been a proponent of the principle of pacta sunt servanda (a treaty in force is binding upon the parties and must be performed in good faith). Treaty disputes between the PRC and other nations have been the result, not of outright treaty violations, but rather of the vagaries associated with treaty interpretation. Moreover, treaty interpretation problems have been exacerbated by mutual distrust and a failure by both sides to recognize and address the disparities in their separate legal theories.

The formal medium of treaties provides the PRC with a common ground of security in dealing with other nations. However, the practical effect of Chinese assertions of unequal treaties is to allow the PRC to accept and adhere to those principles of international law -- as enunciated in treaty provisions -- which it considers politically expedient. Such a practice inevitably results in eclecticism and ambiguity.

Both the Soviet Union and the PRC subscribe to the concept of unequal treaties, and both are in apparent agreement that unequal treaties can be unilaterally abrogated at any time without contravening principles of international law. However, the PRC has not followed a consistent pattern of treaty abrogation under the unequal treaty concept. This has resulted in a number of claims against the PRC for treaty violations.

A Chinese determination that a treaty is unequal has been based on one of two characteristics: the inequality of the negotiating states or the creation of dissimilar and non-reciprocal obligations. The Chinese have elaborated on the definition of inequality and have included within it the principles of coercion and exploitation. To this extent, the Chinese view is similar to recognized Western practice, which condemns
the threat or use of "pressure, whether military, political, or economic" as a coercive tactic in concluding treaties.90

Beyond the principle of coercion, however, additional criteria for the determination of equality of sovereign power in treaty negotiation have failed to crystallize. In theory, the PRC has been fairly firm on the need for reciprocal considerations on substantive treaty provisions. In practice, though, the PRC has not always applied the concept of "identical and reciprocal obligations" as uniformly to multilateral conventions91 nor as consistently to its own bilateral treaties.92

The PRC has also denounced as unequal a number of treaties to which it has not even been a party, including the 1963 Nuclear Test Ban Treaty and the 1968 Treaty on the Non-Proliferation of Nuclear Weapons.93 Chinese objections to the latter treaty serve as the operative basis for PRC denunciation of present disarmament proposals and are illustrative of China's prevailing concern for reciprocal obligations: non-nuclear states were deprived of their rights to develop nuclear weapons for self-defense purposes while the United States and Soviet Union had undertaken no commitment to refrain from using nuclear weapons against non-nuclear countries.94

Because treaties are considered to be an accurate measure of Chinese international behavior and intentions, it is important that the PRC, with the passage of time, has more consistently and more emphatically demanded the incorporation of the Five Principles of Peaceful Coexistence into its treaties.95 Even if one disregards Chinese claims that these principles be considered new and progressive international norms or even lex ferenda, their implication for any arms control arrangement is significant. Despite what some may view as favorable prior treaty practice, the specific incorporation of at least the first three of these principles -- to wit, mutual respect for sovereignty and territorial integrity, mutual non-aggression and mutual non-interference in each other's affairs -- provides the Chinese with a substantive framework for opposition to verification provisions on the grounds that an arms inspectorate interferes with Chinese internal affairs. It is quite conceivable that the PRC would posit a legal argument that inspection arrangements are outside the scope of that which is properly recognized as treaty subject matter, i.e., matters of international relations. Because of high regard which the Chinese hold for the principle of sovereignty, the protection of PRC national interests may prompt the Chinese to ignore any potential counterargument that verification and inspection arrangements further the goal of peaceful coexistence, which the PRC lists as its fifth principle.

The PRC has been reluctant to become a party to many multilateral agreements,96 which -- though it may not indicate direct Chinese opposition to the substantive content of each -- does "reflect an ambivalence in the contemporary Chinese image of legal order,"97 and may suggest a failure on the part of the PRC to "[formulate] a principled stand that is applicable to every legal
issue arising in the conduct of her multilateral diplomacy." Chinese involvement does, however, extend along a common conceptual thread: the development of new rules, new values, and new norms of international legal order, all of which the PRC considers essential to the struggle of Third World countries for "redistributive justice."99

Such conceptual extrapolation, however, must yield in certain instances to more definitive declarations. In this regard, the import of PRC pronouncements on specific international law principles regarding treaties cannot be under-estimated. In addition to the principle of pacta sunt servanda previously mentioned, the Chinese have also endorsed the principle of pacta tertiiis nec nocent nec prosum100 (treaties impose no burden nor confer any benefits on third parties) in maintaining that the PRC could not be bound by previous international arms control agreements nor by international conventions to which it was not a party.101 Indisputably, any working arrangement on arms inspection with the PRC will involve a careful analysis of Chinese adherence to international law principles, a sensitivity to the Chinese political climate and the need to spell out bilateral or multilateral obligations in considerable detail.

E. The Relationship of International Law and Municipal Law

Chinese legal literature until very recently was essentially devoid of any discussion on the relationship between international law and municipal law. The PRC had invoked "international law standards and humanitarian principles" in sentencing Japanese war criminals102 and included a number of treaties in a rather dated official publication, "Compilation of Laws and Regulations of the People's Republic of China."103 Beyond these factors, PRC legal doctrine on the relationship of international law and municipal law was given scant attention. Only recently, and only to a limited degree, has this changed.

Certain international law principles have been expressly incorporated into PRC municipal legislation. For example, Article 32 of the 1982 PRC Constitution104 expressly incorporates the right of political "asylum" for foreign nationals. This right is not limited to cases of persecution "for striving for the progress of humanity, for defending a peaceful cause or for engaging in scientific" as was Article 59 of the 1978 PRC Constitution, which, undoubtedly, was patterned after the Soviet constitutional provision.105 Furthermore, a recent report on the PRC's Provisional Civil Procedure Code directly addressed the conflict between Civil Procedure code provisions and international and bilateral treaties to which the PRC was a party.106

The express incorporation of the right of political asylum into Chinese municipal legislation as well as the references to international and bilateral treaties in the Civil Procedure Code that decrees on the rights, privileges and immunities of foreign nationals, diplomats, consular representatives and auxiliary personnel represents one of the more readily acceptable principles
of international law to the PRC. The Chinese response to the Iranian seizure of American diplomatic personnel in Teheran in 1979, in fact, was terse and unequivocal: the Iranian act violated recognized principles of international law.\textsuperscript{107}

Consistent with Chinese declarations on privileges and immunities of diplomatic personnel, the PRC also ratified the Vienna Convention on Diplomatic Relations,\textsuperscript{108} the 1963 Vienna Convention on Consular Relations\textsuperscript{109} and the UN Convention on the Privileges and Immunities of the Specialized Agencies,\textsuperscript{110} though in typically enigmatic fashion, the PRC has refused to ratify the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.\textsuperscript{111} Such apparent inconsistency detracts from the postulate that the PRC has fully incorporated fundamental international law principles into domestic legislation.

Given these discrepancies and ambiguities and recalling the Chinese posture on the inviolability of the principle of sovereignty, it seems almost axiomatic to conclude that the PRC attaches little significance to the judicial decisions and municipal legislation of individual nation-states. It also diminishes the possibility that individual nations could succeed in influencing the PRC posture toward international law beyond a point the Chinese consider economically and politically expedient for their own purposes.

F. The Scope of Treaty Law in the PRC

An assessment of PRC treaty-making practice ought to begin with a formal examination of Chinese agreements bearing different designations.

Only a small number of agreements have been given the most formal designation -- tiaoyue (treaty). This category designates the "most important international documents, regulating political, economic or other relations between contracting states. . . ."\textsuperscript{112} More likely than not, the conclusion of an arms control agreement with provisions for verification will be embodied in tiaoyue.

Short-term problems of contracting states are handled in the most frequently used form of Chinese contractual arrangement -- xieding (agreement).\textsuperscript{113} Multinational arrangements regulating special problems are called conventions -- gongyue or zhuanyue.\textsuperscript{114}

General principles of international law and international relations are often embodied in xuanyan, or declarations.\textsuperscript{115} International documents addressing more specific and individual problems as well as providing for the amendment and interpretation of, or supplement to a treaty are known as yidingshu, or protocols.\textsuperscript{116} An "exchange of notes (huanwen)" between two states is used when it is necessary to define certain matters already agreed upon by the parties.\textsuperscript{117}
The PRC also used the following designation for certain agreements: 1) lianhe gongbao (joint communique); 2) tong banfa (joint measures); 3) beiwanglu (memorandum); 4) xinwen gongbao (press communique); and, 5) hetong (contract).

The PRC belief that treaties and other international agreements constitute a major source of international law remains tainted somewhat by discrepancies between doctrine and practice. The Chinese definition of treaty is devoid of fundamental distinctions between those that may be viewed as equal and those that may not. Moreover, the definition ignores any explanation of divergent patterns in PRC practice which negate the Chinese assertion that only states may be parties to treaties. Furthermore, the PRC continues to claim its unabashedly eclectic right to choose which of the pre-1949 treaties ratified before the division of China (into Taiwan and the PRC) it will adhere to.

Given such ambiguous and selective behavior, it would seem that any predictable increase in Chinese participation in extensive, multilateral arrangements is at best speculative and may lead pari passu to a decrease in third party expectation and acknowledgement of Chinese commitments. The effect of such a result on the extremely sensitive and delicate provisions for arms inspection would be disastrous. Though such concern may be neither unwarranted nor unjustified, there are a number of observations which indicate that the Chinese posture on future-negotiated treaties may be somewhat more consistent and less problematic.

First, the exclusion of the PRC from the United Nations until 1971 precluded participation in the development or signing of the Vienna Convention on the Law of Treaties. As such, China was unable to engage in the discussions and negotiations which would have permitted and necessitated the formulation of a more definitive and lucid PRC position. The framework of norms governing the machinations of the treaty-making process were thus erected without PRC participation, a process which, by precluding adversary negotiations, prevented the Chinese from seeking the kinds of concessions or making the types of tactical tradeoffs that are so much a part of what the Chinese have perceived as a "struggle with the enemy."

Second, the sheer volume of Chinese treaties indicates the significant role which treaties play in PRC bilateral and multilateral relations and enervates somewhat the concern expressed as to the lack of a concise, coherent and distinct Chinese position. More revealingly, the PRC has consistently called for foreign assistance in its drive to realize the four modernizations. The conclusion of agreements with multifarious, individual nations and the PRC desire for dispatch in achieving modernization mandates moderation of previously irreconcilable differences, non-negotiable topics and immutable positions. The emergence of comity and equity and the dissolution of mistrust...
and suspicion may combine to create accommodation and compromise in PRC treaty negotiations.

Third, from a methodological perspective, treaties represent the most unequivocal source of sovereign consent. The Chinese ascribe far more significance to principles governing international relations as they are embodied in treaties than they do to international law principles.

Because of Chinese sensitivity to inequality in the treaty-making process, present political and economic expediency, and the paucity of definitive statements on the meaning and applicability of international law principles and generally applicable rules governing international relations, no reliance should be placed on Chinese readiness to render interpretations of broad treaty provisions consistent with customary or generally-recognized international principles. The conclusion of an arms control agreement containing inspection provisions would be regarded as a non-routine matter. As such, the procedures governing its conclusion, application, interpretation, revision and termination compare poorly with common practice in concluding trade agreements or other less intrusive contractual arrangements. It is of paramount importance, therefore, to spell out in considerable detail Chinese rights and obligations relating to verification procedures.

G. The Relationship of Treaty Law and Municipal Law

For the most part, the PRC follows generally accepted norms and procedures for the negotiation, conclusion and ratification of international agreements. Treaties, for example, are concluded through a series of steps, comprising the stages of negotiation, signature, ratification and -- where ratification is required -- the exchange of ratifications.126

The treaty-making power of the PRC is vested in the permanent organ of the National People's Congress [hereafter NPC], the Standing Committee.127 Article 67 of the 1982 PRC Constitution enumerates the specific functions of the Standing Committee, which include, inter alia, the power "to decide on the ratification and abrogation of treaties and important agreements concluded with foreign states" (Art. 67(14)) and the power "to decide on the appointment and recall of plenipotentiary representatives abroad" (Art. 67(13)). The chairman of the Standing Committee is empowered to ratify treaties with foreign states in accordance with the decisions of the PRC or its Standing Committee. The State Council, as the highest executive organ of the PRC, is granted the power to submit proposals on laws and other matters to the NPC or its Standing Committee and to conclude treaties and agreements with foreign countries.130 The President of the PRC is directly responsible for the signing of treaties and for the appointment of the proper official to act as plenipotentiary.131 The PRC Constitution describes the duties of the President as follows:
The President of the People's Republic of China receives foreign diplomatic representatives...and, in pursuance of decisions of the Standing Committee...appoints and recalls plenipotentiary representatives abroad, and ratifies and abrogates treaties and important agreements concluded with foreign states. (emphasis added). (Art. 81).

All appointments and removals of plenipotentiaries are subject to approval by the Standing Committee. The official who serves in the capacity of plenipotentiary may be the Chairman himself, the foreign minister, the premier, or any other designated official. Though the PRC has occasionally engaged in the practice of concluding agreements by signatures alone, although the sensitive nature and content of an inspection provision is not likely to lead to any circumvention of the most formal treaty-making procedure -- ratification.

Agreements which must be ratified are first passed by the State Council, then submitted for approval to the Standing Committee of the NPC, and finally formally acted upon by the NPC as a whole, although the PRC Chairman or duly appointed representative may sign the agreement before actual ratification.

The PRC has acceded to a small number of multilateral conventions, the acceptance of which was promulgated by a resolution of the NPC Standing Committee. The foreign ministry of the State Council then transmits the instrument of accession to the depository, though it is not clear what significance the PRC attaches to these reservations. Both PRC practice and protection of sovereign principles seem to dictate, however, that the Chinese would assert, at the proper time, that a state possesses the sovereign right to make reservations to multilateral treaties without the consent of other contracting parties.

The Chinese regard the settlement of disputes over treaty provisions to be within the sole province of the contracting parties. Though the PRC has included arbitration clauses in a number of recent trade agreements, Chinese support for diplomatic negotiations as the only effective means to secure resolution of treaty disputes has otherwise precluded any willingness to permit third party intervention and mediation.

The formal constitutional criteria delimiting the PRC treaty-making process seem to support the proposition that treaties have the status of domestic law. Though there has been no specific assertion by the PRC that treaties do not become binding norms of Chinese municipal law, some scholars have argued that there is no reason why the PRC could not accept the Soviet doctrine that the rules of treaty law and those of domestic law should have the same binding force on state institutions and citizens. One might also postulate that there is no need for
formal incorporation of treaty law into municipal statutes because treaties are established as a result of the volition of state organs (the NPC and its Standing Committee) which, by virtue of specific constitutional provisions, are entrusted with the exercise of supreme legislative power. As such, both treaties and domestic legislation promulgated by the same authority should have the same binding force.

Nevertheless, the lack of any formal PRC commitment to the principle that treaties create binding norms of international law preempts an unqualified assertion that PRC treaties directly create rules of Chinese municipal law. However, PRC state practice and an examination of the most recent principal normative enactments of the NPC indicate that Chinese municipal law has incorporated treaty rules and norms. Some municipal law documents have referred directly to particular treaties. The 1955 Sino-Indonesian Dual Nationality Treaty, for example, was included in an official Chinese compilation of laws, decrees and regulations.¹⁴⁶

Some statutory provisions have paraphrased treaty rules without directly citing specific treaties. In 1964, legislation regulating the travel and residence of aliens in the PRC provided that cases involving violations by foreign nationals enjoying diplomatic immunity be handled through diplomatic channels.¹⁴⁷ The 1979 PRC Criminal Law Code, Article 8, provides that "criminal responsibility of foreigners enjoying diplomatic immunity is dealt with according to diplomatic practice." The paucity of examples of incorporation of treaty provisions into municipal law suggests that the Chinese are perhaps unaccustomed to any concept of general transformation in the absence of specific legislative acts. The mere publication of treaties does not ipso facto provide for the conversion of treaty rules into municipal law. Moreover, the Chinese have not acceded to the Vienna Convention on the Law of Treaties.¹⁴⁸ Arguably, the PRC may still invoke provisions of its municipal law as justification for its failure to perform a treaty,¹⁴⁹ which supports an assertion that treaty law is not automatically incorporated into domestic law and, in fact, may be subordinate to it.

 Though Chinese treaties may provide a legal basis for the issuance of municipal statutes, it would not be appropriate to conclude that treaty rules necessarily give rise to municipal law. The Chinese might posit the argument that the sovereign right of a state mandates that treaties be transformed into Chinese law only through the promulgation of special legislative enactments. Arguably, though, such a contention may be without merit since the identical legislative bodies are responsible for the promulgation of domestic and treaty law. As such, there would be no infringement on the exclusive jurisdiction of these legislative bodies, nor would there seem to be any circumvention of legislative procedure in the treaty-making process which would provide extrinsic justification for declaring that treaties create rules of municipal law. Chinese doctrinal developments regarding the relation between treaty and municipal law are
simply nonexistent, however, and one is inclined to believe that the Chinese themselves may not be clear on their own position. Moreover, regardless of any adherence by the Chinese government to the principle of pacta sunt servanda, the NPC is not the sole decision-maker of rules of municipal law. Local people's congresses and organs of self-government of national autonomous areas exercise some degree of autonomy and it is quite conceivable that there may be some discrepancies between the laws endorsed by each of the different organs. For instance, the recent introduction of the 1982 PRC Constitution and the promulgation of local organic laws invites some degree of decentralized rule-making activity which leaves in doubt the extent to which local participation is desired or required when the inspection provisions of an arms control agreement directly involve a particular region or jurisdiction of the PRC. The lack of official endorsement of the incorporation of treaty law into municipal law gives rise to potential conflict where fulfillment of treaty obligations clashes with rules laid down under municipal statutes. To assert that the PRC, in seeking to maintain the orderly and secure environment it believes necessary for the development of its economy, would adhere strictly to treaty obligations which are inconsistent with municipal statutes is to casually dismiss a fundamental internal Chinese tenet -- absolute and inviolable sovereign power. The problem becomes somewhat more complex when an attempt is made to assess the extent to which the Chinese observe the maxim lex posterior derogat priori when domestic and treaty laws are inconsistent. To argue, for instance, that a subsequent legislative enactment overrides previous treaty obligations is to ignore Chinese adherence to the principle of pacta sunt servanda unless, in fact, the treaty is no longer viable or in force. The possibility that periodical review of treaty provisions could result in an assertion by the Chinese of unequal and nonreciprocal obligations implies an even greater likelihood that the PRC would act in derogation of certain treaties through enactment of subsequent inconsistent municipal statutes. However, there has been no state practice of or adherence to the rule of lex posterior derogat priori. At the same time, the PRC has displayed respect for and adherence to the principle of pacta sunt servanda. Despite concern and conjecture as to the consequences of the application of lex posterior derogat priori, the most plausible response based on precedential information is simply that the Chinese are not likely rely on it.

Chinese legal literature has not admitted to the possibility of self-executing treaties, nor does the plain meaning of the 1982 PRC Constitution. The proposition that treaty law does not ipso facto create municipal law and the absence of any Chinese acknowledgement of criteria for distinguishing between self-executing and non-self-executing treaties suggest that arms control inspection provisions will become operative in the PRC only through specific and deliberate incorporation into Chinese municipal law.
The 1982 PRC Constitution does, however, contain a "supremacy clause" similar to the one in the U.S. Constitution. The American stance on self-executing treaties has grown largely out of the juridical reading of the supremacy clause and has led to an articulation of judicial standards not present in the PRC:

In determining whether a treaty is self-executing, American courts look to the intent of the signatory parties as manifested by the language of the instrument; and if the instrument is uncertain, recourse may be had to the circumstances surrounding its negotiation and execution and other extrinsic factors. In order for a treaty provision to be operative without the aid of implementing legislation and to have the force and effect of a statute, it must appear that the framers of a treaty intended to prescribe a rule that, standing alone, would be enforceable in the courts.

Because the PRC has not formally offered its own position, whether the NPC or designated legislative body must execute the terms of a treaty before it becomes operative Chinese law is uncertain. Generally speaking, international agreements signed and ratified by the PRC will not have the force of law until their provisions are implemented by domestic legislation or by administrative action. Under ordinary circumstances, though, the NPC would probably not hesitate to promulgate legislation designed to remove inconsistencies in municipal law provisions so that they would accord with Chinese treaty obligations.

Chapter 2: The Chinese System as a Potential Facilitator or Obstructor of an Arms Inspection Arrangement

A. General Implications

The success of the implementation and execution of an inspection arrangement in the PRC is contingent upon the receptiveness of the Chinese system to verification procedures. The apparently-decentralized quality of Chinese politics and law compels a closer examination of certain key variables relevant to the formulation of a Chinese arms inspection policy. These key variables are: the Chinese Communist Party (CCP), including its control over, and conflict with quasi-legal organizations; Chinese Communist ideology; the Chinese governmental system; and, Chinese perceptions of arms control and disarmament arrangements.

As the Preamble of the 1982 PRC Constitution indicates, the CCP is the core of leadership of the whole Chinese people. The unity of the political system, as embodied in CCP monopoly over all political activities, presupposes plenary power in the hands of CCP leadership to ensure full compliance with inspection provisions. Similarly, the omnipotence of the CCP suggests the
possibility that CCP leadership may also possess the power to set unobtrusively in motion a number of obstacles designed to effectively impede the execution of an inspection arrangement without the need to resort to official denunciation of inspection activities.

Thus, the requisite element for the successful implementation of an arms inspection arrangement is the unswerving support of the CCP. The Party is, unquestionably, the most pervasive force in Chinese life. Any commentary on factors influencing the formulation of PRC inspection policy is reduced to an understanding of the proper hierarchical arrangement -- by order of importance -- of systematic variables, the preeminent position of which is always occupied by the CCP. An examination of Chinese Communist ideology, the Chinese governmental system and Chinese perceptions of disarmament can only be made in the context of CCP control over them.

Through manipulation of Chinese Communist ideology, for example, the CCP can justify each and every one of its actions to its own people. Moreover, if Party leaders wished to implement an inspection arrangement, they would encounter a minimum of formal legal impediments, any of which may be circumvented through ostensible legal process or through more subtle CCP machinations.

The most serious legal obstacle, in fact, might be the requirement of a Constitutional amendment. Yet, the approval of the NPC, the body vested with the authority to amend the Constitution, is hardly more than a rubber stamp for CCP mandates. The NPC, in executing CCP commands, has not shown any reluctance to exercise its authority: for example, the 1978 PRC Constitution was expeditiously amended to exclude the previously inalienable right to "write big-character posters." The Constitution itself has hardly been an enduring document in the annals of PRC history. Since its official proclamation on October 1, 1949, the PRC has promulgated constitutions in 1954, 1975, 1978 (all no longer in force) and the most recent on December 4, 1982. Such legislative flexibility indicates that even Chinese constitutional law would not obstruct a system of inspection under the guiding hand of the CCP if CCP leadership determined that an arms control inspection served the interests of the PRC.

Chinese perceptions of arms control and disarmament arrangements are also dictated by Party interests and exigencies. These perceptions have shifted from hard-line opposition -- in the twenty year period from the late-1950s to the late-1970s -- to more flexible and mollified policies which are undoubtedly the outcome of Party leadership position changes that resulted from the transfer of power to Deng Xiaoping (Teng Hsiao-ping) after Mao Zedong's (Mao Tse-tung's) death in 1976.

Despite the paramount importance of the Party, each of these factors is separately relevant, because a wholesale assertion that the only variable meriting examination is the CCP underestimates the more subtle interrelationships of the four
factors suggested and ignores their aggregate effect on PRC participation in and formulation of verification procedures.

B. Systemic Variables

1) The Chinese Communist Party

a) The Role of the Party in the Policy-Making Process

The CCP is a highly-disciplined organ which functions under the guiding principles of democratic centralism. It is comprised of over 35 million politically conscious activists who work in government offices, factories, mines, and other enterprises, people's communes, schools, shops, neighborhoods and the armed forces (PLA). The CCP machinery, because of its pervasive control of Chinese organizations, associations and federations, is the prime motivational force in the facilitation or obstruction of arms inspection.

The CCP requires its members, inter alia, to serve the people, uphold Party unity, observe Party discipline and guard Party and state secrets. Failure to fulfill such obligations could result in such disciplinary action as expulsion from the Party, an extremely serious penalty in Chinese society. Moreover, the CCP has the power to turn cadres over to criminal justice organs for criminal prosecution. In short, the Party is the center of an extremely efficient and extensive coercive apparatus in the PRC and controls the policy-execution and policymaking processes of the Chinese governmental infrastructure.

The unique position of the CCP as the central instrument for policy-making in the PRC and as the potential supervisor of all inspection activities compels an examination of the operation of CCP leadership. From a methodological standpoint, the covert nature of much of the CCP policy-making process precludes any direct study of the internal machinations of the Party and necessitates instead conclusions based on a significant degree of speculation and circumstantial evidence.

Although the current political scene in the PRC has been characterized by "greater stability at the top of the Party hierarchy than at any time since the overthrow of the gang of four in October 1976," Party policies in various domains have created resentment. Furthermore, an issue as significant as an arms inspection agreement might involve some degree of conflict and resistance at lower Party levels. Nevertheless, final acceptance of an arms control agreement and its attendant inspection provisions would probably be based on an ostensibly unanimous CCP decision, although it would be wiser to assume some unarticulated internal disagreement that could hamper full CCP support of inspection operations.
An arms inspectorate is at a distinct disadvantage in the PRC, where the absence of direct observations and the unavailability of crucial information contribute to less accurate and reliable political assessments. These assessments are critical in anticipating potential impediments to the fulfillment of inspection obligations, and want of them would make it difficult to determine where the support for arms control lies within the CCP infrastructure.

Another potential pitfall in the PRC policy-making process is the element of experimentalism: decisions on many important issues have a tentative and experimental quality. High-level decisions are couched in general, sometimes vague, language that is purposefully designed to establish the outermost parameters of permissible behavior (or policy) and extend the flexibility of the CCP to define exact procedures, forms and relationships as experience dictates. The obvious potential for alterations in initial policy objectives and guidelines illustrates the importance of obtaining firm Chinese commitments in order to minimize the risk of sudden policy shifts and reduce the gap between the expectancy generated by "trial" directives and the reality created by later revisions.

The result of the lack of first-hand knowledge of a firm CCP arms control policy, the potential for tentative, mutable policy decisions, and the subtleties of behavioral and positional changes of upper-echelon PRC officials make it difficult to detect changes in Party interests, such as the "gradual erosion of a consensus, the disintegration of a coalition, or the instability of a simple majority." Moreover, PRC adherence to the principle of the inviolability of its sovereignty and Chinese sensitivity to equal and reciprocal treaty obligations presents the kind of political environment that is most susceptible of sudden shifts of position and, hence, most important for the orderly and consonant activities of an arms inspectorate.

Thus, the most important goal for inspectorate members is to determine the CCP commitment to the formulation and execution of an inspection policy. An arms inspectorate is best advised to assess the CCP commitment by gauging the degree to which Chinese leaders support the inspection policy in the public statements they issue; by determining the existence of persuasive editorials in behalf of an inspection policy in the Chinese press; and by reviewing the responsiveness and cooperation of the CCP officials most likely to have contact with the inspectorate. By reviewing such peripheral variables, the inspectorate could minimize the inherent difficulties in determining the extent to which the CCP, through its largely covert policy-making process, has decided to contribute to the execution of proper verification operations. Moreover, an assessment of such variables would provide a means by which the inspectorate could trace systematic non-compliance or isolated instances of interference with inspection operations to either the CCP, participating governmental
institutions, or particular individuals. Of course, this previous statement must be punctuated with the caveat that inspectorate observations of systematic non-compliance by non-Party organs will almost invariably occur with Party knowledge and approval.

b) The Role of the Party in the Policy-Execution Process

The pervasive influence of the CCP in every major aspect of Chinese life connotes active Party participation in the policy-execution process of arms inspection. The influence of the CCP in this process is belied by the Preamble of the 1982 PRC Constitution, which recognizes the supremacy of the constitution as the fundamental norm for all state organs, state officers and the PLA when, in fact, the Party -- and not the law -- is the principal element of control. The role of the CCP in the policy-execution process of the PRC is nowhere more clearly manifested than in the dramatic and sometimes frightening aspects of mass political campaigns. These campaigns, which span issues from the eradication of pests to the implementation of a new legal order, are waged periodically by the CCP and command the active participation of millions of Chinese. The formidable political apparatus of the CCP can, through such mobilization campaigns, generate support for, or opposition to, an arms inspection policy.

In truth, the real power structure of CCP leadership probably differs from the formalistic constitutional one. Thus, it is uncertain which CCP command channels would directly supervise the execution of inspection operations, though, indisputably, the Central Committee, its military commission, and the more select Politburo will play an integral role. Because the highly restricted group of participants who comprise these organs conduct their policy-making deliberations and decisions in camera, one can only speculate as to the particular role various other departments within the CCP infrastructure would play in coordinating the policy-execution process.

Both the Central Secretariat and Advisory Commission of the CCP would most probably be responsible for transmitting the commands of the CCP Central committee to Party members throughout the PRC. The most probable expressions of CCP commands are public statements by CCP leadership, Party communiques, editorials in Party publications like the official People's Daily, resolutions of the Central Committee and Party Congresses, and directives of the CCP Politburo. Propaganda and indoctrination at the provincial levels in the local press and in schools would be supervised by regional party committees. An arms inspectorate should be aware that the extent to which each of these channels is used and the intensity of the language used in communicating the messages are good indices of the commitment of the CCP to the execution of an arms inspection arrangement.
c) Party Control of Quasi-Legal Organizations

CCP supervision of state organs, administrative departments, army bureaucracies and peripheral agencies, such as the secret police, may also provide a clue as to the willingness of the PRC to furnish strong affirmative support for the policy of arms inspection. Presumably, the activities of the military, procuracy, judiciary, and police all fall within the purview of CCP Central Committee departments, which, as part of the highly centralized CCP political apparatus of the PRC, would maintain effective control over the policy-execution process, the agencies and organizations most involved with it, and the communications systems they control.

Since complete unanimity among variables of the governmental system in the formulation of an inspection policy is probably unlikely, a certain degree of factionalism within the government must be anticipated and tolerated. The most likely sources of intragovernmental conflict are from those departments concerned with defense and internal security.

The role of internal security forces in the execution of an arms inspection arrangement is the critical component of the quasi-legal factor involved in the policy-execution process. Internal security in the PRC is distributed among a variety of different organizations, each with independent and overlapping functions.

The military organ of the PRC, the PLA, has played a substantial role both in inculcating in Chinese citizens a positive attitude toward armed might and in civilian surveillance. The PLA is currently under the leadership of the CCP and the Central Military Commission and under the direct command of the Chairman of the latter. The 1978 Constitution gave statutory expression to the expansive role of the PLA in the affairs of the PRC, though it did not formalize the extent to which the PLA has exercised its power since the Cultural Revolution. The PLA is now recognized as an active participant in the work of national construction, in the people's congresses, and in the maintenance of public security. The perceived importance of unity of the military, Party, mass organizations, and various governmental departments in safeguarding public order is an important contemporary element of understanding and dealing with the modern Chinese political machinery. Though local procuratorates are the organs constitutionally designated to ensure observance of the law, the brief time that has elapsed since the promulgation of the recent legal codes and the continuing call for further codes has resulted in CCP-controlled cooperative efforts among various governmental organs that has effectively blurred the distinct roles expected to be played by each.

The role of the PLA in internal security is not confined to its participation in public security functions. It extends to the potentially obstructive influence on arms inspection generated by a national emphasis and socialization on the value of
Military consciousness emanates from the provisions of the 1982 PRC Constitution. Article 55 notes that it is “the honorable duty of citizens . . . to perform military service and join the militia in accordance with the law.” Each Chinese is required to “defend the motherland and resist aggression.” Articles 91-94 and Article 97 of the PRC Criminal Code indicate the heinousness with which the Chinese perceive treasonable activities.

Mao Zedong’s philosophy of fighting a “people’s war” has imbued the average Chinese citizen with a sense of respect for the military and has generated significant patriotic sentiment. The intensive process of socializing the Chinese citizen on the value of armed might runs counter to an arms inspection policy, but is not necessarily inconsistent with it provided an arms control arrangement has CCP support. Though it is conceivable that the military could lead a large-sized factionalist force against CCP commands for unobstructed verification procedures, Party control of the military would seem to preclude such potential conflict.

In addition to the CCP and the PLA, another critical variable in the policy-execution process is the role of the Chinese secret police. Though much has been written about CIA and KGB activities, very little has been published about Chinese intelligence and its domestic and international ramifications. The PRC press is constantly assailing the vast spy rings of the superpowers, but does not acknowledge the existence of a Chinese undercover network. In fact, the existence of such a formal, covert intelligence network in the PRC is itself uncertain, not merely because of the lack of actual recognition of such a network, but because of its redundancy.

The recent reintroduction of regulations on local organizations illustrates the extensive conduit of information that flows to official Party and governmental departments. This entire arrangement is part and parcel to the ideological emphasis in the PRC on the control of man, not his performance. The extent and effect of this overt, coercive apparatus is difficult to gauge with precision, but it has been utilized on a scale that tends to reduce the necessity for establishing additional -- and largely superfluous -- covert operational networks.

Nevertheless, at least one author has asserted the alleged existence of two critical security agencies in the PRC, the General Office of the Central Committee and the so-called 8341 unit. The General Office is reportedly in charge of security for key Party personnel and for confidential Party materials while the 8341 unit serves as a military detachment guarding Chinese leaders, though some sources report that the unit has a network of agents throughout the PRC.

Whether the Chinese secret police is a formidable component of the Chinese system is difficult to assess without hard evidence. Moreover, despite the apparent connection between the
alleged security agencies and the CCP, through the Central Investigation Department of the Central Committee, little can be deduced about Party control of the secret police. It is, though quite possible that these Chinese security agencies are capable of conducting operations without the full knowledge or approval of the responsible Party organ. If so, the mere existence of a Chinese secret security network may have adverse implications for arms inspection.

Though no giant secret police apparatus, as exists in the Soviet Union, is apparent in the PRC, the relative xenophobia of PRC leadership and the importance the present leadership ascribes to unity and order suggest that a strengthened security apparatus which maintains surveillance over the armed forces, reports on provincial and local developments, and investigates the loyalties of key CCP personnel is absolutely essential.

The gradual opening of Chinese society to increasing numbers of foreign contacts is destined to result in more assiduous and zealous counterintelligence activities. The emphasis in the Chinese press on the obnoxious features of foreign intelligence operations and the potential efflorescence of counterintelligence operations directed towards foreign visitors signifies the very likely prospect that the CCP, PLA, local committees, public security organs, secret police (if it exists) and individual Chinese citizen informants can become an obstructive factor in arms inspection activities.

The role of the communications media is also vital in facilitating or obstructing arms inspection in the PRC. Chinese press, television, radio and cinema could be utilized to acquaint the masses with an arms control agreement and the requisite inspection provisions, thus diminishing the surprise and intrusiveness of verification arrangements. The responsiveness of the Chinese communications system to the CCP makes the media a valuable and effective tool for propagandizing, publicizing, or popularizing any agreement for which the Party requires the mobilization of broad public support or opposition.

An arms inspectorate might be advised to measure the volume and intensity of the media campaign as a good indicator of the CCP's commitment to an arms inspection agreement. However, the examination of media reports as a gauge of PRC commitment must be punctuated with a caveat: the new socialist order envisaged by Mao Zedong, that of "giving full play to democracy among the people" may have had a somewhat enervating effect on Party control of the communications system. The "quadruple weapon" of Chinese democracy, dafang daming (allow opinions to be freely aired), dabienlun (hold debates in a big way), and dazibao (with big character posters), permitted the public criticism of Chinese authorities through the "audio-visual media available to the masses." The major thorn in the side of the Chinese government was dazibao (big-character posters), which government officials felt was being abused by certain Chinese individuals who made use
of wall-posters to attack and publicize social and personal inequities in contravention of an official media blackout on certain social upheavals. Ironically, the initial government crackdown on wall-posters was communicated through the press, unquestionably the most effective and authoritative medium of communication used by the PRC authorities. In fulfilling its pedagogic role, the press gave significant editorial coverage to the nefarious effects of dazibao and emphasized the benefits of abolishing the use of these posters. The result was the rather expeditious enactment of an amendment to Article 45 of the 1978 PRC Constitution and the expurgation from its text of the right to write big-character posters.

The role of the press in publicizing the 1979 Chinese legal codes indicates CCP reliance on and control of this medium as the most potent facilitator of the policy-execution process and public acceptance of the press as the most authoritative source of official policy. Press coverage preceding the promulgation of the legal codes included significant numbers of articles calling for public order and for a collection of formal written statutes. Following the promulgation of the codes came special feature stories, official explanations of certain code provisions and legal terms, publicized court cases concerning legal violations, published reports of cooperation, and the application of the new laws to offenders. The press also published limited criminal statistics.

Extrapolating from the role of the press in the execution of domestic legal norms to the role of the press in the execution of an arms inspection policy is not difficult or inappropriate. The press can serve as the forum for CCP pronouncements concerning the advantages of inspection and can publicize examples of compliance and incidents of noncompliance which can serve to legitimize PRC participation in any arms control verification agreement. Raising the political consciousness of the average Chinese citizen on the subject of arms control and indoctrinating each on the importance of PRC participation in inspection arrangements is uniquely suited to the Chinese press. The volume, diversity and type of reports should serve as an indicator of CCP commitment to compliance with inspection provisions.

However, the press would not serve as the sole means used by the PRC regime to legitimize the policy-execution process. The downward transmission of CCP policy directives would need to be communicated through other forms of mass media as well as through quasi-public mass organizations such as trade unions, the Communist Youth League, poor and lower-middle peasant associations, women's federations and other revolutionary mass organizations and individual work units or danwei. Each of these organizations is responsible for more direct contact with the average Chinese citizen and more direct control over his daily activities. In the hierarchical pattern that emerges as the dominant political structure in the PRC, the utilization of these quasi-public organizations to effectuate
Party policy is still another indication of the total CCP commitment to arms inspection.

2) Chinese Communist Ideology

The second variable, Chinese Communist ideology, provides the single, most definitive criterion for determination of the attitudes and beliefs that govern political behavior in the PRC. In essence, it serves as a code of communication by which the CCP can encipher its pronouncements and legitimize its actions.

Fundamental Chinese Communist ideology is inscrutable. Traditional Marxist-Leninist concepts, as embodied in the classical writings of Marx, Engels, Lenin and Stalin, are selectively incorporated into Chinese ideology, to the extent that they serve the interests of the PRC.\textsuperscript{215} Of course, the interests of the PRC are hardly immutable, and Chinese Communist ideology is sufficiently flexible (and amorphous) to permit changes in policy which would not contravene ideological precepts or otherwise threaten the foundation of Chinese society.

Major ideological concepts are reflections of Mao Zedong thought,\textsuperscript{216} though the growing challenge to the Maoist image has eroded, to some extent, the previously impregnable fortress of Maoist dogma.\textsuperscript{217} Nevertheless, Mao's dominance of foreign and domestic policy thinking for almost four decades has not entirely dissolved. His epistemological constructs continue to guide the political culture of the masses and the more select CCP. They also provide the framework, if not the substance, of contemporary Chinese cognitive and evaluative decision-making functions. Thus, to participate in the political process of the PRC, one must possess an understanding of the more fundamental Maoist ideological concepts.

The central theme in Mao Zedong thought is the law of contradiction.\textsuperscript{218} At the heart of this apocalyptic vision of the world is the struggle between two major forces, characterized as "friends" and "enemies." Between these two forces exists a number of antagonistic contradictions, the resolution of which often compels the use of armed force. Within each group there exists the possibility of nonantagonistic contradictions, which are usually resolved through peaceful, non-coercive methods.

From the basic, perceived conflict between "friends" and "enemies" has arisen the Maoist axiom that the enemy must be despised strategically but respected tactically.\textsuperscript{219} This principle was designed to provide a means by which to assess the relative ratio of forces between a revolutionary challenger and the defender of the status quo.\textsuperscript{220} More subtly, this principle was used by the Chinese to develop strategies for bridging the gap between the PRC and the superpowers. The Chinese belief that the PRC must move from a position of inferiority to one of parity with major powers\textsuperscript{221} was a corollary of the belief that the PRC could not command respect within the international community.
until it had become strong and powerful -- politically, economically and militarily.

This basic eschatological ideological construct is the language of Chinese politics. Such facets of international political and legal conduct as negotiating tactics, concessions, obligations, flexibility and recalcitrance, as applied to the implementation and execution of an arms control agreement, are all grounded in this fundamental Maoist tenet.

Mao Zedong's impact on Chinese legal development has conditioned PRC perception of the role of law in its revolutionary scheme, though the force of law and legal institutions in post-Mao China has generally received greater acceptance than Mao himself might have envisioned. The PRC's present approach to the role of law is actually an amalgam of Maoist doctrine and practical necessity. For example, the PRC's emphasis on flexibility rather than rigidity in the application of law, on the politicization of the entire legal process, and on the use of law as an instrument of social engineering to transform the PRC222 are carryovers of traditional Mao Zedong policies and beliefs. At the same time, the swing toward institutionalization (as suggested by the 1979 legal codes) and economic development (particularly as it applies to foreign trade) has necessitated a subtle yet discernible revision of the Maoist concepts of the class nature of people, a justice,223 the societal model of law,224 the mass line,225 and the "uninterrupted revolution."226 The consequence of these adjustments is difficult to define with accuracy. It does not appear that the Maoist influence on the role of law has totally dissipated, but it would not be correct to assert that Maoist precepts have the same potency they once had. In truth, each "case" is handled according to its own set of facts. Where traditional ideological concepts can be used to justify a particular action, they will be. Where these concepts are deficient, or otherwise ill-fitting, they may be altered by the present leadership to reflect reality. Deng Xiaoping has labelled this policy jingyan shi jianyan zhenli de weiyi biaozhun [literally: experience is the only criterion for examining truth].227 Such a policy appears to inject greater flexibility into Chinese ideology, but it has not yet been sufficiently time-tested to warrant any presumption of consistency in its application, particularly with respect to rather intrusive arms inspection operations.

Chinese Communist ideology -- in any form -- is an important variable of Chinese arms inspection policy, not only because of its specific application in particular instances, but because of its general effect on the CCP apparatus and the Chinese masses. The effective use of ideology to veil the content of external communications to the PRC has created an internal "atmosphere of secrecy reinforced by pervasive suspiciousness and a fundamentally hostile attitude toward other (chiefly Western) political and socioeconomic systems."228 Though the recent rapprochement with the United States has piqued the curiosity of the Chinese
and sparked their interests in the machinations of Western culture, the historical distrust for foreign elements still percolates in official Chinese ratiocinations. Chinese ideological inflexibility might therefore be expected to be more apparent in response to more physically intrusive foreign ventures, among which one can readily expect to include arms inspection and verification procedures.

Although the ideology is subject to the interpretation of the leadership and therefore not inflexible, and although it has supported world campaigns for the abolition of... armed forces, its general set for the past [thirty-four years] runs counter to the idea of arms control, and especially the idea of territorial inspection. An arms inspectorate should be aware that an arms inspection policy may require some remolding on the part of the leadership of both the mass[es] and elite... to neutralize or alter potentially obstructive or hostile attitudes. This would essentially involve a process of partial resocialization of the citizen [as to] the relationship [toward the West and Soviet Union], a process which must start in the schools and spread throughout the adult agencies of political socialization. Obviously, such an effort would be a major ideological commitment to long-term peace, and it would naturally require a period of time to inculcate the new attitude in the masses and the elite.

Unless and until the PRC undertakes such a process of partial resocialization and devotes the necessary time to diffuse present political hostility towards foreigners, an arms control agreement and its concomitant inspection provisions might well remain ideologically unacceptable to the Chinese.

3. The Governmental System of the PRC

a) Organs of State Power

The emphasis of this section will be on the apparent power of Chinese state organs. Nominally, there are six basic components of the governmental system -- the legislative, administrative, judicial, procuratorial, military, and quasi-public organs. Despite constitutional and statutory grants of exclusive and overlapping powers to each of these different organs, essential control always rests with the CCP. In many instances, the actions of these different organs are directly authorized and expressly approved by the Party. In other instances, one might expect no less than Party knowledge and tacit approval of governmental acts.
Nevertheless, the governmental system of the PRC is treated as a separate variable of Chinese arms inspection policy. There are two reasons. First, the 1982 PRC Constitution and subsequent legal codes have, at least ostensibly, restructured the PRC's socialist legal system and established separate lines of governmental authority. Since then, there have been numerous calls for the independent exercise of authority of the separate organs, pursuant to the letter of the law as laid down in those enactments. There seems to be little doubt that the Party will never relinquish total effective control of legal and extra-legal governmental organs, though the extent to which the CCP may be willing to share or transfer limited powers to domestic organs is uncertain. An examination of the apparent parameters of power which significant governmental organs may possess will provide an arms inspectorate with an understanding of the maximum limits of permissible authority granted to such organs, and allow inspectorate personnel to discount from that point for CCP control. Second, though the components of the PRC's governmental system apparently exercise only a marginal influence over CCP policy-making, they are important to study because of their instrumental role in the policy-execution process -- Party control notwithstanding -- vis-a-vis inspectorate operations.

The Chinese theory of a monolithic state, in which the political and legal systems are unified, is embodied in a number of principles of Chinese constitutional law. The PRC is constitutionally organized as a "federal" system. At the apex of the state structure described in the 1982 PRC Constitution is the NPC, the "highest organ of state power (Art. 57)." The NPC is comprised of deputies elected by the people's congresses of the provinces, autonomous regions, and municipalities directly under the central government, and by the People's Liberation Army (Art. 59).

Pursuant to the 1982 PRC Constitution, the NPC exercises numerous ostensible legislative, quasi-judicial and constituent powers, including the power to amend the Constitution (Art. 62(1)); to make and revise criminal, civil, state organizational and other fundamental laws (Art. 62(3)); to supervise the enforcement of the Constitution (Art. 62(2)); to decide on the State Council Premier (Art. 62(5)); to elect the Supreme People's Court President (Art. 62(7)) and the Supreme People's Procuratorate's chief procurator (Art. 62(8)); and to pass upon the major economic measures of the state (Art. 62(9)). A blanket clause also gives the NPC the right to exercise such other functions as it deems necessary (Art. 62(15)).

Sometimes sharing NPC powers and sometimes exercising them ad interim is the NPC Standing Committee. It also possesses a number of exclusive powers, including the right to interpret the Constitution and supervise its enforcement (Art. 67(1)); to enact and amend laws other than those which should be made by the NPC (Art. 67(2)); to make partial revisions and supplements to fundamental laws enacted by the NPC when it is not in session (Art. 67(3)); to interpret statutes (Art. 67(4)); to revise or annul
inappropriate rules, regulations, decisions and decrees of both the State Council and local government organs (Art. 67(7)-(8)); to decide on ratification and abrogation of treaties (Art. 67(14)); to decide on the proclamation of a state of war when the NPC is not in session (Art. 67(18)); to decide on the proclamation of martial law (Art. 67(19)); to supervise the work of the State Council, the Central Military Council, the Supreme People's Court and the Supreme People's Procuratorate (Art. 67(6)) and, to "exercise such other functions and powers are vested in it by the [NPC]" (Art. 67(21)).

The State Council of the PRC is the executive organ of state power and the highest organ of state administration (Art. 85). Among the functions and powers of the State Council are: to formulate administrative measures, provide and approve administrative laws and regulations and issue decisions and orders in accordance with the Constitution and statutes (Art. 89(1)); to formulate tasks and responsibilities of PRC ministries and commissions (Art. 89(3)); to exercise leadership over local organs of state administration (Art. 89(4)); to administer foreign affairs and conclude treaties with foreign countries (Art. 89(9)); to change or revoke inadequate decisions and orders of local administrative organs (Art. 89(13)); and, to exercise such other powers as are granted to it by the NPC and NPC Standing Committee (Art. 89(18)). In essence, State Council decisions and orders cover a wide range of topics and, to a large extent, serve as the operative legislation of the PRC whereby the Chinese economy and many of the daily activities of Chinese life are regulated.237

The 1982 PRC Constitution grants procuratorial authority to the Supreme People's Procuratorate (Art. 132) and judicial authority to the Supreme People's Court (Art. 127).

Although articles 95-122 of the 1982 PRC Constitution grant limited powers to local governmental organs, the grant of powers to the federal authority is so sweeping as to bring most governmental concerns within its competence. The virtual omnipotence of the federal authority grants to constituent organs like the NPC, the NPC Standing Committee, the State Council, the Supreme People's Procuratorate and the Supreme People's Court almost unlimited responsibility to execute policy and administer all major aspects of Chinese economic, political and social life. Moreover, the consolidation of power in these major organs simplifies CCP control over PRC governmental activities.

b) Arms Inspection and the Legislative Process

After the ratification of a disarmament agreement, the legislature, in the absence of self-executing treaty provisions, would be called upon to implement the arms inspection provision. Substantive policy-making and policy-execution processes will undoubtedly originate within the upper echelons of the CCP, probably in the Political Bureau and its Standing Committee. These will be transmitted -- through the Central Committee and the
Secretariat -- to the proper legislative institutions for final rubber-stamp approval.

As the legislative process appears to evolve under the 1982 PRC Constitution, the ACD agreement will be signed by an official plenipotentiary of the PRC, most likely the PRC chairman, at which time reservations may be attached. It will then be sent to the NPC Standing Committee for formal ratification. Assuming automatic incorporation of the agreement into PRC municipal law, no further action need be taken. However, since all fundamental domestic legislation receives the approval of the NPC, it would appear that arms inspection provisions may need to pass a majority vote of this body, as well as that of the Standing Committee, although ratification by the former should make subsequent approval by the latter a mere formality. Because of the international tenor of the ACD agreement, subsequent municipal legislation will probably not be handled along the lines of current NPC national enactments, which are often first disseminated in draft form to local governmental units for discussion before official promulgation.

In essence, there are actually layers of legislatures in the PRC. The NPC is the highest legislative authority at the federal level, and there are people's congresses and standing committees in each of the smaller governmental units of the PRC -- provinces, autonomous regions, municipalities directly under the central government, autonomous prefectures, autonomous counties, counties, cities, villages, municipal districts and towns. Each of these congresses ensures observance of the laws and is constitutionally granted the power to issue decisions within the limits of its authority (Art. 102). The text of the 1982 PRC Constitution thus reserves to these smaller governmental units only a limited sphere of concurrent powers and reinforces the political domination of the lower legislatures by the higher. By indisputably creating lines of subordination between legislative layers, the Constitution assures the unchallenged existence of federal supremacy over constituent units and guarantees the CCP total domination of the legislative process.

Since the adoption of the 1979 organic laws, there appears to have been no single instance where the decrees of the NPC Standing Committee and the statutes and decisions of the local standing committees have not met with the approval of the people's congresses. In spite of the fact that the volume of normative enactments promulgated by the legislatures of the various levels since mid-1979 has hardly been overwhelming, continuing jurisdiction of the various levels reduced any possibility for future clashes between different centers of power. NPC and State Council laws, regulations, and decrees are often implemented within the PRC through constituent legislative enactments known as circulars. In essence, circulars are no more than official notices of "federally-enacted" legislation, although their formal, official promulgation by local party committees and governmental units invites the supposition that they are akin to regional implementing legislation.
Strict horizontal and vertical subordination -- giving superior party and legislative organs the right to modify or cancel ultra vires decisions of lower-level departments -- indicates that Chinese participation in the adoption and execution of an arms inspection policy is first and foremost a subject for the attention of the CCP, and the NPC and its Standing Committee. Since arms control legislation would be a national responsibility, lower-level legislation would probably be minimal. Because of the requirement of compliance with the principles enacted by the national legislature, the more important and relevant local laws will probably exhibit complete homogeneity. The proceedings and decisions of the NPC are carefully and extensively covered by the various forms of Chinese news media, a process ensuring wide dissemination of the contents of national laws and portraying the proper official attitude toward the policies underlying them. As such, it is hardly likely that lower-level legislative tiers, despite some degree of autonomy and discretion, will promulgate and administer local arms control laws which do not strictly conform to those of the NPC. Where non-conformities do exist, the PRC system would appear to provide an arms inspectorate with the opportunity to bring non-conforming lower-level legislation to the attention of the Chinese institutions vested with the authority to modify or cancel such decisions. However, this is not to assert that there would not be underlying difficulties resulting from inspectorate requests for conforming legislation. For instance, there is no evidence that the Chinese have ever applied the concept of severability to statutes with invalid provisions or applications. Thus, it is uncertain whether Chinese authorities would be amenable to striking invalid portions of an enactment or whether they might resist requests for modification because of a perceived necessity for invalidating an entire statute. This particular problem, though, may well be mooted by legislative and administrative processes at lower levels, which would most likely be characterized by a minimization of policy conflict and a maximization of expediency. That would ensure effective centralized CCP control of the policy-execution process. Thus, the extent to which the legislative process facilitates or obstructs an arms inspection arrangement would serve as an important political weathervane of CCP commitment to effective inspection operations.

The shortage of published materials on Chinese law has the potential for imposing significant limitations on the sources of an arms inspectorate's legal information. The relative paucity of available published regulations outside the PRC is largely the result of the 1979 legal codes; Chinese limitations on the distribution of legislative and administrative materials; and, the lack of interpretive precision occasioned by PRC mass media translations of Chinese legal materials by non-legal journalists.

Though legal journals, which ceased publication during the Cultural Revolution of the 1960s, have reappeared, they often contain only peripheral legal information of marginal utility to inspectors.
More direct legal information was recently made available in a 1980 collection of statutory material, though the volume includes enactments which have subsequently been declared null and void. No systematic publication of judicial decisions exist. At best, such decisions receive only selective and often cursory treatment in the Chinese press.

Chinese newspapers may, in fact, be the most significant source of legal information for foreign perusal that exists in the PRC today. The 1979 legal codes and many 1979 and 1980 regulations appeared in Renmin ribao (People's Daily) and were subsequently translated and distributed by foreign wire services, though the lack of legal training of many of the Chinese and foreign correspondents and journalists has resulted in non-precise, often inaccurate translations, the consequences of which could be most deleterious to an accurate assessment of Chinese law.

Moreover, CCP control of the press and the generally limited accessibility of foreign media personnel to legal institutions can only raise suspicion and doubts as to the precision of distributed published legal material. In addition, the legislative power granted to local people's congresses and their respective standing committees indicates that there is an effective body of Chinese legislation which is simply too voluminous for dissemination through the PRC press. Hence, inspectorate personnel could find lower-level legislation difficult to obtain.

Finally, Harold Berman and Peter Maggs have suggested what would appear to be a problem that might well be endemic to Party-controlled totalitarian societies, that of secret legislation. In the first instance, of course, the possibility of secret legislation and the existence of legal materials for internal circulation only create problems for an arms inspectorate, inasmuch as the inspectorate would have difficulty in distinguishing between a clear-cut violation of an inspection provision authorized by the CCP and a violation due merely to the mistakes or inefficiency of local authorities.

Moreover, the possibility of secret legislation creates problems for Chinese officials who must obey secret orders to sabotage activities which published Chinese legislation has seemingly sworn them to uphold. In like fashion, Chinese judges, lawyers and administrators may well find themselves uninformed of secret legislation, a possibility which only adds to the confusion. Because of the shortage of published legal materials, the slant of the CCP-controlled press, and the potential for secret legislation, an arms inspection arrangement concluded with the PRC faces a number of significant challenges and compels an arms inspectorate, for the successful execution of inspection provisions, to seek and obtain the active cooperation of Chinese officials.
Arms Inspection and the Procuratorates, Judicial Organs and Public Security Departments

The procuratorates, judicial organs and public security departments would play a significant role in the execution of an arms inspection arrangement: the procuratorates as an administrative and prosecuting organ, the judiciary as an organ for the resolution of disputes and the public security departments as an organ of law enforcement.

In theory, an arms inspectorate might desire to coordinate its operations with the Ministry of Justice, which was restored in 1979 and which supervises the work of the courts, procuratorates, and judicial administrative organs. As the central organ in charge of judicial work, the Ministry would ordinarily be the proper organ to contact to alleviate the potential of local judicial and procuratorial interference with inspection operations. However, it is not altogether clear what authority the Ministry of Justice actually possesses, since its assigned tasks appear to be largely ministerial in nature. As a result, an inspectorate could not rule out the possibility of having to deal with these organs individually. Nevertheless, at the very least, the Ministry may help to improve the quality of the judicial and procuratorial processes and help to partially redefine procuratorial and judicial responsibilities and powers.

Judicial and procuratorial participation in an arms inspection arrangement would essentially be determined by the nature of the particular situation, but would undoubtedly be influenced by the internally communicated CCP position on arms inspection policy and by the professional guidelines acquired by judicial and procuratorial personnel in the course of their work.

The procurator's office was restored as a government institution as part of the state structure set up under the 1978 PRC Constitution. The 1979 Organic Procuratorate Law calls on the procurator to exercise his authority with regard to cases of treason, attempts to split the country and other major criminal cases disrupting uniform conduct (Arts. 4, 5). It also places a strong emphasis on the procuratorate's punitive power. Only passing reference is made of the procuratorate's power to supervise the observance of citizen's rights by state organs. Article 2 of the Organic Procuratorate Law permits the formation of special people's procuratorates, including military, railway transport, water transport and "other special" procuratorates. In this way, the procuratorial network has been expanded to become "universal."

Under its general supervisory powers over the administration of justice, the procuracy exercises significant influence over the manner in which the law is applied. Pursuant to the Organic Procuratorate Law, the procuratorates possess extensive investigative powers, including the legal authority to issue an
indictment (Art. 13) and to question the legality of judicial decisions (Arts. 17-19) though, in practice, this latter power appears more illusory than real. Such sweeping powers imply that the procuracy could be expected to intervene in any one of a number of multifarious legal predicaments between an arms inspectorate and the PRC.

The potential role of the procuracy in arms inspection is further complicated by other provisions of the 1979 Organic Procuratorate Law. In an effort to promote greater centralization of procuratorial bodies, the 1979 Law provided that higher level procuratorates shall exercise "leadership" over lower-level procuratorates (Art. 10), thus suggesting strict vertical subordination. At the same time, lower-level procuratorates are also responsible to corresponding level people's congresses and standing committees, the bodies to which they report. Such "twin" subordination "creates some difficulties for uniform application of laws nationwide and in the final analysis reduces the role of the procurator's office as a body supervising legality." Revealingly, Chinese procuratorial offices have themselves disclosed that procuratorates are simply unclear on the scope of their functions and powers. The uncertain position of the procuratorates, in a society where law is often an instrument of CCP policy, further erodes any sense of legal security or stability and tends to undermine statutory assertions of independent procuratorial authority.

Despite an incomplete crystallization of the process of casting the procuratorates in the PRC's present state structure, the relevance of the procuracy to arms inspection is not lost, though procuratorial discretion may well be circumscribed by CCP directives. The vital role of the procuratorates in inspection operations may rest largely on its assigned task of questioning the validity of judicial decisions and judgments since judicial review does not exist under PRC law. The procuracy is thereby granted significant responsibility for examining the constitutionality of various rulings and for ensuring compliance with enabling legislation. However, the breadth of this power is uncertain. Can an arms inspectorate protect an administrative ruling, local ordinance, or judicial decision inimical to arms inspection to procuratorial authorities? Pursuant to procuratorial powers, procuratorial officials -- presumably after receiving CCP clearance -- would be charged with the responsibility of pressing for the reversal of bad judicial decisions, which has some established precedent in PRC law. But, whether this power extends to pressing for the repeal of an offensive local statute is doubtful, although technically that would eliminate any form of statutory review and would require inspectors to resort to some form of grievance issued to local standing committees (or the NPC Standing Committee) to initiate new legislation.

The procuracy works closely with another political-juridical body, the people's courts. Pursuant to the Organic Court Law, the courts of the PRC are the judicial organs of the
state in charge of dispensing justice. Despite granting independent authority to the people's courts, the Organic Court Law fails to confer exclusive judicial power of them, an omission which preserves the dependence of the courts on local organs of state power (and on the CCP). People's courts are subordinate and accountable to local people's congresses and to their standing committees between LPC sessions (Art. 17). Moreover, Article 28 of the Organic Court Law for Local Congresses and Governments grants to standing committees the power to supervise the activities of the courts. In practice, Chinese judicial authority has been further diluted by the frequent interference of local Party and administrative organs in the judicial process and by the dual allegiance of many judges to the judicial system and the Party. Such practices, combined with court accountability to LPCs and their standing committees, create judicial dependence on the organs of local government and significantly attenuate the independent power of the court system.

Pursuant to the Organic Court Law, the judiciary is composed of a broad stratum of district, intermediate, and higher people's courts with jurisdiction over "both criminal and civil cases" (Art. 3). In actuality, though, mass organizations handle the task, under the Provisional General Rules Governing the Organization of the People's Mediation Committees of February 25, 1954 reintroduced by the Twelfth Session of the NPC Standing Committee in 1979, of "mediat[ing] civilian disputes and minor criminal cases in general and . . . carry[ing] out propaganda and education in policies and laws in the course of mediation" (Art. III). The committees are not empowered to use any sanctions to compel reconciliation and their reintroduction as a judicial appendage may only be "a temporary if incomplete answer to the acute shortage of judicial personnel which is the result of the deliberate Maoist policy of contempt for laws."

In the administration of justice, the people's courts of the PRC under the Organic Court Law have adopted the system of "rendering judgment after two trials." The initial trial of criminal and some civil cases is conducted by the basic-level people's court (Art. 21). At the next level, the intermediate courts exercise appellate review over basic-level people's courts and, in addition, have original jurisdiction over cases prescribed to them by law (Art. 25(1)), or referred to them by local courts (Art. 25(2)). The higher people's courts stand in like relation to the intermediate courts. Both intermediate and higher-level people's courts have the right to review decisions of lower-level people's courts which have taken legal effect pursuant to their powers of judicial supervision (Art. 14).

The highest judicial organ is the Supreme People's Court (Art. 30), which has been granted powers identical to those of intermediate and lower-level courts, including the power of original jurisdiction in important cases, but which is also entrusted with the power to exercise judicial supervision over the decisions of local people's courts and special courts. The Supreme People's court is empowered to provide judicial
interpretation concerning the specific application of laws and
decrees (Arts. 30, 33) and approves or passes the death penal-
ty in many cases of capital punishment (Art. 13). In addi-
tion, the Supreme People's Court is vested with the authority to
issue explanatory decrees (Art. 33) designed to publicize and
eliminate the more common errors made by lower-level courts. To
date, few explanatory decrees have ever been publicly issued.
Moreover, the lack of trained judicial personnel in the PRC has
left the Supreme People's Court unable to handle the deluge of
lower-level cases appealed to it and to carry out its supervisory
legal functions as well. The Supreme People's Court is not the
custodian of the PRC Constitution and has not questioned the
validity of any of the recently enacted legal codes and regula-
tions. Its role appears to be significantly more passive. In
effect, this passive role cuts both ways. An arms control in-
spectorate should have little or no concern about the possibility
of the Supreme People's Court's initiation of judicial review of
inspectorate provisions passed by the NPC.

Chinese law permits only one appeal by a defendant to the
next highest court as a matter of right. While appellate re-
view in the West is concerned mostly with questions of law, such
review in the PRC does not seem to be so limited. The factual
record may be reviewed or expanded by the introduction of new or
further evidence, and indications are that full-dress re-trials are
within the scope of appellate authority. Appellate review by way of judicial supervision of decisions which have
taken effect (usually by virtue of an adverse decision on appeal
or by the lapse of the 5-day requirement for filing an appeal) en-
compasses review of both facts and law. If a higher-level
court or the procuracy feels that the appellate decision would
cause a miscarriage of justice, either body may then object to
the decision by filing a protest. The paucity of actual judicial or
procuratorial protests notwithstanding, an arms inspectorate
might well gauge Chinese commitment to an arms control arrange-
ment by the willingness of the superior courts or procuracy to
protest decisions inimical to arms inspection.

In addition to the local people's courts and the Supreme
People's Court, the Organic Court Law has added a third type:
special people's courts (Art. 2). The NPC Standing Committee is
vested with the power to determine the organization and jurisdic-
tion of special people's courts, despite the constitutional
grant of judicial supervisory authority to the Supreme People's
Court. Undoubtedly, "the fact that the special courts are under
the scrutiny of particular government departments goes a long way
to determine the nature of their activity." The use of a spe-
cial court and special procuratorate for the Gang of Four trial
suggests that special courts are most likely to be used in publi-
cized cases of significant importance and sensitivity. Claims
brought against an arms inspectorate in cases where it was not
shielded by immunity would seem to be the most likely candidates
for the creation of special courts, which, by their very nature,
would not be entrusted with a flood of other cases, and which,
because of the legal machinations surrounding their creation,
would portray to the international community the Chinese commitment to judicial fairness. On the other hand, claims brought on behalf of an inspectorate for alleged acts of Chinese interference in inspection operations may or may not receive the attention of a special court, depending on the nature of the obstruction and the reasons for it. Moreover, trials in people's courts on non-secret or other non-special matters would give the Chinese the option of conducting the trial publicly pursuant to Article 125 of the 1982 PRC Constitution. In many instances, that option could be exploited by the PRC to garner public support for Chinese policy, publicize the indiscretions of inspectorate personnel, or simply legitimize the judicial process.

Public security departments (gonganju) are the third division of political-juridical bodies in the PRC. Prior to the adoption of the 1978 PRC Constitution the public security bodies "performed secondary functions of the procurator's office in conducting inquiries and preliminary investigations, instituting criminal proceedings and maintaining public accusations in court, as well as supervising the fulfillment [sic] of court sentences." 282

The public security organs functioned outside the scope of any established legal norms and "enjoyed a higher status" than the procuracy.283 Such functions and powers would indicate that the participation of public security organs in the arms inspection process would have significant ramifications for an inspectorate, largely because of the public security departments' uncontrolled responsibility in the criminal process.

Although ostensible power of public security organs has since been circumscribed,284 this vast control apparatus still retains impressive and disturbing - authority. For example, the Regulations of the People's Republic of China Governing the Arrest and Detention of Persons Accused of Crimes, adopted February 23, 1979285 [hereafter Arrest Regulations], requires procuratorial or judicial approval in the form of an arrest warrant before public security bodies were entitled to make arrests. But, Article 6 of the Arrest Regulations permits public security organs, in an "emergency, to detain up to four days a person who has committed a crime or one who is "suspected of having committed a major crime."288 Public security organs maintain visa inspection stations for foreign travellers and are otherwise in charge of monitoring foreign activities in the PRC.289 Moreover, public security organs allegedly have exclusive power to enforce fines through detention and to determine fault at the site of an accident for purposes of compensation.290 Public security organs are apparently not accountable to the courts or the procuracy.291 Simply phrased, public security organs and the Public Security Ministry in charge of them, operate a largely unfettered surveillance system in the PRC.

A 1978 report given by the chairman of the PRC Supreme People's Court, Jiang Hua (Chiang Hua), noted that "security bodies widely practice extraction of 'confessions' from the accused
under duress." Although the Arrest Regulations grant the procuratorates the power to investigate "responsible personnel who carried out arrests, detentions and searches of citizens in violation of the law" (Art. 13), in reality, the zeal with which any investigation will be conducted will depend largely on the nature of the offense and the offender. A genuine Chinese commitment to an arms inspection policy would probably result in official disciplining of any public security organ for flagrant misconduct displayed towards the inspectorate team. Unpunished, obstructive actions, such as gross provocations or dilatory detention procedures carried out by public security organs, may simply evince a lack of good faith on the part of the PRC.

The extent to which the political-juridical organs participate in an arms inspection arrangement undoubtedly remains a function of CCP policy directives. The development of the procuratorial, judicial and public security bodies since 1979 is still incomplete and their interaction within the governmental mechanism is still unsettled. Nevertheless, the mass public campaign to strengthen the PRC legal system has inculcated Chinese citizens with a manifest respect for legal institutions and a positive attitude toward Chinese justice. As a result, the procuracy, the courts, and the public security organs could significantly facilitate the policy-execution process of arms inspection. The procuracy, the most active of the three political-juridical bodies in the Chinese legal system, could offer a strong indication of the overall Chinese commitment to arms inspection by its willingness to cooperate with an inspectorate in removing local legal obstacles to inspection. The courts, as institutions empowered to settle disputes, often through public procedures, could influence Chinese attitudes towards inspection procedures by providing a forum for legal challenges to inspection functions. The public security departments, as the official policing agency for the PRC, could be particularly assiduous in removing threats to the inspectorate and the inspection process. Consistent, unequivocal acts of cooperation from these three organs would substantially contribute to the creation of a climate in the PRC which is conducive to the execution of an inspection arrangement.

4) The Chinese Attitude Toward Disarmament

The acquisition of strategic nuclear weapons capability by the PRC, shown most recently in the successful Chinese test launching of an ICBM, has added a new dimension to the global strategic balance; given the PRC a leading voice on pressing contemporary international issues; and, provided a stronger, more stable domestic environment in which to embark on the program of "four modernizations."

The evolution of Chinese disarmament policy has been a function of Chinese national security interests. The PRC has regarded possession of a limited nuclear arsenal as an absolutely essential requisite for self-defense purposes and for world security. Chinese perceptions of PRC military vulnerability...
have created a domestic political posture generally unswerving in its rigid opposition to international agreements that would hinder continued sophisticated weapons development. With few exceptions, the PRC has not acceded to or ratified any international agreement related to arms control and disarmament. Moreover, the Chinese have stated unequivocally that the PRC would not be bound by any agreement without the formal participation and signature of her delegate.

An understanding of Chinese attitudes toward arms control and disarmament begins with an understanding of the characteristic differences between the terms "arms control:" and "disarmament:"

Disarmament normally means a quantitative reduction or elimination of armaments and military forces, whereas arms control refers to measures designed to regulate and restrict armaments so as to maintain a measure of military power balance and to reduce the probability of accidental war.

Chinese policy implicitly differentiating between these two forms of arrangements was largely the result of a defensive political outlook borne by military inferiority. From the vantage point of national security interests, the PRC disapproved of any measures which would neutralize China's man-power advantage vis-a-vis the technological superiority of the United States and the Soviet Union, or which would perpetuate the superpowers' nuclear monopoly. As a result, the Chinese formulated in the 1960s an independent policy grounded upon the complete prohibition and thorough destruction of nuclear weapons, otherwise expressed as total and complete nuclear disarmament.

In effect, this policy has been the cornerstone of subsequent Chinese disarmament proposal modifications, although international disharmony has compelled the PRC to underscore more limited measures as a means to eventually achieve complete nuclear disarmament. Moreover, the PRC has added conventional disarmament to its proposals, something it had heretofore been reluctant to do. The result is that the current Chinese policy of disarmament is an amalgam of what are arguably the more preferable (i.e., comprehensive) features of arms control and general disarmament measures. The basic premise continues to be the reduction in number of weapons systems components. Hence the terms -- arms control and disarmament -- are used interchangeably with respect to inspection operations, because verification procedures may accompany either arrangement.

It is only in the last decade -- since China's entry into the United Nations in 1971 -- that Chinese representatives have articulated the PRC's principled stand on disarmament issues. Only nine days after being admitted to the United Nations, the PRC, through UN representative Jiao Guanhua (Chiao Kuan-hua)
reiterated Chinese support for total nuclear disarmament and opposition to superpower arms control arrangements. Jiao reasserted that the proper condition precedent for genuine disarmament was a pledge by all the nuclear powers "to guarantee that they will not use nuclear weapons against [non-nuclear] countries and [non-nuclear] zones and will withdraw all their nuclear forces and dismantle all nuclear bases and nuclear installations from these zones." This pledge came to be known as the "no-first-use" pledge and remains one of the guiding principles of subsequent Chinese disarmament proposals.

Despite Jiao's cogent remarks during the introductory phase of Chinese participation in the United Nations, the PRC voted against a significant number of disarmament and arms control resolutions, some of which were supported by a majority of Third World countries. The Chinese justified their own nuclear development program as well as their opposition to UN arms control measures on the basis that nuclear deterrence among a number of countries would break the superpower monopoly, eliminate the danger of a new world war, and contribute to the maintenance of global stability.

During UN debates on arms control and disarmament issues, Chinese representatives condemned both superpowers -- though their verbal attack on the Soviet Union was more vituperative -- for increased arms expansion and denounced their negotiations. The Chinese envisaged the rising powers of Third World countries, often portrayed proverbially in the PRC press (e.g., shanyu yulai fengmanlou), as an effective counterweight to superpower imprudence. In the face of such united global opposition the United States and the Soviet Union were depicted as isolated and debilitated sovereign powers, "in the plight of wuke naihe hualuo qu (flowers fall off, one is helpless)"). Nevertheless, the Chinese constantly admonished Second and Third World countries to guard against superpower military pressure -- qianmen ruhu houmen jinlang (repel the tiger at the front gate and the wolf sneaks in at the back door).

The formulation of Chinese policy has resulted from deductive logic, syllogistically progressing from general Chinese perceptions of the state of the world to the more specific issues of arms control and disarmament. For example, Chinese denunciations of disarmament negotiations in the 1960s and early 1970s reflected both PRC disagreement with the Soviet Union and the perceived military vulnerability of China. The PRC's censure of the 1963 Nuclear Test Ban Treaty reflected the Chinese position that nuclear status was regarded as the mark of a major military power and could not be fairly limited to only the United States and the Soviet Union. The Chinese had not yet attained nuclear capability; hence they labelled the treaty a "fraud" and accused the superpowers, with their nuclear arsenals, of attempting to consolidate their nuclear monopoly and prevent "peace-loving countries" (including the PRC) from strengthening their own self-defense techniques through nuclear weapons development.
the PRC was regarded as having "more nations on its border, more insecure frontiers and more controversies with neighboring states than any other large or small powers." Military might in the form of nuclear capability was considered a constituent national power ingredient. To enhance its global image and protect itself from the superpower threat, the Chinese regarded their own unconstrained weapons development as essential.

At the same time the Chinese described the Nuclear Test Ban Treaty of 1963 as insufficiently comprehensive, they also sought to avoid support for general and complete disarmament proposals, since conventional force reductions embodied in those proposals would remove China's only strategic advantage over the superpowers. Moreover, China perceived that its large size made possible dispersion of industry and population so that a nuclear attack would not completely immobilize the PRC. Therefore, the Chinese reasoned that they could, in a sense, afford to oppose any international concourse which sought to maintain the military status quo or prevent the PRC from acquiring its own nuclear weapons. This position was tempered by the realization that low quality medical facilities dictated that germ, chemical, or radiological warfare against China would be very effective, a fact that certainly justified PRC ratification of the 1925 Geneva Protocol and indicated the extent to which Chinese policy was both self-serving and politically practical.

As various arms control and disarmament negotiations between the United States and the Soviet Union continued, the PRC accused the superpowers of "collusions in their arms control plots" and observed that the purpose and result of these negotiations were merely to set high ceilings for missile delivery systems, leaving plenty of elbow room for research and experimentation. The Chinese perceived no real disarmament resulting from the SALT negotiations, noting often in UN speeches and domestic news articles that the SALT agreements were ineffective and would eliminate quantitative competition and confine it to qualitative in the development of strategic nuclear weapons.

The Chinese historical portrayal of the superpowers as two giant forces locked in fierce contention for global hegemony has given way, partly as a result of recent SALT negotiations, to an increased regularity of Chinese press releases and official statements characterizing the Soviet "hegemonists" as the principal threat to other countries. Opposition to Soviet expansionism "remains the principal basis for accommodation between the PRC and a broad spectrum of states." Chinese behavior has manifested itself in salutary gestures that seem almost uncharacteristic, including an alleged offer by Vice-Premier Deng Xiaoping to the United States to allow the latter to install American equipment on Chinese soil to monitor Soviet compliance with the SALT II Treaty.

The PRC continues to oppose the Partial Test Ban Treaty, the Non-Proliferation Treaty, and the proposed comprehensive test
The overriding reason for opposition to these treaties has been the firm Chinese assertion that limited arms control and disarmament measures "establish nothing". Superpower nuclear weapons were considered to be entirely offensive and continually geared for war. Each superpower was accused of using arms control and disarmament negotiations as a method "to attain nuclear superiority by limiting the strength of the other." Between 1963 and 1978, the United States was alleged to have conducted 343 nuclear tests and the Soviet Union 234. The PRC asserted that such tests indicated that arms limitation talks had simply failed to halt the escalation and expansion of nuclear arms. The superpowers had military strength "far beyond their defense needs" and their bilateral negotiations were designed to preserve the superpower nuclear monopoly and foreclose the development of nuclear programs by developing countries.

The PRC has also refused to ratify the Outer Space Treaty, the Seabed Treaty, the convention on environmental warfare (ENMOD), and the convention banning biological warfare. Much of Chinese opposition to these arm limitation agreements stems from the "deep rooted suspicion . . . about Russian and American intentions [and] . . . a long history of Soviet intervention in China and U.S. support for the rival government on Taiwan." Though the PRC has not opposed the basic premise of these treaties and conventions, it has objected to the procedural and substantive control exerted by the superpowers which, the Chinese have felt, precluded meaningful discussion and the adequate formulation of arms limitation policies which incorporate the reasonable proposals of Third World countries.

China's arms control and disarmament policies are occasionally inconsistent. On the question of chemical and biological warfare, for instance, the PRC has asserted its support for the complete and thorough destruction of chemical and toxic weapons and denounced their use by other countries in warfare. The Chinese have not only ratified the 1925 Geneva Protocol on Chemical Weapons but have also included a provision on the prohibition and destruction of biological and chemical weapons in their 1982 disarmament proposal and in their Comprehensive Programme on Disarmament. Moreover, the PRC voted for the 1973 resolution on napalm and other incendiary weapons and ratified the UN Convention restricting or prohibiting the uses of certain conventional weapons (landmines, booby traps, incendiary weapons and small calibre weapons systems). Nevertheless, China has opposed the superpower-sponsored biological warfare convention as a tool of the United States and the Soviet Union for peddling their disarmament fraud.

The PRC has not failed to attack the Soviet Union for the latter's deployment of biological weapons on the grounds that such weapons are ecologically destructive. Yet, the Chinese themselves have ignored the environmental repercussions of their own above-ground nuclear tests.
Despite the apparent inconsistencies in Chinese policy regarding weapons testing and biological and chemical warfare, the PRC has been most unequivocal in her support for the establishment of nuclear-free zones around the world, a concept which the Chinese have offered as proof that they are committed to the genuine disarmament demanded by Third World countries. By voting for UN resolutions on the establishment of a zone of peace in the Indian Ocean, the nuclear weapon-free zones in the Middle East, Africa, South Asia and Latin America as well as ratifying Additional Protocol II of the Tlateloco Treaty, the PRC has established itself as the only major nuclear power which has taken firm, consistent and unequivocal action on any issue involved in the non-proliferation of nuclear weapons.

The ratification of Additional Protocol II of the Tlateloco Treaty was not without a number of self-service political motives. At one and the same time, the PRC hoped further to isolate the Soviet Union by denouncing Soviet "acceptance" of Additional Protocol II as a fraud and more closely to align itself with the "reasonable" position of Third World countries.

The flexibility that the PRC has shown toward arms control and disarmament negotiations in the recent past is further evidence of the continuing Chinese predilection toward retaining its position as the vanguard of the Third World. The year 1978 marked the first instance in which the Chinese expressed an interest in directly participating in disarmament negotiations. Huang Hua, who represented the PRC delegation at the 10th Special Session of the UN General Assembly on Disarmament in 1978, noted that the convocation of the Session, at the insistence of the non-aligned countries, was the result of the increased dissatisfaction with the "intensified [superpower] arms race." Developing countries continued to struggle to protect their sovereignty and national security. In "reviewing the past to know better the future," Hua noted that the key reason for the lack of progress in disarmament negotiations had been the insincerity of the superpowers. The PRC representative asserted that the people of the world wanted genuine and not sham disarmament. To the Chinese delegation, genuine disarmament could only begin with the superpowers. To reduce the danger of war, Hua called for the simultaneous reduction of both nuclear and conventional armaments, something the PRC had heretofore rejected. He also called for the United States and the Soviet Union to adopt the no-first-use pledge to withdraw their armed forces from abroad, and to dismantle their foreign military installations. Moreover, the Chinese viewed as "understandable" the proposal of small and medium-sized countries that the reduction of military expenditures under disarmament measures be channelled toward the economic development of the developing countries.

During the Tenth Special Session, the Chinese delegation also announced its willingness to participate in future disarmament negotiations if and only if the superpower-dominated Geneva Conference of the Committee on Disarmament was reorganized under
UN auspices "so as to bring the role of the Third World into full play ... [by adhering to] the principle of equality among all countries."359 Throughout the Session, the Chinese press continued to denounce the superpowers' obstruction of disarmament and to support the proposals of the developing countries.360 The final document of the Session, approved by the General Assembly on June 30, 1978, gave its "highest priority" to nuclear disarmament and the prevention of nuclear war.362 The previous negotiating body for disarmament measures, which met in Geneva, was reorganized and renamed the Committee on Disarmament with an expanded 39 member representation, including the PRc.363 A new Disarmament Commission, composed of all UN members, was also established by the General Assembly and was designed to report annually to the Assembly and make recommendations on ACD problems.

The Chinese delegation maintained that it was pleased that the superpowers did not control the negotiations. Yet, it remained concerned that the final documents failed to specify explicitly that the new negotiating body, the Committee on Disarmament, be fully representative and that it be composed on the basis of equitable geographical distribution.364 Moreover, the PRC accused that the document incorporated many of the unreasonable positions of the superpowers, omitted any mention that the superpowers' rivalry increased the likelihood of a new world war and failed to criticize the Non-Proliferation Treaty and projected comprehensive test ban treaty.367 Perhaps most revealingly, a Chinese press release during the Special Session asserted that the PRC could not agree to disarmament alongside the superpowers while Soviet troops were arrayed along China's northern border and while Taiwan remained unliberated.368 Though the latter assertion had heretofore been absent from Chinese disarmament proposals and has not appeared as explicitly since, PRC concern for foreign arms sales to Taiwan and continued calls for the island's liberation in the Chinese press imply the possibility that the Taiwan issue could become a complicating factor in establishing Chinese support for full-fledged participation in the disarmament process.

Throughout 1978, the Chinese continued to view with disfavor the increasing intensity of the superpower arms race and the failure of bilateral Soviet-American disarmament deliberations.369 When the newly-formed Committee on Disarmament held its first session in 1979, the PRC attended only as an observer, though it reserved its right to take its seat at a future time.370 The Chinese, as part of their plan to assume a more active role in disarmament negotiations, proposed at the first session of the UN Disarmament Commission on May 15, 1979 their Comprehensive Programme of Disarmament, which has become the core of later PRC disarmament proposals.371 In its Programme, the PRC proposed the reduction of nuclear conventional weapons as well as biological, chemical and other weapons of mass destruction initiated and executed first by the superpowers.372 In addition, the Chinese called for the establishment of zones of peace in Southeast Asia and the Mediterranean and respect for the Indian
Ocean peace zone. The Programme also called for the establishment of nuclear-free zones in the Middle East, Africa and South Asia and respect for the status of the nuclear-free zone in Latin America.

Among the more basic principles emphasized were the no-first-use principle, the five principles of peaceful coexistence and the declaration that no disarmament measure may impair the sovereignty, independence and security of any state. The bottom line, however, was that the PRC and other nuclear powers would join in serious disarmament negotiations at some point after the superpowers had made substantial and satisfactory progress in the reduction of their armaments.

Other elements in the PRC's Comprehensive Programme of Disarmament were included as inducements to garner the support of the Third World. Phrases such as: "the actual process of disarmament should benefit the economic and social development of States;" "no disarmament measure may prejudice the right of States to make use of modern scientific and technological achievements to promote their economic development;" "the question of disarmament should be discussed and settled by all States on an equal footing;" and, "the role of the United Nations in the field of disarmament should be strengthened," were probably incorporated for their propagandistic, rather than their normative, effect.

However, the last reference -- to UN participation in disarmament negotiations -- has since been characterized as an "unusually warm endorsement of the UN role and recommendations in disarmament," and may "indicate a willingness now to consider other arms limitation treaties endorsed by the United Nations."

By implication, the PRC has advanced its support for disarmament verification provisions in its 1979 Comprehensive Programme on Disarmament and in its 1980 proposal for chemical disarmament. The former contains provisions on superpower reduction of nuclear and conventional arsenals; the latter, a provision for the destruction of existing stockpiles of chemical weapons and the dismantling of production facilities. It seemed unrealistic that the Chinese would envision the execution of either provision without adequate verification procedures.

What lingering doubts existed about PRC support for verification dissipated in 1982, when the Chinese introduced their "Proposal on Essential Measures for an Immediate Halt to the Arms Race and for Disarmament" before the Second Special Session of the UN General Assembly. Provision five of the proposal called for "strict and effective measures of international verification." The international nature of verification is further clarified in the proposal as a "group ... [of] representatives from all nuclear and non-nuclear weapon states ... [which] should submit reports to the UN General Assembly annually and whenever necessary." In this manner, the 1982 disarmament
proposal also fuels the supposition that the PRC seeks a more active role for the United Nations in disarmament.

The PRC's proposal in most other respects parallels the principles espoused in the Comprehensive Programme of Disarmament: the no-first-use principle is retained; nuclear and conventional armaments should be reduced; chemical weapons should be prohibited; and all states should participate in disarmament negotiations on an equal footing. The only addition to these principles appears to be the Chinese call for a 50 percent reduction in superpower nuclear arsenals -- previously the PRC had used the term "substantial" reduction -- before the advent of serious negotiations.

If there are troubling aspects to this proposal, they appear to be with respect to verification. First, the Chinese suggestion for an international verification group composed of nuclear and non-nuclear weapon states appears cumbersome and unwieldy. Second, the 1982 proposal retains the provisions of the 1979 proposal that disarmament measures should not threaten the sovereignty of any state. How the PRC perceives the reconciliation of potentially intrusive "effective verification" operations -- through national technical means or on-site verification -- with the inviolability of sovereignty is unclear. Nevertheless, the most recent Chinese disarmament proposal is the first to suggest the need for verification and remains an unprecedented step in PRC disarmament policy, however impractical that policy may appear.

Throughout all its deliberations, the Chinese have continued to stress the "stark reality of accelerated arms expansion and intensified military expansion abroad by the superpowers," and the right of Third World Countries to develop their own self-defense programs and to use nuclear energy for peaceful purposes. The effect of this position has been to chill somewhat the atmosphere surrounding disarmament negotiations and attribute to the United States and the Soviet Union the primary responsibility for arresting the arms race and initiating the disarmament process.

The tradition of extensive opposition to superpower disarmament efforts provides one of the most obstructive elements for arms inspection in the PRC. Chinese participation in an arms inspection arrangement would first involve the initiation and implementation of a substantial resocialization of the population on arms control and disarmament issues, an undoubtedly lengthy and complicated process. Furthermore, this process of resocialization would necessarily involve some form of reconciliation or rapprochement with the Soviet Union. The political rift that has existed between the Chinese and the Soviets is one of the fundamental reasons the PRC refuses to negotiate with the nuclear powers on arms control and disarmament issues. The Chinese have consistently regarded the Soviet Union as the major source of world tension. The PRC response to the aggressive
The military presence of the Soviets along the Chinese-Soviet border and around the world has been a declaratory policy which has stressed a posture of finite nuclear deterrence. The goal of the Chinese nuclear deterrent strategy has been to minimize the likelihood of a Soviet preemptive attack and reduce the vulnerability of the PRC's nuclear systems. The Chinese have thus undertaken a number of measures designed to "disperse, camouflage and diversify" their nuclear delivery systems, hiding some missiles in silos and others in mountainous locations, thus complicating detection. An arms inspection arrangement would run counter to such a continuous and intensive process of war preparedness based on a limited retaliatory capacity requiring the utmost in non-detection to be effective.

In effect, Chinese participation and interaction in the international community will always depend, to a great degree, on PRC-perceived priorities, values, and vulnerability. The PRC's sensitivity to previous superpower-controlled disarmament negotiations and its ardent distrust of the Soviet Union makes the likelihood of unreserved approval of intrusive arms inspection procedures presently improbable, particularly if the composition of the inspectorate includes Soviet participants. The entire approach of the Chinese to arms control and disarmament issues suggests the formation of an inspectorate body composed of impartial, Third World members whose reports are eventually funneled through a representative international body. Such an inspectorate would receive a potentially greater degree of initial cooperation from the relevant PRC governmental bodies involved in the inspection process and could minimize Chinese assertions of potential ulterior motives on the part of individual inspectors. Most Chinese discernible anti-Soviet trends among the general population would fail to disrupt as readily an inspection procedure which did not involve direct Soviet participation. Finally, greater Third World participation in the inspection process would provide the PRC with what it may consider a more sympathetic ear towards potential superpower violations of the inspection agreement, a point not to be disregarded lightly given past Chinese attacks on superpower-controlled disarmament organs. Though it is not the intent of this study to propose in detail the working composition of an arms inspectorate, an awareness of Chinese receptiveness to present disarmament proceedings may make the finalization of future agreements somewhat easier.

Of course, PRC apprehension toward, and skepticism of, present disarmament negotiations may prove obstructive of arm inspection inasmuch as the Chinese would be likely to envelop the operations of the governmental system in secrecy and encumber even the simplest problems in bureaucratic red tape. The CCP and Chinese media have never been remiss in inculcating the masses with an attitude "that constant vigilance on the part of every citizen is essential to prevent both foreign agents and subversive ideas from penetrating." Chinese society. This attitude endures despite the kind of PRC control over the population which has been so thorough that it is unlikely a limited contingent o
foreign inspectors would prove politically disruptive. Inspectors would probably not be attending Chinese schools, working in Chinese factories, or otherwise engraining themselves in the fabric of PRC society so as to cause the system to break down. Yet, increased cultural contacts and present-day reports in the Chinese press criticizing Mao\(^3\) -- for so long the patriarch of Chinese society -- may invariably lead to the kind of psychological self-reevaluation that encourages Chinese people to seek knowledge of the outside world and prompts the PRC leadership to labor under an anxiety about Chinese society becoming contaminated by foreign influence. Chinese reluctance to accept inspection for reasons of national security may manifest itself in implementation of stricter standards of civilian and police (public and secret) surveillance over inspectorate members, particularly since it would be unlikely that the PRC would be permitted to maintain effective, selective control of the inspectorate's official itinerary within the country.\(^3\)\(^8\)

Although Chinese support for verification remains one of the more laudable aspects of PRC disarmament policy, the Chinese have never publicly endorsed on-site inspection. In fact, in what was one of the very few press reports to even faintly allude to on-site inspection, the Chinese noted that the United States would have difficulty monitoring Soviet compliance with SALT II because "there is no perfect solution to verification."\(^3\)\(^9\)\(^9\) There is no hint that the PRC considers on-site inspection less flawed than other surveillance techniques nor that it would find on-site operations acceptable under provisions of its disarmament proposals opposing measures that impair the sovereignty, independence and security of any state. At present, the net impact of Chinese attitudes and policies toward disarmament would probably prove obstructive to PRC participation in on-site inspection arrangements.

In the final analysis, the single most constructive factor conducive to Chinese participation remains, despite pervasive PRC suspicion of superpower motives, the willingness and sincerity of the United States and the Soviet Union to engage in genuine disarmament. The reluctance of the superpowers to proceed pursuant to the terms of the PRC's disarmament proposals will probably have an enervating effect on Chinese participation in, and affirmative support for, effective verification procedures.

But this is not to assert that the PRC would limit its participation in arms control and disarmament measures to arrangements based exclusively on its programs. Chinese declarations on the strengths and weaknesses of recent proceedings are occasionally equivocal and often indecisive in suggesting more feasible alternatives. Any lack of resolve, however, is not to be mistaken for weakness. Rather, it is the result of the relative brevity of PRC participation in official international intercourse. The Chinese are frequently professing official and semi-official proclamations as litmus tests for official international reaction. Chinese positions are pliable; they may be altered in response to vigorous foreign dissent or adjusted to - 57 -
more appropriately fit the dictates of CCP ideology. The more positive the relationship between such variables, the greater the likelihood for compromise. The position of the PRC with respect to present-day disarmament measures is arguably more conducive to Chinese participation than it has ever been. This is a first significant concrete move in the direction of disarmament and suggests that the PRC no longer considers genuine disarmament a mere hackneyed slogan.
FOOTNOTES


2. LENG AND CHIU, supra note 1, at 243. For a detailed discussion of Chinese views on international law, see Chiu, Communist China's Attitude Towards International Law, 60 AJIL 245, 251-57 (No. 2, April 1966); Wang Teyia and Wei Min (eds.), Guojifa (International Law), (Legal education teaching materials), Chapter 2, Liu Zenzhang and Wei Min, Guojifa de jiben yuanze (Basic principles of international law), pp. 48-53 [published by the Law Publishing Co., Beijing: 1981, lst ed.]. [hereafter cited as Guojifa]. On doctrinal grounds, the PRC is said to recognize two separate systems of international law, "bourgeois" and "socialist." LENG AND CHIU, supra note 1, at 243; HALPERIN AND PERKINS, supra note 1, at 143. Regardless of these "bourgeois" and "socialist" international law distinctions, the PRC will justify the use of "bourgeois" principles and, in effect, transform them into "socialist" ones where they serve national interests. Cf. note 40 infra.

Although some have ascribed to the PRC this distinction in international law principles, the Chinese themselves have not recently resorted to such a distinction in foreign language legal publications, though it continued to appear in Chinese documents. See, e.g., Guanyu xiandai guojifa dingyi wenti (Problems in the Definition of Contemporary International Law), Xinhua yuebao, June 1980, at 10-12. According to this article, the Chinese continue to debate the merits of the "socialist system of international law" (shehui zhuyi tixi quojifa) and the "bourgeois system of international law." [translation by author]. One possible explanation for the absence of such articles in, say, English legal publications of the PRC is that the Chinese quest for economic modernization with Western aid may require less vehement and aggressive opposition to "bourgeois" principles.

Chinese scholars have also distinguished PRC acceptance of principles of international law from those of world law. See Anguilo, Chinese Nuclear Tests and Transnational Radioactive Pollution, 3 ASILS INT'L L.J. 63, 85 (Vol. 3, 1979).

3. No comparable generalized theory of the validity of customary international law seems to have developed in the PRC, though the Chinese -- through adherence to the
"general principles of law" provision of Article 38(1)c of the State of the International Court of Justice, 3 Bevans
1179 (1945) -- have at least impliedly asserted that international custom is a valid source of international law.
See Wilk, International Law and Ideological Realignment: Universality Reexamined, 10 NYU J. OF INT'L L. AND POL.
463, 482 (1978); LENG AND CHIU, supra note 1, at 27 n. 49.
Cf. "PRC Delegate Addresses Security Council on U.S.
Hostages," Foreign Broadcast Information Service on China
[hereafter FBIS-CHI], No. 001, 1980 [hereafter cited by
year and number: e.g., 80-001] (Jan. 2, 1980), at A1; Og­
den, The Approach of the Chinese Communists to the Study of
International Law, State Sovereignty and the International

The traditional Chinese image of world order conceived
of the PRC as a cultural epicenter, as illustrated by Chi­
inese use of the term "tianxia" or "all under heaven" to
describe its culture. See Hoffheimer, China and Interna­
tional Legal Order: An Historical Introduction, 11 CASE W.
RES. J. INT'L L. 251, 252 (Nov. 2, 1979). Even the Chinese
characters for "China" -- Zhongguo -- mean the "middle
kingdom." The implication would be that China perceived
itself not as an equal among others but as world order in
itself. See id. For this reason, it may not be surprising
that traditional Chinese jurisprudence is devoid of any
 systematic treatise on comparative or international law.
Id., at 253. With the increasing interdependence of na­
tions and the introduction of foreign philosophies and
ideals, however, China's view of international law as "sim­
ply China," (id., at 252) was forced to undergo
readjustment.

International law as an academic discipline has again
appeared for the first time since the start of the Cultural
Revolution. See "Renmin Ribao Calls for International Law

4. Often these agreements are embodied in treaties, a facet of
international relations the PRC deems as one of the most
important sources of international law. See Anguilo, supra
note 2, at 86; Guojifa, supra note 2, Chapter 9; Wei Min,
Tiaoyue (Treaty Law), pp. 319-62. See also J. HSIUNG, LAW
AND POLICY IN CHINA'S FOREIGN RELATIONS 225 (1972).
Cf. "Xinhua on Soviet Friendship Treaties, Afghanistan," FBIS­

Basic to Chinese international relations and to many
of the treaties entered into by the PRC are the five
 principles of peaceful coexistence which embody the fundamen­
tals of Chinese foreign policy and have been "expounded
upon as the quintessence of modern international law." Anguilo, supra note 2, at 86 citing HSIUNG, supra note 4,
at 40. These principles were reportedly originally promul­
gated in 1954. G. SCOTT, CHINESE TREATIES: THE POST­
REVOLUTIONARY RESTORATION OF INTERNATIONAL LAW AND ORDER 53

- 60 -
(1976). They are considered by the PRC to be peremptory norms designed to ensure international order. See HSUANG, supra note 4, at 38. See also infra note 32 and accompanying text.

PRC views often reflect the exigencies of Chinese politics, economics and ideology. As such, the PRC has resorted to use of the term "unequal treaties" as justification for avoiding compliance with, or for denouncing, treaties distasteful to it. The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 14 UST 1313, TIAS No. 5433, 480 UNTS 43 (Aug. 5, 1963) [hereafter 1963 Nuclear Test Ban Treaty] is a case in point. Cf. "U.S., USSR Nuclear Disarmament Roles Discussed," FBIS-CHI 82-188 (Sept. 28, 1982) at A1 (PRC refused to join ad hoc working group on nuclear test ban under Geneva Disarmament Committee on the basis that the ban would help the superpowers consolidate their nuclear monopoly).

The PRC objected to the 1963 Nuclear Test Ban Treaty on the grounds that the treaty was designed to prevent other countries from conducting nuclear tests and possessing nuclear capability. Since, at the time the treaty entered into force, the PRC had not yet developed its own nuclear capability, the agreement was perceived as a plot on the part of the United States and Soviet Union to monopolize nuclear weapons. See HALPERIN AND PERKINS, supra note 1, at 115; Beijing Review, July 26, 1963, at 47-79; "People of the World Unite for the Complete, Thorough, Total and Resolute Prohibition and Destruction of Nuclear Weapons (Peking, For. Lang. Press, 1963); LENG AND CHIU, supra note 1, at 244; Steiner, Mainsprings of Chinese Communist Foreign Policy, 44 AJIL 69, 94-8 (No. 1, Jan 1950).


Furthermore, the sovereignty principle has been used to condemn, inter alia, the Israeli occupation of Arab territories, the Soviet invasion of Afghanistan, the South African occupation of Namibia, the Japanese-ROK Agreement on the Joint Development of the Continental Shelf in the East China Sea, the Vietnamese provocations along the Chinese-SRV border, the U.S. Taiwan-Relations Act, and American arms sales to Taiwan. See, e.g., New Provocations, Beijing Review, No. 18 (May 4, 1979), at 29 (Israeli Shelling of Lebanon); Palestine's National Rights Must be Restored, Peking (Beijing) Review, No. 50 (Dec. 9, 1977), at 28; "Lai Yali Addresses UNSC on Jewish Resettlements Issue," FBIS-CHI-79-143 (July 24, 1979), at A4; "PRC Issues Statement Against Soviet Intervention in Afghanistan," FBIS-CHI-79-252 (Dec. 31, 1979), at C1; "Renmin ribao: Soviet Invasion of 'Umost Gravity,' FBIS-CHI-80-001 (Jan. 2, 1980), at C4; Chen Chu Speaks on Namibia Question, Peking (Beijing) Review, No. 32 (Aug 11, 1978), at 28; "PRC UN Delegate Scores South African Occupation of Namibia," FBIS-CHI-79-239 (Dec. 11, 1979), at A2; Chinese Foreign Ministry Statement Protest against Japanese Government's Infringement on China's Sovereignty, Peking (Beijing) Review, No. 26 (June 26, 1978), at 25; Foreign Forces Called on to Withdraw Immediately From Kampuchea, Beijing Review, No. 47 (Nov. 23, 1979), at 20; "PRC's UN Representative Condemns SRV Aggression on Kampuchea," FBIS-CHI-79-220 (Nov. 13, 1979), at A4; "Xinhua Roundup of SRV Provocations Against China in January," FBIS-CHI-80-026 (Feb. 6, 1980), at E1. See


8. The Paris Agreements were signed on January 27, 1973. Yahuda, supra note 6, at 239.


10. See YAHUDA, supra note 6, at 239. See also 10th Member State, Beijing Review, No. 23 (June 8, 1979), at 27.

In pertinent part, the Chinese analysis of the three worlds was stated as such:

Judging from the changes in international relations, the world today actually consists of three parts, or three worlds, that are interconnected and in contradiction to one another. The United States and the Soviet Union make up the First World. The developing countries in Asia, Africa and Latin America and other regions make up the Third World. The developed countries between the two make up the Second World.

Vice-Premier Deng Xiaoping, as Chairman of the Delegation to the UN General Assembly's Sixth Special Session (on Raw Materials and Development), presented this theory in a speech delivered on April 19, 1974. For the text of the speech, see Chairman of Delegation of People's Republic of China Teng Hsiao-ping's Speech at Special Session of UN General Assembly, Peking (Beijing) Review, No. 15 (April 12, 1974), Supplement [hereafter Three World's Speech].


The Chinese penchant for labels and belief in the destructive power of words must be carefully analyzed by any serious student of Chinese studies. The structure of communications in the PRC suggests that Chinese use of the media is designed to ensure the stability of the system, promote individual devotion to conformity and enforce consensus. For an excellent analysis of the relationship of communication and politics in the PRC, see Pye, Communications and Chinese Political Culture, 18 ASIAN SURVEY 221, esp. 228-40 (No. 3, March 1978). See also Liu, Problems in Communications in China's Modernization, 22 ASIAN SURVEY 481 (No. 5, May 1982); R. WICH, SINO-SOVIET CRISIS POLITICS: A STUDY IN POLITICAL CHANGE AND COMMUNICATION (1980).

In ordinary journalistic and academic parlance, the term "superpower" connotes considerable size, population, industrial-technological capacity and strategic power which are all used to exert influence in the international community. In the Chinese political lexicon, however, the term "superpower" is distinctly more perjorative. The
policies of those countries designated by the PRC as superpowers -- the United States and the Soviet Union -- are often linked with expansionism, subversion, aggression, racism, intervention, territorial encroachments, infringements on sovereign rights, colonialism, Zionism, hegemonism and, inevitably, war. Cf. Three World's Speech, supra note 11, at p. 11.

The distinguishing feature of the superpowers is their quest for hegemony [bachuan], a word indicating "not the legitimate leadership of an alliance or association founded on common interest, but the unlawful and tyrannical use of coercive force over the weak and the defenseless." Levine, supra note 13, at 639. Cf. Walder, Press Accounts and the Study of Chinese Society, 79 CHINA Q. 588 (Sept. 1979).

As such, the term "superpower" is a focal point around which the Chinese have attempted to create a united front of Third World and Second World countries whose common interest is to defend their sovereignty against superpower encroachment. Levine, supra note 13, at 638.

Though the PRC is itself committed to military modernization and has, in fact, already tested an ICBM, it lacks the "malevolent ambition" of the superpowers. Id., at 639. See also "Beijing Press Reports on Successful Missile Test: 'Jiefangjun Bao Commentary,'" FBIS-CHI-80-103 (May 27, 1980), at L6; "Submarine-Launched Carrier Rocket Tested," FBIS-CHI-82-201 (Oct. 18, 1982), at K1.

Thus, any enlightened attempt to include the PRC as a "superpower" based on its aggregate power potential, rather than on its use of such power, would be strongly denounced by the Chinese. Moreover, the Chinese definition of the term would render its applicability to the PRC largely incorrect.

14. Feeney, supra note 12, at 819.
15. Id.
17. Guojifa, supra note 2, Chapter 4: Wang Xuan, Guojia lintu (National territory), pp. 135-62. LENG AND CHIU, supra note 1, at 244-45; HSIUNG, supra note 4, at 72-77; YAHUDA, supra note 6, at 264; See generally, COHEN AND CHIU, supra note 5, at 106-18; Guojifa ziliao xuanbian (Selected materials on international law) compiled by Wang Tieya and Tian Ruxuan (Law Publishing Co., Beijing, 1981).


20. Chinese commentators have consistently insisted that the United Nations, in exercising its role in the maintenance of international peace and security, should not intervene in the internal affairs of other states in violation of Article 2, paragraph 7 of the UN Charter, 59 Stat. 1031, 3 Bevans 1153 (1945). S. KIM, CHINA, THE UNITED NATIONS AND WORLD ORDER 411 (1979). Consistent with this belief, the PRC objected to the UNEF (United Nations Emergency Force) I General Assembly resolution during the 1956 Suez Crisis as ultra vires because Article 24 of the UN Charter assigned the primary responsibility of maintaining international peace and security to the UN Security Council. Id., citing Sun Nam, What is the United Nations Emergency Force?, Shih-chieh ch'i-shih [World Knowledge], No. 24 (Dec. 20, 1956), at 22.

The PRC has also objected to UN troop deployment in Korea, Hungary, the Congo [ONUC], Cyprus [UNFICYP], Vietnam, Tibet, Hong Kong and Macao as contraventions of UN Charter principles. KIM, supra note 20, at 411. See also "UN Extends Mid-east Observer Force; PRC Does Not Vote," FBIS-CHI-80-110 (June 5, 1980), at A1; "UN Peacekeeping Force Extended in Cyprus," FBIS-CHI-80-244 (Dec. 17, 1980), at A3 (PRC did not vote).

In 1981, however, the PRC for the first time agreed to help finance UN peace-keeping forces, declaring itself prepared to adopt a more flexible attitude on UN peace-keeping operations. See "PRC to Help Finance UN Peace-Keeping Operations," FBIS-CHI-81-238 (Dec. 11, 1981), at A1; "UN


23. Chinese authorities have enunciated eight principles guiding economic aid to other countries, the second of which is respect for sovereignty of recipient countries. See Eight Principles Guiding China's Economic Aid to Other Countries, Peking (Beijing) Review, No. 4 (Nov. 25, 1977), at 28.

24. KIM, supra note 20, at 411. Because the law regarding the sovereignty of a state was perceived as so immutable and the power of a sovereign so superior, attempts to subvert, dilute or transform sovereignty through such concepts as "world law" [shijiefa] or "transnational law" [chaoguojifa] were considered by the Chinese to violate international law. Id. See also LENG AND CHIU, supra note 1, at 244.


26. Id.


30. KIM, supra note 20, at 415. The Soviet invasion of Czechoslovakia illustrates this rationale. The exercise of absolute sovereignty by the Soviet Union limited the sovereignty of Czechoslovakia. Id., citing Chi Hsiang-yang, Smash the New Tsars' Theory of Limited Sovereignty, Hung-Ch'i (Hongqi), No. 5, pp. 87-90 (1969).

31. KIM, supra note 20, at 415. See also LENG AND CHIU, supra note 1, at 244-45. Cf., YAHUDA, supra note 6, at 228; COHEN AND CHIU, supra note 5, at 110.

32. The five Principles [wuxiang yuanze] were first enunciated by Jawaharlal Nehru on June 28, 1954. In China's joint declaration with Burma on June 29, 1954, these same principles were reaffirmed. The text is found in Kuo-chi kung-fa fa ts'an-k'ao wen-chien hsuan-chi (Selected Reference Documents on Public International Law), (Peking Shih-chieh chih-shih ch'u-pan she, 1958), pp. 2-3. The five Principles are:

A) mutual respect for each other's sovereignty and territorial integrity;

B) non-aggression;

C) non-interference in each other's internal affairs;

D) equality and mutual benefit, and;

E) peaceful coexistence.

One of the more succinct and penetrating analyses of the Five Principles is found in LENG AND CHIU, supra note 1, at 36-77. See also HSUANG, supra note 4, at 38; COHEN AND CHIU, supra note 5, at 119; YAHUDA, supra note 6, at 228-29.

Note that the PRC publishes the joint communiques establishing such relations in its treaty collection (tiaoyue huibian), which seems to give these communiques the same force as treaties. In the United States such communiques are a form of political declaration only and do not have the force of law.

34. KIM, supra note 20, at 414. See also note 5, supra.

35. Id. at 414-15. Note also that the PRC, in its provisional Civil Procedure Law of 1982, has stated that "cases submitted to China by [a] foreign court will be refused if they are incompatible with the sovereignty and security of the PRC." See Yanling, China's Law of Civil Procedure, Beijing Review, No. 33 (Aug. 16, 1982), at 22.

36. KIM, supra note 20, at 415.

37. Z. ZILE, R. SHARLET AND J. LOVE, THE SOVIET LEGAL SYSTEM AND ARMS INSPECTION: A CASE STUDY IN POLICY IMPLEMENTATION 19 (1972) [hereafter ZILE, SHARLET AND LOVE].


40. PRC publicists perceived a distinction between international legal order and world legal order. The former was based on the UN Charter’s principles of national sovereignty. The latter was considered to be an imperialist conspiracy to remake the Charter into an instrument of a world government under the domination of the United States. KIM, supra note 20, at 411. See also K’ung Meng, A Criticism of the Theories of Bourgeois International Law Concerning the Subjects of International Law and Recognition of States, Kuo-chi wen-t’i yen-chiu [Research on International Problems] No. 2 (Feb. 1960) in COHEN AND CHIU, supra note 5, at 88-99. See also J. COHEN, CHINA’S PRACTICE OF INTERNATIONAL LAW 337 (1972).

41. Accession was deposited on September 11, 1979. See PRC AGREEMENTS 1966-80, supra note 27, at 219.

However, since that time PRC has not officially published any change of position with respect to other international organizations, nor did it publicize its accession to this Convention. The main thrust of the Convention is its extension of diplomatic privileges to the personnel of certain international organizations. See TIAS No. 521, 33 UNTS 261 (Nov. 21, 1947). The PRC’s accession was with respect to the UN Food and Agricultural Organization (second revised text of annex II), the International Civil Aviation Organization (annex III), the UN Educational, Scientific and Cultural Organization (annex IV), The World Health Organization (third revised text of annex VII), the Universal Postal Union (annex VIII), the International Telecommunication Union (annex IX), the World Meteorological Organization (annex XI) and the International Maritime Consultative Organization (revised text of annex XII). See Statement of Treaties and International Agreements Registered or Filed and Recorded with the Secretariat During the Month of September 1979, at 510 no. 521, U.N. Doc. ST/LEG/SER.A/391 (1981).

See also Guojifa, supra note 2, Chapter 10, Guojizuzhi (International Organizations), pp. 363-410.

42. 21 UST 1418, TIAS No. 6900, 11 UNTS 15 (Feb. 13, 1946).

resolutions to support Arabs and Palestinians); "Xinhua Commentary Praises UN Resolution of Palestine," FBIS-CHI-80-149 (July 31, 1980), at A1 (supporting a Security Council resolution in favor of Arab rights); "PRC Envoy Proposes resolutions to support Arabs and Palestinians); "Xinhua Commentary Praises UN Resolution of Palestine," FBIS-CHI-80-149 (July 31, 1980), at A1 (supporting a Security Council resolution in favor of Arab rights); "PRC Envoy Proposes resolu­
tions to support Arabs and Palestinians); "Xinhua Commentary Praises UN Resolution of Palestine," FBIS-CHI-80-149 (July 31, 1980), at A1 (supporting a Security Council resolution in favor of Arab rights), "PRC Envoy Raps South Africa, Supports Sanctions," FBIS-CHI-81-100 (May 6, 1981), at I4; "Government Condemns Israel's Invasion of Lebanon," FBIS-CHI-82-116 (June 16, 1982), at I1 (calling on Israel to "abide by the relevant resolutions of the U.N. Security Council").

Since 1979, the PRC has resorted more frequently to the practice of applying UN resolutions to Chinese principles and stands on aggression and disarmament.


45. See, e.g., LENG AND CHIU, supra note 1, at 11. See also Chou Keng-sheng, "The Persecution of Chinese Personnel by Brazilian Coup d'Etat Authority is a Serious International Illegal Act," Jen-min jih-pao, April 24, 1964 in id., at 27 n. 49.

46. See O.O.N; Poderzhani Mezhdunarodnovo Mira [United Nations and Support of International Law] 43-58 (1973) for support of this principle.

47. See LENG AND CHIU, supra note 1, at 11. See also Fu Zhu, U.S. Court Trial Violates International Law, Beijing Review, No. 11 (March 14, 1983), at 24-27; Guojifa, supra note 2, Chapter 1: Daoren (Introduction), Section 3, Part 5, p. 33.

48. See id., at 28 n. 51 citing Ying Tiao, Recognize the True Facts of Bourgeois International Law From a Few Basic Concepts, Kuo-chi wen-t'ien yen-chiu (Studies in International Problems) No. 1, Jan. 6, 1960.

49. KIM, supra note 20, at 413. Kim also notes that the PRC has never nominated a candidate to the court. Id., at 417. But cf. "UN Adopts Declaration on Peaceful Settlement," FBIS-CHI-82-221 (Nov. 16, 1982), at A1 (noting the adoption of a UNGA resolution calling for, inter alia, the use of the ICJ as a UN judicial organ, without stating that the PRC was opposed to the resolution).


52. For the statute of the ICJ, see 3 Bevans 1179 (1945). The PRC, as a member of the United Nations, is ipso facto a party to the Statute of the ICJ. However, about a year after the PRC became a UN member, it asserted its right under Article 36, paragraph 2, of the Statute, not to accept the compulsory jurisdiction of the ICJ. See Kim, supra note 20, at 418. Since 1972, the PRC has included reservations to a variety of international agreements and conventions it has acceded to, refusing to accept ICJ jurisdiction over disputes arising thereunder.

53. See KIM, supra note 20, at 457-62.

54. Id., at 437-44. See "Special Committee Discusses Revision of UN Charter," FBIS-CHI-78-060 (March 28, 1978), at A1; "Third World Scores Opposition to Revision of UN Charter," FBIS-CHI-78-209 (Oct. 27, 1978), at A1. In both of these examples, the PRC supported Third World demands for revision of the Charter to reflect the changing world situation. Review of UN Charter - An Irreversible Trend, Peking (Beijing) Review, No. 13 (March 26, 1976), at 21 (noting that revision is reasonable in order to promote equality among nations and destroy the privileged positions of the superpowers) particularly with respect to the use of the veto. See also "Xinhua Sees Soviet Isolation in Using UN Veto," FBIS-CHI-80 020 (Jan. 29, 1980), at A1; "NCNA Reports Deliberation on Composition of UN Organs," FBIS-CHI-
55. The Chinese position on international terrorism is a function of its role as vanguard of the Third World. Though the PRC objected explicitly to what it termed "adventurist and terrorist acts," it also noted that imperialists, Zionists, et al. often incorrectly brand legitimate international revolutionary movements as terrorism. See China's Stand on International Convention Against Taking Hostages, Peking (Beijing) Review, No. 50 (Dec. 10, 1976), at 32. See also Aerial Hijacking Condemned. Peking (Beijing) Review, No. 48 (Nov. 25, 1977), at 29 (supporting a UN resolution condemning the threat or use of force against aircraft or passengers but declaring reservations on parts of the resolution referring to conventions ratified by the "Chiang Clique" without formal PRC adherence); "PRC Joins International Anti-Hijacking Convention," FBIS-CHI-78-241 (Dec. 14, 1978), at A2; "UN Political Committee Condemns Aerial Hijacking," FBIS-CHI-77-213 (Nov. 4, 1977), at A2. But see "Teng Hsiao-ping Meets French Newspaper Delegation," FBIS-CHI-77-206 (Oct. 26, 1977), at A14 (Teng comments condemning all terrorist acts as "anti-revolutionary and anti-Marxist.")

56. In 1981, the General Assembly enlarged the International Law Commission from 25 to 34 members. The PRC, for the first time, nominated a member, Zhengyu Ni. He was elected on Nov. 23, 1981 for a one-year term beginning Jan. 1, 1982. See Law Commission Enlarged From 25 to 34 Members, 19 U.N. CHRONICLE 40 (No. 1, Jan. 1982).

57. KIM, supra note 20, at 418-19.

58. The Conferences were:

a) The UN Conference on Prescription (Limitation) in the International Sale of Goods (1974);

b) The UN Conference on the Representation of States in Their Relations With International Organizations (1975);

c) The UN Conference on Plenipotentiaries on Territorial Asylum (1977);

d) The UN Conference on Succession of States in Respect of Treaties (1977); and,

59. The PRC is notorious for the publication of articles referring to violations of "well-known" international law principles, though the PRC itself never formally acknowledges the existence of such principles. For a case in point, see "PRC Delegate Addresses Security Council on U.S. Hostages," FBIS-CHI-80-001 (Jan. 2, 1980), at 11 (referring to the principles of . . . "accepted diplomatic immunities"). Cf. "International Law Research to be Strengthened," FBIS-CHI-80-025 (Feb. 5, 1980), at 11 (calling for development of PRC international law theory on basis of its "experience in the international arena").

60. The PRC has recently expressed its concern for strengthening education of international law. See "International Law Research to be Strengthened," FBIS-CHI-80-025 (Feb. 5, 1980), at 11; "International Law Society Founded," FBIS-CHI-80-026 (Feb. 6, 1980), at 12. Previous leading journals on international law and politics, including Guoji wenti yanjiu [Journal of International Studies] and Shijie zhishi [World Knowledge], which ceased publication as a result of the Cultural Revolution, have recently resumed publication. The publication of World Knowledge resumed in 1980; the Journal of International Studies in 1981. See also note 59 infra.

These acts, coupled with China's official pronouncements on the establishment of an international law society and China's increasing contacts with foreign governments on issues of trade and law, generate optimism among Western scholars that more formal publications on China's official stance on international law issues will appear. Recent PRC editorials on international law appeared in Xinhua yuebao, June 1980. See especially Wang Tieai, Guojifa dangjinde dongxiang [Trend of Today's International Law], at 13. Translation by author. See also guanyu xian dai guojifa dingyi wenti, supra note 2.

61. Jessup and Lauterpacht are two of the more notable "monist" theory proponents. See Ogden, supra note 3, at 326.

62. Id. at 327.

63. Id., citing K'ung Meng, A Criticism of the Theories of Capitalist International Law on Elitist Entities and the Recognition of States, Kuo-chi-wen-t'i yen-chiu; No. 2 (Feb. 3, 1960), at 44-53.


64. Kim, supra note 20, at 406. Hungdah Chiu and Douglas Johnston used over 80 sources in a dozen languages to compile their work. D. Johnston and H. Chiu, Agreements of the
65. KIM, supra note 20, at 406. See also Pye, supra note 13. See generally J. TOWNSEND, POLITICS IN CHINA 289-337 (1980).

66. See Chiu, Communist China's Attitude Toward International Law, 60 AJIL 245, 259 n. 55 (April 1966). See also LENG AND CHIU, supra note 1, at 10; HSIUNG, supra note 4, at 22.

In particular, Article 38 of the Statute of the ICJ refers to international conventions, international custom, general principles of law and the teachings of highly qualified publicists as sources of international law. See Art. 38, I(a)-(d) of the Statute of the ICJ, supra note 3.

67. LENG AND CHIU, supra note 1, at 10. A new international law anthology was recently published by the PRC in early 1983. See Guojifa, supra note 2.

68. HSIUNG, supra note 4, at 27 citing Chen T'i-ch'iang, Taiwan-A Chinese Territory, Review of Contemporary Law (Brussels), No. 5 (1956), at 38-44.

69. LENG AND CHIU, supra note 1, at 5. See also Chiu, supra note 66, at 251.

70. ZILE, SHARLET AND LOVE, supra note 37, at 20.

71. One school subscribes to the view that there are two systems of international relations, bourgeois and socialist, and, therefore, two systems of international law. The adherents of a second school of thought contend that a single system of international law exists which is binding on both bourgeois and socialist countries. The third and apparently strongest school holds that there is a general international law over and above, as well as distinct from, the bourgeois legal system. See HSIUNG, supra note 4, at 17-18.

At least one other scholar pointed out that the Shanghai Law Association in 1958 considered the possibility of three systems -- socialist, bourgeois and general. See Chiu, International Law and a Universal System in LENG AND CHIU, supra note 1, at 8. See also Chiu, supra note 66, at 256; COHEN AND CHIU, supra note 5, at 42-46.

72. HSIUNG, supra note 4, at 16 citing Chou-Fu-lun, An Inquiry Into the Nature of Modern International Law, Chiao-houeh-yu yen-chiu [Teaching and Research] No. 3, 1958, at 52. The Chinese conception of international law is probably best exemplified by Zhou Fu-lun's passage:
International law, in addition to being a body of principles and norms which must be observed by every country is also, just as any law, a political instrument; whether a country is socialist or capitalist, it will to a certain degree utilize international law in implementing its foreign policy.

See also Goujifa dangjinde dongxiang, supra note 60. Cf. Onuf, International Legal Order as an Idea, 73 AJIL 244, 254-56 (No. 2, April 1979).


73. ZILE, SHARLET AND LOVE, supra note 37, at 19. Cohen and Chiu perceived the Soviet attitude towards custom to be somewhat more flexible than Zile, Sharlet and Love indicated. COHEN AND CHIU, supra note 5, at 77. See also K. GRZYBOWSKI, SOVIET PUBLIC INTERNATIONAL LAW: DOCTRINE AND DIPLOMATIC PRACTICE (1977).


75. The Chinese have used such euphemisms as "principles of international law and humanitarianism" and "standards of international law and dignity and justice." COHEN AND CHIU, supra note 5, at 78. More recently, the Chinese have employed the phrase "customary international . . . practice" in referring to diplomatic privileges and immunities. See note 5, supra. See also Agreement on Trade Relations Between the United States of America and the People's Republic of China, TIAS no. 9630, signed at Beijing, July 7, 1979, Art. 1, para. 3; Chiu, China's Legal Position on Protecting Chinese Residents in Vietnam, 74 AJIL 685, 685-89 (1980). Bu Langli, Guojigongfa yuanli [General Principles of Public International Law] (3d ed., 1979), cited in Zhongguo guojif a niankan [Chinese International Law Yearbook], 1982, pp. 393-95.

76. Cohen and Chiu cited an incident between Burmese border guards and Chinese residents. The PRC accused the Burmese of departing from "historical . . . factors and . . . traditional custom." COHEN AND CHIU, supra note 5, at 78. Cf. note 5, supra, espacially SRV infringements on Chinese sovereignty over the Hsisha (Xisha) and Nansha Islands.

78. HSIUNG, supra note 4, at 27.

79. Id. See also Wei Liang, supra note 77; Guojifa, supra note 2, Chapter 9, Wei Min, Tiaoyue [Treaty Law], pp. 319-62.

80. LENG AND CHIU, supra note 1, at 244. Cf. note 72, supra.

81. This quantity reflects the number of treaties included in Professor Hungdah Chiu's study. See PRC AGREEMENTS 1966-80, supra note 27.

Scott included 1660 treaties in his study, 41 percent of which were concluded in the trade category. See SCOTT, supra note 4, at 253. The number of treaties concluded by the PRC in the trade area constitutes a political barometer of the present importance of economic development in the PRC.

82. See generally COHEN AND CHIU, supra note 5, at 1109-1282, esp. 1239-54; L. LEE, CHINA AND INTERNATIONAL AGREEMENTS: A STUDY OF COMPLIANCE (1969). See also SCOTT, supra note 4, at 253. Cf., "Remin Ribao Refutes USSR Statement on Sino-Soviet Treaty," FBIS-CHI-79-075 (April 17, 1979), at C1 (PRC has sovereign right to terminate treaty in view of changed circumstances [rebus sic stantibus] and in accordance with provisions of the treaty).

83. LEE, supra note 82, at 61; SCOTT, supra note 4, at 253. Cf., HSIUNG, supra note 4, at 276-84.

84. SCOTT, supra note 4, at 253.

85. Id., at 254.

86. Id., at 90.

87. In 1963, the U.S. State Department charged the PRC with violations of a number of treaties, including the 1953 Korean Armistice Agreement, the April 29, 1953 and October 14, 1954 PRC-Indian trade agreements and the 1955 Agreed Measures Announcement between the United States and PRC regarding the repatriation of civilians. Id., at 36. See also HSIUNG, supra note 4, at 276-84.

The Soviet Union continues to charge the Chinese with treaty violations and other violations of international law. One recent example of Moscow's reaction was the Chinese abrogation of the Sino-Soviet Peace and Friendship Treaty. See, What Reason is There for Moscow to Fly Into a Rage?, Beijing Review, No. 16 (April 20, 1979), at 8; "Remin Ribao Refutes USSR Statement on Sino-Soviet Treaty," FBIS-CHI-79-075 (April 17, 1979), at C1.
88. SCOTT, supra note 4, at 90. The "perpetual use, occupation and control," of the Panama Canal was condemned as a usurpation of Panamanian sovereignty over the zone. Thus, the 1903 U.S.-Panama Treaty was viewed as unequal. See New Canal Treaty - Panamanian People's Victory, Peking (Beijing) Review, Nos. 37-38 (Sept. 13, 1977), at 34.

89. See SCOTT, supra note 4, at 90. The twin themes of coercion and exploitation have recently been cited in PRC articles addressing the British control over Hong Kong during PRC-UK negotiations on the status of Hong Kong after 1997. See, e.g., "Shanxi Ribao Discusses Nanjing Treaty," FBIS-CHI-82-113 (June 11, 1982), at K9.


91. H. CHIU, THE PEOPLE'S REPUBLIC OF CHINA AND THE LAW OF TREATIES 68 (1972) [hereafter cited as CHIU]. See also SCOTT, supra note 4, at 94.

92. SCOTT, supra note 4, at 94.

93. Id., at 93. See also note 4, supra.

94. See A Nuclear Fraud Jointly Hatched by the United States and the Soviet Union, Peking (Beijing) Review (June 21, 1968), at 5. See generally Part I, Chapter 2(B)4, infra on the Chinese attitude on disarmament.

95. See notes 32 and 33, supra. Cf. generally A. LALL, HOW COMMUNIST CHINA NEGOTIATES (1968).


97. KIM, supra note 20, at 421-25.

98. Id., at 426.
99. Id., at 427. Kim also notes that the PRC has promptly ratified amendatory protocols to convention or constitutions of specialized agencies and the Amendment to Article 61 of the UN Charter, all of which are designed to increase the representation in limited membership organizations. Id.

100. Id., at 431. COHEN AND CHIU, supra note 5, at 1230-38.

101. COHEN AND CHIU, supra note 5, at 1230-38.


103. See LENG AND CHIU, supra note 1, at 12. The 1955 Sino-Indonesia Dual Nationality Treaty is cited as one example of what is included in the compilation. See id. See also Guojifa, supra note 2, Chapter 1: Daoren (Introduction), Section 5, pp. 42-7. Note that there is a recent publication of major treaties, General Assembly resolutions and international agreements, some of which the PRC is a party to, that can now be found in a separate international law text entitled Guojifa ziliao xuanbian, supra note 17, which includes Chinese texts of 88 major documents.


The text of the provision reads as follows:

The USSR grants the right of asylum [pravo ubezhitsa] to foreigners persecuted or defending the interests of the working people and the cause for peace, for participation in the revolutionary and national liberation movement, or for progressive social, political, scientific, or other creative activity.

supporting a just cause, for taking part in revolutionary movements or for engaging in scientific work."

106. The recently circulated PRC Provisional Civil Procedure Law contains provisions noting that, in the absence of strict language to the contrary, any conflict between international treaties and conventions (to which the PRC is a party) and the Law of Civil Procedure will be resolved in favor of those international treaties and conventions except where contractual clauses which specifically designate that China's law will be applied. Yanling, China's Law of Civil Procedure. Beijing Review, No. 33 (Aug. 16, 1982), 20 at 22.

107. See note 5 supra.

108. The PRC deposited its accession on Nov. 26, 1975 with reservations concerning "the provisions about nuncios and the representative of the Holy See in Arts. 14 and 16 and on the provisions of paragraphs 2, 3 and 4 of Art. 37 (regarding the privileges and immunities of service, technical and administrative personnel). See PRC AGREEMENTS 1966-80, supra note 27, at 217. See also KIM, supra note 17, at 425-26. For the Convention, see 23 UST 3227, TIAS No. 7502, 500 UNTS 95 (April 18, 1961).

109. PRC accession was deposited on July 2, 1979. See PRC AGREEMENTS 1966-80, supra note 27, at 218. For the Convention, see 21 UST 77, TIAS No. 7502, 596 UNTS 261 (April 24, 1963).

110. See note 41 supra.

111. KIM, supra note 20, at 423.

112. SCOTT, supra note 4, at 113. Hsiung, supra note 4, at 234. See generally COHEN AND CHIU, supra note 5, at 1162-65; CHIU, supra note 91; G. RHODE and R. WHITLOCK, TREATIES OF THE PEOPLE'S REPUBLIC OF CHINA, 1949-1978: AN ANNOTATED COMPILATION 1-6 (1980); PRC AGREEMENTS 1966-80, supra note 27. Note the problems that would arise by the application of such a definition to a situation where one party to an arms control or disarmament agreement is an international organization, such as a UN special agency. See generally H. CHIU, THE CAPACITY OF INTERNATIONAL ORGANIZATIONS TO CONCLUDE TREATIES, AND THE SPECIAL LEGAL ASPECTS OF THE TREATIES SO CONCLUDED (1966) [hereafter cited as TREATIES OF INTERNATIONAL ORGANIZATIONS].

113. SCOTT, supra note 4, at 113; HSIUNG, supra note 4, at 234; COHEN AND CHIU, supra note 5, at 1163.

114. SCOTT, supra note 4, at 114; COHEN AND CHIU, supra note 5, at 1163.

115. Id.
116. Id. See also HSIUNG, supra note 4, at 234.

117. SCOTT, supra note 4, at 114; HSIUNG, supra note 4, at 234; COHEN AND CHIU, supra note 5, at 1164.

118. It is worthy of note that joint communiques have been published in the official compilation of Chinese treaties (tiaoyue huibian), which would imply that such communiques have the force of treaties. See also infra note 149.

119. SCOTT, supra note 4, at 114; COHEN AND CHIU, supra note 5, at 1164. Cf., HSIUNG, supra note 4, at 234.

120. In his work on international trade treaties, Wang Yao-t'ien defined treaties as "documents which relate to the establishment, modification, or termination of the sovereign rights and duties between two or more states." SCOTT, supra note 4, at 109 citing Wang Yao-t'ien, Kuo-chi mao-yi t'iao-yueh ho hsieh-ting (International Trade Treaties and Agreements) Beijing (Peking), 1958, at 9. See also Faxue Cidian [Law Dictionary], Shanghai, 1980, at 338.

Another author, Wei Liang, defined treaties as "agreement[s] between two or more states which must have received the unanimous consent of all contracting parties." SCOTT, supra note 4, at 109 citing Wei Liang, Looking at the So-Called McMahon Line From the Viewpoint of International Law, Kuo-chi wen-t'i yen-chiu (Studies in International Problems), No. 6 Beijing (Peking) 1960, at 46.

121. In practice, the Chinese have recognized the capacity of revolutionary groups to conclude treaties and have also acknowledged semi-official arrangements between a special agency of the PRC and a similar agency of a foreign country as having the binding force of treaties. SCOTT, supra note 4, at 110; Faxue Cidian [Law Dictionary], Shanghai, 1980, at 338.

Professor Hungdah Chiu noted that the PRC "does not seem to exclude international organizations from concluding treaties." See CHIU, supra note 91, at 8. Chiu cited PRC participation in the International Organization for the Cooperation of Railroads and the Korean Armistice Agreement with the United Nations Command in Korea as examples supporting his hypothesis. See also note 41, supra, on Chinese ratification of the UN Convention on Privileges and Immunities of the Specialized Agencies; TREATIES OF INTERNATIONAL ORGANIZATIONS, supra note 112. But see SCOTT, supra note 4, at 112.

122. For example, the PRC, before joining the International Hijacking Convention, expressed its opposition to civil aircraft hijackings in a UN General Assembly resolution. The PRC noted that it had reservations on the positions of the resolution dealing with the Tokyo, Hague and Montreal Conventions on aerial hijacking since they had been "signed
and ratified by the Chiang clique by usurping the name of China. See "UN Political Committee Condemns Aerial Hijacking," FBIS-CHI-77-213 (Nov. 4, 1977), at A2.

123. See COHEN AND CHIU, supra note 5, at 1112. For the text of the treaty, see 8 INT'L L. MATS. 679-727.

124. See note 81 supra and accompanying text.

125. The present general tasks for the PRC include making China a great and powerful socialist country by the twenty-first century by completing four modernizations in agriculture, industry, national defense, and science and technology. See the preamble to the 1982 CONSTITUTION, supra note 104. Cf., "AFP: Teng Says PRC to Buy Weapons Technology Abroad," FBIS-CHI-77-196 (Oct. 11, 1977), at A6.

126. See SCOTT, supra note 4, at 237.

127. 1982 PRC CONSTITUTION, supra note 104, Arts. 57, 67(14).


129. 1982 PRC CONSTITUTION, supra note 104, Art. 85.

130. See 1982 PRC CONSTITUTION, supra note 104, Art. 89(9).

131. See SCOTT, supra note 4, at 122. See also HSIUNG, supra note 4, at 237.


133. See HSIUNG, supra note 4, at 237; SCOTT, supra note 4, at 122.

134. SCOTT, supra note 4, at 123.

135. This procedure is outlined in id., at 124. Scott noted, though, that at the time of the publication of his work, the current (post-Cultural Revolution) ratification process was in doubt, largely because the Chinese had not ratified any multilateral treaties through formally publicized procedures. However, since the enactment of the 1978 PRC Constitution, there have been numerous examples of published reports on ratification, including the procedure and the relevant organs involved. See, e.g., "NPC Ratifies Treaty With Japan, Accord With Romania," FBIS-CHI-78-160 (Aug. 17,

In these instances -- the ratification of the Japanese treaty and the Romanian accord and the abrogation of the Sino-Soviet Treaty -- the NPC Standing Committee submitted its decision on the treaty to the entire NPC for formal action. There were no indications that the State Council played any role in this procedure, despite the 1982 PRC Constitutional grant of power to the State Council to "submit proposals on laws and other matters to the National People's Congress or its Standing Committee" (Art. 32(2)). Though the State Council's role in the ratification process cannot be dismissed out of hand, present indications suggest a de minimis role for the executive organ in treaty ratification or abrogation.


138. See HSIUNG, supra note 4, at 239, citing the PRC reservation to Article 85 of the Geneva Convention Relating to POWs. More recently, the PRC expressed its reservation as
to Sec. 1, Art. 29 of the UN Convention on the Elimination of Discrimination Against Women, supra note 136. See also note 122, supra.

139. HSUONG, supra note 4, at 239.

140. Id.

141. SCOTT, supra note 4, at 132.

142. The composition of the arbitral tribunals has varied with the treaties the PRC is party to. In some agreements, the arbitrators must be citizens from the nation party to the treaty; in others, they must be citizens of the country in which the arbitration takes place. In rare instances, arbitrators may be nationals of a third country if the contracting parties can so agree. Id., at 133.


144. The Soviet doctrine holds that treaties and national law are legal categories of different legal systems. Treaty and municipal law have equal juridical force and are interconnected. See Mironov, Sootnoshenie Mezhdunarodnovo Dogovora i Vn'it'rigosudarstvennovo Zakona (The Relationship of International Treaties and Municipal Law) 1963 SOV!ET Y.B. INT'L LAW 157-58 (1965).

145. See LENG AND CHIU, supra note 1, at 12. But cf. Article 46 of the UN Convention on Privileges, supra note 41, which reads: "It is understood that, when an instrument of accession or a subsequent notification is deposited on behalf of any State, this State will be in a position under its own law to give effect to the terms of the Convention. . . ."

146. COHEN AND CHIU, supra note 5, at 105. The most recent published Chinese compilation of domestic laws and decrees, Gong an fagui huibian [COLLECTION OF PUBLIC SECURITY LAWS], printed by the Commission on the Study of Policy and Law, Department of Public Security, Beijing (1980) did not contain any such treaty. The 1980 volume, however, does not appear to be intended to supersede preceding volumes and past compilations are, therefore, still valid.


149. Article 27 of the Vienna Convention on the Law of Treaties, id., states, inter alia: "A party may not invoke the provisions of its internal law as justifications for its failure to perform a treaty." Since the PRC is not a party to the Convention, it is not bound by this provision. But cf. "Legality of U.S. Arms Sales to Taiwan Questioned," FBIS-CII-82-025 (Feb. 5, 1982), at Bl (noting that, with respect to the Taiwan Relations Act of the United States as interfering with PRC sovereignty: "a state cannot plead its own law as an excuse for noncompliance with international law. There is not the slightest doubt on this point among various nations and international lawyers.") Note, though, that the PRC adheres to many principles which have become embodied in the Convention. By not ratifying it, the PRC may pick and choose from among those provisions it may consider innocuous at any particular time.

Recently, the Chinese exhibited the kind of selective behavior that created a lack of predictability in the international legal community. Chinese jurists accused the United States of violating international law on the basis that the Taiwan Relations Act (a U.S. statute permitting quasi-official recognition of Taiwan) contravenes the US-PRC Joint Communique, which the Chinese consider to have the legal force of treaty law. As such, the Taiwan Relations Act violates Article 27 of the Vienna Convention. The United States, moreover, is also not a party to the Convention. Whether Chinese jurists were simply mistaken as to the application of the Convention to a non-party, or made their assertions on the grounds that the Convention codified customary practice and was therefore binding on nonmembers (although this argument would bind the PRC as well), is unknown.

150. Article 100, of the 1982 PRC CONSTITUTION, supra note 104, grants local people's congresses the right to "adopt local regulations" as long as these local regulations do not conflict with the Constitution, laws, decrees and administrative orders.

151. At the Second Session of the Fifth NPC on July 1, 1979, the PRC adopted the Organic Law for Local Congresses and Governments; the Organic Law for People's Courts [hereafter ORGANIC COURT LAW]; and, the Organic Law for People's Procuratorates [hereafter ORGANIC PROCURATORATE LAW]. All laws entered into force on Jan. 1, 1980. For the Court and Procuratorate laws, see Gongan faqui huibian; supra note 146, at 449-57, 458-64. For the English texts, see "Seven PRC Laws Adopted at Fifth NPC Second Session," FBIS-CII-79-146 (July 27, 1979) PART I: Supp. No. 019.

152. See note 82 supra.

153. U.S. CONST., art. VI, para. 2 states: "This Constitution and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be
made, under the Authority of the United States, shall be the supreme Law of the Land. . . ." The 1982 PRC CONSTITUTION, supra note 104, Article 5 states: "No law or administrative or local rules and regulations shall contravene the constitution."

154. ZILE, SHARLET AND LOVE, supra note 37, at 27.

155. In this regard, one might note that the NPC is supposed to meet only once a year. See Article 61 of the 1982 PRC CONSTITUTION, supra note 104.


158. Id., Art. 3.


163. The removal of the derogatory labels of "landlords and rich peasants" by the CCP Central Committee apparently occasioned such resentment. See id., at 704. See also "CCP Central Committee Decides to Remove 'Labels, Designations,'" FBIS-CHI-79-021 (Jan. 30, 1979), at E1. The labels of "counterrevolutionary" and "bad element" continue to be connected to criminal activity.

164. Factionalism is an important element in both the implementation and execution of any CCP policy. One should be aware, however, that major policies are not susceptible of intense mass debate and discussion in the PRC because they are usually formulated in camera by only a small, select number of CCP officials -- those comprising the members of the Party Politburo and Central Committee.

However, some degree of disenchantment and conflict has even been made public. In 1980, NPC deputies passed a
citizenship bill by a margin of about 3500-1, and four NPC
deputies abstained from voting on the PRC Marriage Law.

165. TOWNSEND, supra note 65, at 294. See also R. BERNSTEIN,

166. ZILE, SHARLET AND LOVE, supra note 37, at 5. Note, for
instance, Tokyo-based report that four members of the CCP
Politburo, the most powerful organ of the CCP and, argu­
ably, of the PRC, were dismissed for "grave mistakes." The
study was not subsequently denied by the Chinese media,
lending credibility to the original report. See "KYODO:
Four Politburo Members Dismissed for 'Grave Mistakes',"

167. ZILE, SHARLET AND LOVE, supra note 37, at 6.

168. See TOWNSEND, supra note 65, at 82-176, 289-337.

The role of the CCP in the policy-execution process
was, at least before 1978, considerably more complex and
was interlaced with judicial and procuratorial functions.
In established Chinese practice, local CCP leaders and ad­
ministrative officials often interfered in the legal pro­
cess. In fact, a system of criminal justice was imple­
mented, whereby the CCP secretary in charge of political­
legal affairs at the local committee level was given direct
responsibility for review and approval of judicial deci­
sions. This system, known as shujipian ("deciding a case by
the secretary"), was rampant prior to the adoption of the
legal codes in 1979 and, despite PRC press exhortations to
the contrary, is suspected of being in existence even to­
day. See generally Chiu, Structural Changes in the Orga­
nization and Operation of China's Criminal Justice Sys­
tem, OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN
STUD. No. 1-1981(38), at 59. Chiu, China's New Legal Sys­
tem, 79 CURRENT HIST. 29, 45 (No. 458, Sept. 1980); Chiu,
Socialist Legalism: Reform and Continuity in Post-Mao Peo­
11, Nov. 1981) [hereafter Chiu, Socialist Legalism]. See
also Yegorov, Changes in China's State Structure, 4 FAR
EASTERN AFF. 118, 125-26 (1980). Yegorov noted a Jan. 15,
1979 Guangming Ribao report in which a Party secretary mis­
takenly wrote the number "eight" when, at the behest of a
local people's court, he was asked to approve a seven-year
sentence handed down to a defendant by that same court.
The Party secretary refused to correct his error, noting
that it was "improper to correct a written resolution." Id., at 126. See also Hsia, Sources of Law in the People's
Republic of China: Recent Developments, 14 INT'L LAW 25,
29 (no. 1, 1978)[hereafter Hsia, Sources of PRC Law].

A less direct role in the legal process was recently
played by the CCP Central Commit­tee, which organized cadres
to fan out into areas of local government and help thousands of Chinese who were seeking "appeal of previous false charges" levied before and during the Cultural Revolution. See, e.g., "Central Authorities to Aid Beijing Petitioners," FBIS-CHI-79-131 (Sept. 17, 1979), at L1; "Central Authorities Respond to Beijing Petitioners," FBIS-CHI-79-176 (Sept. 10, 1979), at L1.

The exercise of concurrent procuratorial and judicial powers by Party cadres may actually have been imposed by the language of the PRC state constitution then in force (1954). Such constitutional language nowhere granted exclusive judicial or procuratorial power to the judiciary or procuratorate, respectively. Nevertheless, just prior to the promulgation of the 1979 legal codes -- and, ironically, just after the enactment of the 1978 PRC Constitution -- news articles appeared in which the CCP Central Committee called for the independence of the judicial and procuratorial organs and for the abolition of Party interference in the legal process. See "CCP Plenum Elects New Politburo Members, Communique Issued: CCP Central Committee Communique," FBIS-CHI-78-248 (Dec. 26, 1978), at E4; "Beijing Ribao Decrees Interference in Legal Cases," FBIS-CHI-81-021 (Feb. 2, 1981), at L8.

Note the sequence of events in this instance: Party interference in the legal process, constitutional revision requiring procuratorial and judicial independence, and a CCP directive calling for the independent exercise of power. Only after the last event occurred was the matter seriously addressed. By virtue of such an example, the omnipotence of the Party appears obvious.

However, the Party directive has not been strictly followed. See "Supreme Court President Discusses Legal System Reforms," FBIS-CHI-80-168 (Aug. 27, 1980), at A7. See also "Remmin Ribao on Rule by Law, Rule by Man," FBIS-CHI-81-166 (Aug. 27, 1981), at K1 (supremacy of law is not fundamental to the PRC for it blindly negates the role of the CCP and undermines socialism). But see the Preamble to the 1982 PRC CONSTITUTION, supra note 104, which reads: "This constitution . . . is the fundamental law of the state and has supreme legal authority;" "Guangming Ribao on Party, Constitution Roles," FBIS-CHI-82-142 (July 23, 1982), at K7.

169. There is, however, an undercurrent of sentiment in the PRC that the Party be not above reproach. In accord with the present PRC policy of equality before the law, radio broadcasts and press articles have appeared which have, at least ostensibly, rejected the notion of Party privilege. See, e.g., "Pai Hsing on Arrest of Children of CPC Members," FBIS-CHI-82-192 (Oct. 4, 1982), at W3; Discipline Commission on Inner Party Member Privileges," FBIS-CHI-80-204 (Oct. 20, 1980), at L2; "Beijing Denounces Seeking of Special Privileges," FBIS-CHI-80-202 (Oct. 16, 1980), at L1;

The responsiveness of the CCP to democratic principles was also indicated in an article calling for the abolition of lifetime tenure for cadres in order to ensure responsible actions on the part of Party leaders. "Renmin Ribao on Abolishing Lifetime Tenure for Cadres," FBIS-CHI-80-113 (June 10, 1980), at Ll; "Renmin Ribao on Advisory System for Old Cadres," FBIS-CHI-81-098 (May 21, 1981), at K19. See also Falkenheim, Liberalization and Reform in Chinese Politics, 79 CURRENT HIST. 33, 45 (No. 458, Sept. 1980).

The purpose of abolishing lifetime tenure is twofold: it presents to the masses a flexible policy of reassessment of cadre behavior designed to ensure consensus among Party members toward evolving Chinese tactics and strategies; and, it promotes control by the Party elite over the Party bureaucracy by creating the possibility of a more rapid personnel turnover rate. In a sense, the call for the abolition of lifetime tenure is the necessary corollary of a democratic principle giving Party cadres the right to ventilate their personal views at organizational meetings (granted by the CCP Constitution, supra note 157, Art. 4), for the former grants the upper crust of Party leadership -- a body of Party members most likely immune from lifetime tenure modifications, notwithstanding such proposals -- control over perceived irregular or abnormal behavior among Party members at lower levels.


170. Mobilizing the masses is part of the Chinese policy of duhuizhan ("Battle in which all forces are mobilized"). See BERNSTEIN, supra note 165, at 118. See generally J. WANG, CONTEMPORARY CHINESE POLITICS: AN INTRODUCTION (1980). The CCP used its full arsenal to publicize the new legal order, including scores of press reports on domestic law enforcement. Mass rallies were used in many instances to help garner support for the new legal codes, publicize crimes for different purposes and lend legitimacy to the new legal system. See, e.g., "Anhui Prefecture Calls Rally on Arrest
171. The CCP has used PRC media to transform other issues into mass campaigns. See, e.g., "Renmin Ribao Criticizes Japan's Revised Textbooks," FBIS-CHI-82-140 (July 21, 1982), at D3. The Chinese, Party dominance of the entire bureaucratic system of the PRC may well be a basic feature of politics in Communist systems. According to such reasoning, the CCP has: 1) ultimate authority over the appointment and removal of high-level bureaucrats; 2) the ability to maintain considerably high personnel mobility; and, 3) authority over the bureaucracy by effecting a rapid personnel turnover rate. See Chai, Communist Party Control Over the Bureaucracy: The Case of China, 11 COMP. POL. 359 (April 1979).

172. The Central Committee is composed of leading Party members who directly manage the Party, the army, and the government. It is the symbol of established authority. The Chairmanship of the Central Committee is the most prestigious office of the PRC. See L. PYE, CHINA: AN INTRODUCTION 191 (1978). The chairmanship is presently held by Hu Yaobang. In 1977, there were 201 members of the Central Committee and 132 alternates. See List of the 333 Members and Alternate Members of the 11th Central Committee of the Communist Party of China, Beijing Review, No. 35 (Aug. 26, 1977), at 15. See generally TOWNSEND, supra note 65, at 294-305.

173. The members of the Military Commission of the Central Committee are chosen by the Central Committee. See CCP CONSTITUTION, supra note 157, Art. 21, para. 5.

174. Apparently, real power in the Party rests with the Politburo. The Central Committee merely legitimizes policies. PYE, id., at 181.

Since the Politburo is somewhat too large to operate effectively, major decision-making power is entrusted to its Standing Committee. See generally TOWNSEND, supra note 65, at 89, 294-96.

175. The Central Advisory Commission is beneath the Political Bureau and the Secretariat and is responsible for, inter alia, "the formulation and implementation of the party's principles and policies . . . ." CCP CONSTITUTION, supra note 157, Art. 22. The interaction between the Secretariat and the Advisory Commission is not altogether clear, although it is known that the latter body, by request of the Secretariat, is entrusted with the investigation of economic crimes by CCP officials. See "China Daily Cites Deng on Advisory Commission," FBIS-CHI-82-210 (Oct. 29,

176. The fundamental Party unit is zhibu or branch committee. TOWNSEND, supra note 65, at 180. These Party branches provide guidance to, and surveillance of, lower-level Party activities. Yet, the real strength of the CCP lies with the dedicated cadre, the "[treasure] of the nation and pride of the whole Party." Liu Shao-ch'i, ON THE PARTY 101 (1952) cited in id., at 182.

177. The affairs of the PLA are constitutionally entrusted to the Military Commission (Art. 93 of the 1982 PRC CONSTITUTION). See also Art. 21 of the CCP CONSTITUTION. supra note 157. Presumably, the CCP Military Commission directs military policy and supervises the work of the political commissars in the army structure. See PYE, supra note 174, at 181. See also "CCP Military Commission Decides to Suspend Vietnam Action," FBIS-CHI-79-044 (March 5, 1979), at A5 (suspending the PRC self-defense counterattack against SRV forces on the Guangzi-Yunnan border); "CCP Military Commission Issues Decision on Discipline," FBIS-CHI-78-069 (April 10, 1978), at E4 (calling for strict discipline of army personnel according to Party policy); TOWNSEND, supra note 65, at 91-95. Cf. note 169, supra.

High-level military personnel in the PRC are found in most key political positions. The Chinese do not have anything similar to the National Security Act of 1947 which set up the U.S. Central Intelligence Agency and which does not allow the military to occupy the top two CIA positions at the same time.

178. See Kakkar, The Role of the PLA During the Cultural Revolution, 13 CHINA REP. 29, 29-36 (No. 5, Sept.-Oct. 1977); Terrill, China and the World: Self-Reliance or Interdependence, 55 FOR. AFF. 295, 304 (Oct. 1976). See also TOWNSEND, supra note 65, at 91-95.

179. See, e.g., "Tung Hsiang Comments on PRC War Preparedness," FBIS-CHI-78-232 (Dec. 1, 1978), at N3 (noting that the PLA continues to remain vigilant in defending PRC interests so as to help maintain the orderly and peaceful environment the PRC needs in its quest to achieve the four modernizations).


No articulated code mandates PLA involvement in law enforcement. Whether PLA participation in combating crime will diminish as a result of the formal establishment of public security and procuratorial organs is uncertain, though it would seem to contravene previous PRC policy of mass participation in public security activities. See Pollack, The Logic of Chinese Military Strategy, 35 BULL. OF ATOM. SCIENTISTS 22, 25 (Jan. 1979):

The PLA is the backbone of [PRC] armed forces. The militia is the PLA's effective assistant and powerful reserve . . . In accordance with Chairman Mao's teachings . . . the militiamen in the cities and the countryside in positive coordination with the PLA and public security departments, have for years maintained public order, dealt blows at the sabotage activities by class . . . enemies and protected the people's interests. Id.


182. The PRC continues to prepare a civil code. A recent draft contained 501 articles.


The PRC has also called for a more formalized Chinese theory of international law. See "International Law Research to be Strengthened," FBIS-CHI-80-025 (Feb. 5, 1980), at L10. Formal international law enactments are not as urgent as domestic law enactments to the PRC. The former are likely to be forthcoming only after the PRC has reviewed and approved its domestic laws and has sufficiently tested the waters of the international legal order to formulate precise rules flexible enough to permit Chinese pursuit of the four modernizations with a minimum of foreign interference and a maximum of non-intrusive foreign support.

183. See generally, Heaton, Professional Military Education in China: A Visit to the Military Academy of the People's Liberation Army, 81 CHINA Q. 122 (Mar., 1980).

185. The PRC CRIMINAL CODE was passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and entered into force on January 1, 1980. See Gong'ao faqii huibian, supra note 146, at 4-33. Article 91 reads:

Offenders colluding with foreign countries and conspiring to jeopardize the sovereignty, territorial integrity and security of the motherland will be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years.

Article 92 reads:

Those plotting to overthrow the government and split the country will be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years.

Article 93 reads:

Those instigating, seducing, or bribing any state functionary or any member of the armed forces, the people's police, or the militia to detect, turn traitor or rebel will be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years.

Article 94 reads:

Those defecting and turning traitor will be sentenced to fixed-term imprisonment of not less than 3 and not more than 10 years. Those guilty of serious cases of defecting and turning traitor or who lead their men to defect to the enemy and turn traitor will be sentenced to imprisonment of not less than 10 years or life imprisonment.

Article 97 reads:

Those committing espionage or supporting the enemy in the following manner will be sentenced to imprisonment of not less than 10 years or life imprisonment; in less serious cases, they will be sentenced to fixed-term imprisonment of not less than 5 and not more than 10 years:

1) Stealing, spying and supplying information to the enemy;

2) Supplying arms or other military materials to the enemy; and

3) Joining a secret service or espionage organization or receiving orders from the enemy.
These provisions are all part of the section of the PRC Criminal Code on counterrevolutionary activities, the most serious criminal violations in the PRC. The English text of the Criminal Code may be found in "Seven PRC Laws Adopted at Fifth NPC Second Session," FBIS-CHI-79-146 (July 27, 1979) PART I: Supp. No. 019 (hereafter PRC CRIMINAL CODE). The effective date of the laws published therein was January 1, 1980.


Contemporary Chinese intelligence forces may be a throwback to the Chinese Censorate (dujiaoyuan) in Imperial China, which served as special watchdog over the civil service and performed inspector-general and secret police functions. PYE, supra note 172, at 79.
189. The NPC reintroduced the Organic Regulations of the Urban Neighborhood Committee, the Organic Regulations of the Sub-district Office, the Temporary Organic Regulations of the People’s Meditation Committee and the Temporary Organic Regulations of the Social Order and Security Committee. See “Central Press Publishes NPC Regulations on Local Organizations,” FBIS-CHI-80-017 (Jan. 24, 1980), at L2-9. The statutes permit local authorities to recruit members of the population through the latter’s work in mass volunteer organizations, to administer and enforce governmental decisions and to preserve law and order. The Security Committee regulations permit the formation of 3-11 members public security committees in government organizations, plants enterprises, schools and neighborhoods in cities and administrative villages in rural areas (Art. III) to assist the government "in preventing traitors, spies, thieves and arsonists and in eliminating counterrevolutionaries in order to safeguard state and public security" (Art. I). See also "Anhui Radio Calls for Suppression of Criminals, Spies," FBIS-CHI-80-024 (Feb. 4, 1980), at 02; 1982 PRC CONSTITUTION, supra note 104, Art. 111.

190. TOWNSEND, supra note 65, at 318.

191. See Scalapino, supra note 188, at 1052.

192. Id. See generally DEACON, supra note 188. The existence of the 8341 unit was implied in a recent reports on an attempted assassination of Deng Xiaoping. See "Taipei Rumors Say Xu Shiyou Wounded in Attempt on Deng," FBIS-CHI-80-083 (April 28, 1980), at L11. See also "AFP: Spokesman Denies Taiwan Claims of Xu Attempt on Deng," FBIS-CHI-80-186 (May 1, 1980), at L10. Perhaps significantly, neither report originated on the Chinese mainland. Both were sent through AFP (a foreign news service) wire services in Hong Kong. A second report was issued through Hong Kong in 1982. See "Paper Reports Deng Xiaoping Shot in October," FBIS-CHI-82-019 (Jan. 28, 1982), at W1. The PRC did not confirm the accuracy of the report.

193. Scalapino, supra note 188, at 1052. The need for a clandestine security apparatus may also be seen in an unconfirmed report from Hong Kong of the existence of terrorist organizations in the PRC. See "Beijing Reported Investigating Terrorist Organizations," FBIS-CHI-80-120 (June 19, 1980), at U1; "Wan Jen Jih Pao: Plane Crash Due to Sabotage," FBIS-CHI-82-084 (April 30, 1982), at W5 (plane crash over Guangxi caused by terrorist group).

The PRC internal security apparatus is rather intricately structured at present. The recent promulgation of the Chinese criminal, marriage, and tax codes, the expected promulgation of the civil codes, and the intensification of Chinese contacts with foreigners has required a joint effort on the part of the Party, the government, the army and
militia, the mass organizations, the cultural and educational departments and the public security organs in the PRC to help safeguard public order. Such a joint effort is probably a product of Party paranoia as to the effects of Western principles on Chinese society, the lack of a clearly articulated role for any particular organ in the maintenance of public security, and the sheer number of Chinese citizens who must be policed. See "Renmin Ribao Points Out Duties in Fighting Crime," FBIS-CHI-80-007 (Jan. 10, 1980), at L13 (noting the importance of unity among Party and governmental organizations in the preservation of public order); "Jilin Founds People's Police Armed Forces," FBIS-CHI-82-209 (Oct. 28, 1982), at 56.

The masses also have a role in preserving public security, that of "self-surveillance." See, Butterfield, How the Chinese Police Themselves, N.Y. Times, April 18, 1982, p. 32 (Magazine). Cf. "AFP: Shanghai Mob Kills Drunken Hooligan," FBIS-CHI-80-099 (May 20, 1980), at 03 (noting that a crowd of about 100 people lynched a drunken hooligan who had slapped a passerby. The police took no action against the lynchers. The use of "mob" in the title may be attributed to the fact that the report was issued over a foreign wire service (AFP)).

Moreover, to increase administrative control over the masses, the 12th Session of the 5th NPC Standing Committee decided, in 1980, to reintroduce a number of legislative enactments passed in the PRC in the 1950s. One of these was the December 31, 1954 Statute on Organization of Urban Precinct Offices. Under the Statute, local precinct offices were created. Through these precinct offices and mass volunteer organizations known as urban population committees (created by the Statute of the Organization of Urban Committees, adopted Dec. 31, 1954 and reintroduced in 1980), public security organs keep urban residents under strict surveillance through civilian administration departments which require mandatory registration of identity documents and prevent citizens from moving freely in the PRC without special permits. See supra note 189. See also Yegorov, supra note 168, at 124-25.

The public security apparatus, therefore, is an amalgam of various legal and quasi-legal organizations with overlapping functions. Thus, the average Chinese citizen is not subject to the arbitrary and ruthless tactics of a single agency, such as Soviet citizens are in the Soviet Union. But surveillance in the PRC may be more extensive: street committees, for example -- the lowest level governmental subdivision -- may monitor the menstrual cycles of young women to ensure compliance with population control directives. See F. BUTTERFIELD, CHINA: ALIVE IN THE BITTER SEA 325-28 (1982). However, joint supervision of internal security results in greater control of daily routines and poses the possibility that PRC internal security forces may become more susceptible of capricious
and uncontrolled behavior in the execution of an arms control agreement.

194. See Scalapino, supra note 188, at 1053.

195. The increase in foreign contacts has been more subtle than published reports indicate. The Chinese continue to require Western technological assistance in their drive to realize the four modernizations. This has required sales negotiations with foreign officials. See, e.g., Kux, supra note 186, at 107-08; Wallace, Rebuilding China's Army: A Job for the U.S.?, U.S. NEWS & WORLD REP. (Nov. 9, 1981) reprinted in U.S. POLICY TOWARD CHINA, SELECTED ESSAYS AND PAPERS 70-71 (Jan. 1982) (published by the National Conference on Asians in America and Asian Americans).

The PRC Joint Venture Law has also occasioned foreign commercial contacts. In addition, the number of diplomatic and quasi-diplomatic visitors to the PRC, as well as tourism, has increased steadily since 1977. See Kallgren, China 1979: The New Long March, 19 ASIAN SURVEY 1, 3-4 (No. 1, Jan. 1979).

A number of trips by Deng Xiaoping were well-covered by the Chinese media. Id., at 3. In addition, groups of Chinese journalists have travelled to Europe, Africa and the United States. Many wrote of their accounts in the PRC press. Combined with television transmissions, these reports provided Chinese citizens with one of their first opportunities to view their leaders in the international arena and to increase their knowledge of the outside world. Id. See also "Formalities Simplified for Foreign Tourists," FBIS-CBI-82-205 (Oct. 22, 1982), at K13; "Youth Federation to Increase Foreign Contracts," FBIS-CBI-80-102 (May 23, 1980), at A6; "More Areas, Cities Opened to Tourists," FBIS-CBI-80-090 (May 7, 1980), at L23; "Plans Made to Open More Areas to Foreign Tourists," FBIS-CBI-78-114 (June 13, 1978), at E11; "AFP: Rules on Foreign Students' Travel Replaced," FBIS-CBI-78-020 (Jan. 3, 1978), at E16. But see "Regulations on Studying Abroad Approved," FBIS-CBI-82-147 (July 30, 1982), at K9 (warning PRC students abroad to carefully observe Chinese national security laws); Peiping Clamps Down on Studies Abroad, China Post, July 28, 1982, at 2; "Renmin Ribao Cautions Foreign Journalists," FBIS-CBI-82-044 (March 5, 1982), at A1; Peking Curbs Contacts With Foreign Residents, N.Y. Times, July 15, 1982, at A9.


197. But see BUTTERFIELD, supra note 193, at 445, who reported that People's Daily editors were forced to undergo self-criticism (ziwoping) for printing a plea for artistic
freedom from renowned PRC actor Zhao Dan, without first seeking clearance for the article from the CCP. See also "Kyodo Sources Say Renmin Ribao Editor Criticized," FBIS-CHI-81-236 (Dec. 9, 1981), at K8 (Japanese news report on alleged editorial error by People's Daily editor). Note that in the PRC, there is no constitutional preclusion of legal or CCP interference with the press.

198. See Chung, From Great Disorder to Great Order: The Eleventh Party Congress and the Continuous Revolution, 13 CHINA REP. 7, 28 (No. 6, Nov.-Dec. 1977). See also the 1982 PRC CONSTITUTION, supra note 104, Art. 2, which gives the people "the right to administer state affairs."

199. Id., at 27. The "quadruple weapon" was more often referred to as the "four bigs" in Chinese press parlance. The "four bigs" first appeared in full in 1957. The press noted that the "four bigs" were abused during the Cultural Revolution by Lin Piao, the gang of four and their respective cohorts. One "big" in particular -- the right to write big-character posters -- was alleged to have become a vehicle for groundless accusations and character assassinations. The posters supposedly led to in-fighting among the masses and harmed many good people. Such accusations preceded the 1980 Constitutional amendment of Art. 45. See supra note 156 and accompanying text. See also "Renmin Ribao Cites Reasons for Abolishing 'Four Bigs'," FBIS-CHI-80-194 (Oct. 3, 1980), at L3; "Deng Xiaoping on Importance of Revising Constitution," FBIS-CHI-80-191 (Sept. 30, 1980), at L3; "Guangming Ribao Notes Harm of 'Four Big Rights'," FBIS-CHI-80-080 (April 23, 1980), at L14; "Xinhua Surveys People's Deputies on 'Four Bigs' Abolition," FBIS-CHI-80-076 (April 17, 1980), at L1; "Nanfang Ribao: Abolition of 'Four Bigs' Seen Necessary," FBIS-CHI-80-074 (April 15, 1980), at P4; "Qinghai Ribao Article Hails Elimination of Four 'Rights'," FBIS-CHI-80-066 (April 3, 1980), at T1.

The CCP-sponsored media thrust for elimination of the "four bigs" was prompted by a number of problems. First, the emphasis of da (great or big) denoted a new style of authority-public relationship in which individuals were allowed to publicly criticize authority. Chung, supra note 198, at 27. This was apparently intolerable to CCP leadership. Second, the intensity, capriciousness and scope of the accusations alarmed the authorities. See, e.g., "AFP: Beijing Wallposter Hits CCP Leadership," FBIS-CHI-79-066 (April 4, 1979), at L1 (noting in an Agence France Presse (foreign news service) report that wallposters had attacked CCP leadership for its repression of certain authors of big-character posters).

Rather than tolerate a burgeoning underground dissident-human rights movement, the CCP resolved to remedy the problem by removing the major outlet for dissident discussion -- big-character posters.
200. Chung, supra note 198, at 27.


202. Article 45 of the 1978 PRC CONSTITUTION originally read:

Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and have the right to speak out freely, air their views fully, hold great debates and write big-character posters. [emphasis added].


The dispatch with which the Constitution was amended -- albeit through proper legal channels -- indicates the significance attached by the CCP to uncontrolled free speech activities and the power of Party leadership in supervising the government and legal process. See "Wen Hui Bao on Shortcomings of Big-Character Posters," FBIS-CHI-80-045 (March 5, 1980), at 01.

203. Control of the press has been further strengthened by the promulgation of a State Council "report" banning the "unauthorized" compiling and printing of books and publications. See "State Council Approves Increased Publication Controls," FBIS-CHI-80-060 (July 16, 1980), at L6. See also Chinese are Reminded of Reins On Expression, Balt. Sun, Feb. 17, 1980, at A2.

The press has dictated the extent to which information provided by PRC officials would not run afoul of CCP and state secret laws. An anonymous PRC legal official informed this author that court proceedings are state secrets and should not be discussed until information on them is released in the press. See also "24th Session of NPC Standing Committee Closes," FBIS-CHI-82-164 (Aug. 24, 1982), at K1 (passing resolution on making Xinhua the state organ for "unified" release of important news).

The role of the press in national construction is indicated merely by a perusal of FBIS reports over the last eight years. Just after the PRC's admission to the United Nations and prior to the promulgation of domestic legal codes, the PRC press reported almost exclusively on international relations topics. With the enactment of the legal codes and the emphasis on the four modernizations, an FBIS-PRC press report is now devoted to national, regional and local affairs in addition to international topics, which are decidedly more limited in scope.
The press has also been used to infuse Chinese society with the proper attitudes toward certain foreign acts. Vicious and frequent PRC condemnation of Japanese textbook citations to the Japanese invasion of China is an example. See, e.g., "Renmin Ribao Criticizes Japan's Revised Textbooks," FBIS-CHI-82-140 (July 21, 1982), at D3.


Lucien Pye noted that even though all media forms are vital for legitimacy, the process which makes this true operates in a way that forces the media to maintain a significant gap between rhetoric and reality; in effect, to create an imaginary world. See Pye, Communications and Chinese Political Culture, 13 ASIAN SURVEY 221, 244 (No. 3, March 1978). See also Lonshchakov, The Chinese Press: A Brainwashing Machine, 4 FAR EASTERN AFF. 148.

One recent example of the gap between Chinese rhetoric and reality concerns the existence of terrorist organizations and narcotics peddlers in the PRC. In a Xinhua (Hsinhua) report printed by the Chinese, Xie Bangzhi, PRC vice-minister of Justice and head of the Chinese delegation of the UN Congress on Crime, noted in an address to the Congress that terrorist groups and major narcotics peddlers were "non-existent" in the PRC. See "PRC Representative Addresses UN Congress on Crime," FBIS-CHI-80-173 (Sept. 4, 1980), at A1. Yet, shortly after this statement appeared, an article surfaced in the Chinese press that noted the crackdown on drug-traffickers in Guangzhou province. See, "Guangzhou Cracks Down on Drug Addicts, Traffickers," FBIS-CHI-80-182 (Sept. 17, 1980), at P1. See also "PRC Tightens Security on Drugs Into Hong Kong," FBIS-CHI-82-215 (Nov. 5, 1982), at W6.

More significant, though, was a Hong Kong-based report citing the existence of terrorist organizations in the PRC. See "Beijing Reported Investigating 'Terrorist Organization'," FBIS-CHI-80-120 (June 19, 1980), at U1. A second report -- this one published by the foreign wire service Agence France Presse -- appeared in 1981, and noted the PRC's continuing concern with terrorism. See "AFP: Liberation Daily on Increase in Terrorism," FBIS-CHI-81-010 (Jan. 15, 1981), at L7. The Chinese did not directly confirm or deny the accuracy of reports on terrorism until the recent publicity surrounding a hijacking near Shanghai.

211. See generally Kallgren, supra note 195, at 16-17.


215. See, KIM, supra note 20, at 52.


Examples of Maoist philosophy which have provided fundamental guidelines for Chinese actions include, inter alia, his articles on military strategy and people's warfare. See, e.g., "The Atom Bomb is a Paper Tiger," SCMP no. 6382 (July 18, 1977), at 9; "Strategically 'Pit One Against Ten' and Tactically 'Pit Ten Against One'," SCMP no. 5826 (April 17, 1975), at 16; "Study of Mao Tse-tung's Military Writings: The Pivotal Strategy Must be Mobile Warfare," id., at 11. Chinese Communist ideological instruction emphasizes slogans and catch phrases which are useful in providing political instruction to large segments of the rural populace which have little schooling. For an excellent analysis of these slogans, catch phrases and the use of numbers, see PYE, supra note 172, at 277-88. See


219. KIM, supra note 20, at 63.

220. Id.


222. See Leng, The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence, OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD., No. 5-1978(17), at 18.

223. See id., at 8-11. Under Mao's concept, equality before the law for all persons has no place in people's justice. Yet, the PRC has, at least for the sake of appearance, called for equality before the law for all. See note 169, supra.

224. As Leng noted, two models of law have coexisted and competed with each other in the PRC -- the jural and the societal. The former stands for "formal, elaborate and codified rules enforced by a centralized and institutionalized bureaucracy." The societal model emphasized "socially approved norms and values, implemented by political socialization and enforced by social pressures." Leng, supra note 222, at 2. Mao's focus was largely on the societal model. The spate of legal codes which appeared in 1979-80 indicated a general shift towards a jural model, though the societal has not by any means been abandoned.

225. The mass line is a fundamental party policy, expounded by Mao, which requires party cadres to integrate with the masses and to lead the masses in implementing Party policy. Id., at 2 n.8. See generally id., at 2-8.

227. The phrase has often been translated as "to seek truth from facts."

228. ZILE, SHARLET AND LOVE, supra note 37, at 9.

229. PRC press reports have occasionally assailed the liberal attitudes of curious Chinese in their contacts with foreigners. Some of the reports have been official Chinese releases. See, e.g., "Shanghai Radio Urges Proper Attitude Toward Foreigners," FBIS-CHI-80-084 (April 30, 1979), at 02 (noting that it is "political ignorance to regard all foreign things as good" and that the Chinese people should never lose their ability to distinguish between "flagrant followers [sic] and poisonous weeds"). "Beijing Radio Article on Foreign Influence," FBIS-CHI-82-194 (Oct. 6, 1989), at C1; "Article Cites Corruption Imported From West," FBIS-CHI-82-078 (April 22, 1982), at K3. See also "Guangming Ribao Discusses Proper Approach to Foreign Things," FBIS-CHI-79-091 (May 9, 1979), at L11; China Official's Punishment Gives Chinese A Message: Don't Talk To Foreigners, Asian Wall St. Journal, April 5, 1982, at 10; note 195, supra.

Other reports have been passed on by foreign news services. See, e.g., "AFP: Restrictions Placed on Chinese Contacts with Foreigners," FBIS-CHI-79-105 (May 30, 1979), at L2 (alleging that the PRC restricted contact with foreigners by stipulating that Chinese citizens could no longer visit a foreigner's living quarters or eat with him in restaurants without specific permission from their work units). The Chinese press never officially published the stipulations, but it never denied the report. A previously released Renmin ribao article lends credence to the AFP report. In the Renmin ribao article, Chinese authorities called for "energetic sanctions" against those who "sell off [state] secrets."

The article was a reflection of CCP apprehension brought on by the recent birth of the Beijing democratic movement, some of the members of which were accused of selling secrets to foreigners. The publicity surrounding the trial of Wei Jingsheng, a Chinese dissident accused of selling secrets to the enemy, and the allegations against Jiang Qing of giving non-public documents to a foreign reporter also preceded the Renmin ribao article. One was left with a sense that official concern was growing within the CCP that the PRC was becoming more vulnerable to espionage and disruption of its four modernizations plan. See generally "Beijing Ribao Stresses Importance of Guarding Secrets," FBIS-CHI-79106 (May 31, 1979), at L1; "AFP: Beijing Radio Urges Protection of State Secrets," FBIS-CHI-100 (May 22, 1979), at L1. See also Renmin Ribao Article on Protecting State Secrets," FBIS-CHI-79-072 (April 11, 1980), at L8; "Beijing Ribao Urges Protecting State Assets," FBIS-CHI-82-097 (May 19, 1982), at K1; Deng Yingchao on Guarding Party Secrets," FBIS-CHI-82-128 (July

230. ZILE, SHARLET AND LOVE, supra note 37, at 9.

231. For instance, the PRC continues to remain hostile toward hegemonism (a term applied more to Soviet acts than American one, though it is frequently used generally with respect to "superpower" actions). The Chinese even regard the hegemonic acts of third party states to be the direct result of superpower instigation. See "Newspapers Note Importance of Three Tasks for 1980," FBIS-CHI-80-025 (Feb. 5, 1980), at 11 (Renmin ribao report) and L2 (Jiefang ribao commentary); "Renmin Ribao Commentator Urges Unity Against 'Soviet Aggression';" FBIS-CHI-80-095 (May 14, 1980), at C1; "Israel Invasion of Lebanon, U.S. Role Scored," FBIS-CHI-82-119 (June 21, 1982), at I1.

232. See generally TOWNSEND, supra note 64, at 289-337.

233. That the NPC is a rubber stamp organ of the CCP is not unknown to the Chinese themselves, who have sarcastically remarked that NPC delegates have two roles: to applaud the speeches of CCP leaders and to raise their hands to vote yes.

234. NPC deputies serve for a period of five years, though under special circumstances, that term may be extended or shortened. 1982 PRC CONSTITUTION, supra note 104, Art. 57.


236. The designation of "statutes" appears to encompass both "laws and decrees," which appear in both the 1978 and 1982 PRC CONSTITUTIONS. With an eye toward legal precision, a recent Guangming ribao article noted that there is a distinct hierarchical relationship among laws, decrees, and policy decisions although this relationship may now be blurred. The ranking of 1) laws; 2) decrees; and 3) policies in Article 9 of the PRC CRIMINAL CODE, supra note 185; to wit, "acts committed . . . should be dealt with according to the laws, decrees and policies" was deliberate. Decrees and policies cannot contradict the law (i.e., NPC-enacted statutes) and the law itself cannot contradict the Constitution. See "Guangming Ribao Discusses Enforcement of Policies, Laws," FBIS-CHI-79-221 (Nov. 14, 1979), at L1; 1982 PRC CONSTITUTION, supra note 104, Arts. 5, 62. Legislation and issues concerning it, are delegated in the first instance to the Legislative Affairs Commission of the NPC Standing Committee. See "Laws Concerning State Structure to be Revised," FBIS-CHI-82-220 (Nov. 15, 1982), at K4. In reality, CCP directives are effectively the supreme
law of the land, though it would appear that CCP revisions of existing law should, for the sake of appearance, pass the NPC or its Standing Committee, the only organs empowered to revise the law. See "Peng Zhen Discusses Task of Public Security Organs," FBIS-CHI-79-147 (July 30, 1979), at L1. See also Chiu, Socialist Legalism, supra note 168.


238. This constitutional procedure was outlined in the recent ratification of the 1980 UN Convention on the prohibition or restriction on the use of certain conventional weapons deemed to be excessively injurious or to have indiscriminate effects. See "Ling Qing Signs UN Accord on Conventional Weapons," FBIS-CHI-81-179 (Sept. 16, 1981), at A1; "Further on NPC Standing Committee Session: Weapons Convention Resolution," FBIS-CHI-82-046 (March 9, 1982), at K8 [hereafter UN Weapons Convention].


239. Important NPC-drafted domestic legislation, like the 1982 PRC CONSTITUTION, is circulated throughout the country in draft form prior to promulgation for official reaction to provisions and education of the public. See, e.g., "Company Workers Discuss 'Draft Constitution,'" FBIS-CHI-82-111 (June 9, 1982), at K11; "CPPCC Meeting Discusses Draft Constitution," FBIS-CHI-82-116 (June 16, 1982), at K6; "Further PRC Draft Constitution Discussions Held," FBIS-CHI-82-126 (June 30, 1982), at K1.

240. In July, 1979, the second session of the fifth NPC promulgated four new organic laws - the Organic Law for Local Congresses and Governments, the Organic Law for People's
Courts, the Organic Law for People's Procuratorates and the Electoral Law for the NPC and People's Congresses — designed, inter alia, to define permissible limits of local power. All four laws in translation may be found in "Seven PRC Laws Adopted at Fifth NPC Second Session," FBIS-CHI-79-146 (July 27, 1979) PART I: Supp. No. 019. The effective date of the laws was January 1, 1980.

241. An inspectorate would be well advised to peruse the texts of the speeches of various speakers at NPC sessions to discern traces of policy trends and potential conflicts. The PRC preoccupation with consensus apparently precludes more open disagreement. The floor speeches accompanying the adoption of new laws could be used as a gauge for Chinese attitudes toward formulation and execution of those laws. Cf. note 164 supra. But cf. "Renmin Ribao on Whether Speeches Can be Crimes," FBIS-CHI-82-140 (July 21, 1982), at K2 (inflammatory speeches may be considered a criminal act under Art. 10 of the PRC Criminal Code).


243. It is suggested that perceived non-conforming legislation or other legislative or judicial obstructions to arms inspection operations be brought first to the attention of the recently reestablished Ministry of Justice, which coordinates judicial and procuratorial work. See "Justice Minister Views Judicial Administration," FBIS-CHI-82-149 (Aug. 3, 1982), at K13. Presumably, initial contact with the Ministry would expedite investigation of the matter.

244. In American law, for example, invalidity or portions of an act or some of its applications will not cause the whole act to fall if the valid portions or possible applications which remain are capable of being given legal effect, and if the legislature would have intended that which remained to stand alone. See, e.g., Berea College v. Kentucky, 211 U.S. 45, 54-56 (1908); Carey v. South Dakota, 250 U.S. 118, 121 (1919); Dorchy v. Kansas, 264 U.S. 286, 289 (1924); United States v. Jackson, 390 U.S. 570 (1968); Tilton v. Richardson, 403 U.S. 672 (1971); Buckley v. Vailes, 424 U.S. 1 (1976). This has given rise to severability clauses. See note, 40 HARV. L. REV. 626 (1927). But cf. note 203 supra and accompanying text.

American courts will invalidate an entire statute only where an invalid provision is so dependent on an otherwise valid statute as to, by its removal, affect the constitutional features and purposes of the act. See, e.g., Williams v. Standard Oil Co., 278 U.S. 235 (1929).

245. Limited distribution is partly the result of paper shortages in the PRC. See BUTTERFIELD, supra note 193, at 399.

246. E.g., Faxue yanjiu (Studies in law), Minzhu yu fazhi (Democracy and the legal system); Renmin gongan (People's public security) (restricted circulation), Renmin jiancha (People's procuratorate) (restricted circulation), Renmin sifa (People's judiciary) (restricted circulation) and Zhongguo fazhi bao (China legal system daily). See also "Chinese Judicial Weekly," FBIS-CHI-80-121 (June 20, 1980), at L14; "Legal Journal Calls for Abolishing Old Legal Practice," FBIS-CHI-80-218 (Nov. 7, 1980), at L21.

Several law books have also been published, including Guojifa (International law), Falu zhishi wenda (Questions and answers on law) and Falu jiben zhishi jianghua (Talks on basic knowledge of law). See CHIU, Socialist Legalism, supra note 168, at 47 notes 8 and 9.

247. See Gongan fazui huijian, supra note 146. See also Faxue cidian (Law Dictionary) (published in Shanghai, PRC, 1979)(definitions of many legal terms useful to the PRC are included therein); note 60 supra.
For earlier collections of PRC statutory material, see Hsia, Sources of PRC Law, supra note 168, at 25; CHINESE DICTIONARIES (Chinese-English Translation Assistance Group ed. 1982), at 202-05.


Two notable exceptions were the trial of dissident Wei Jingsheng and the trial of the gang of four, both of which received extensive coverage. See, e.g., "Political Dissident Sentenced to 15 Years' Imprisonment," FBIS-CII-79-201 (Oct. 16, 1979), at L1; "Further Reportage on Trial of Wei Jingsheng: 'Xinhua Reporter's Account,'" FBIS-CII-79-202 (Oct. 17, 1979), at L1; 'Public Prosecutor's Statement,' id., at L3; 'Remin Commentator's Article,' id., at L4; "Further Report on Remin Ribao Commentator in Wei Trial," FBIS-CII-79-203 (Oct. 18, 1979), at L2; "Gang of Four Trial Reportage Continues," FBIS-CII-80-230 (Nov. 26, 1980), at L1; 'Jiang Tengjiao Testimony,' id.; Huang Yongshen, Li Zuopeng in Docket' id., at L3; 'Xinhua Chinese on Officer's Testimony', id., at L5; 'Jiang Qing Interrogated in First Tribunal,' id., at L6; "Gang of Four Trial Reportage Continues From Beijing," FBIS-CII-80-232 (Dec. 1, 19890), at L1-40; Chiu Certain Legal Aspects of the Recent Peking Trial of the "Gang of Four" and Others, OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMPT. ASIAN STUD. (No. 3-1981 (40)), at 27-38.


250. H. BERMAN AND P. MAGGS, DISARMAMENT INSPECTION UNDER SOVIET LAW 12-13 (1967) (hereafter BERMAN AND MAGGS). See also ZILE, SHARLET AND LOVE, supra note 37, at 39; note 246 supra.

Chinese secrecy about PRC legal development is not a new concept. Disclosure of information about the judicial system was made punishable under the State Secrets Regulations adopted in the early years of the PRC (1951). Hsia, Sources of PRC Law, supra note 168, at 27.

251. See BERMAN AND MAGGS, supra note 250, at 13.

252. The Ministry of Justice was established with the approval of the NPC Standing Committee on September 13, 1979. See "Decisions Announced at Fifth NPC Standing Committee Session" FBIS-CHI-79-180 (Sept. 14, 1979), at L1.


254. The Ministry of Justice was recently assigned the following tasks:

1. Guiding and managing the training of judicial personnel, including directing political and law schools to develop legal curriculums;

2. Publicizing and propagandizing the legal system;

3. Managing lawyers' work;

4. Managing notarization work;

5. Supervising the work of people's mediation committees;

6. Organizing participation in international judicial activities;

7. Investigating questions of theory and policy in judicial work and studying juvenile delinquency and other criminal activities;
8. Supervising judicial administrative organs.

See "Justice Minister Views Judicial Administration," FBIS-CHI-82-149 (Aug. 3, 1982), at K14. Note that these assigned tasks are an expansion of those powers earlier associated with the Ministry, with the notable exceptions of the tasks of compiling codes of laws and publishing law books. Compare New Minister of Justice Interviewed, Beijing Review, No. 42 (Oct. 19, 1979), at 3-4.

255. Many of the guidelines for judicial personnel may be formulated by judicial committees, the people's court organ entrusted with such tasks as summing up experience in judicial work, discussing important and complicated cases and the application of relevant laws and decrees to them, and exchanging views on criminal cases not specifically defined in the criminal law. See generally "Remin Ribao Discusses Role of Judicial Committees," FBIS-CHI-80-038 (Feb. 25, 1980), at L17; "Shaanxi Judicial official Discusses Legal System," FBIS-CHI-81-119 (June 22, 1981), at T1; "Justice Minister Views Judicial Administration," FBIS-CHI-82-149 (Aug. 3, 1982), at K13.

256. Article 43 of the 1978 PRC Constitution gave the procuracy the power to "ensure observance of the Constitution and the law," a power which was deleted from the 1982 Constitution, but which nevertheless exists impliedly in the Organic Procuretorate Law.

Procuratorial powers were apparently not successfully forged until the adoption of the 1979 Organic Procuretorate Law. As late as March 27, 1979 -- a full year after the adoption of the 1978 Constitution, the chief procurator of the Supreme People's Procuretorate, Huang Huoqing, was still calling for the rebuilding of procuratorial organs and the enlistment of a "good revolutionary contingent of procuratorial cadres." See "Huang Huoqing Article on Tasks of Procuretorial Work," FBIS-CHI-79-060 (March 27, 1979), at L7. See also "Zhejiang Chief Procurator in Democracy, Legal System," FBIS-CHI-79-072 (April 11, 1979), at S1; "Heilongjiang Ribao Editorial Stresses Procuretorial Work," FBIS-CHI-79-071 (April 11, 1979), at S1; "Hubei Reestablishes People's Procuretorates," FBIS-CHI-79-047 (March 8, 1979), at H1; "Guizhou Province Reestablishes People's Procuretorates," FBIS-CHI-79-043 (March 3, 1979), at J2; "Guangxi Reestablishes People's Procuretorates," id., at N3; "Beijing Municipality Restores Procuretorial Organs," FBIS-CHI-79-042 (March 2, 1979), at K1.


258. See Yegorov, supra note 168, at 128. Procuratorial duties include striking at counterrevolutionaries, punishing other
criminals, approving arrests ad suppressing treasonous activities. ORGANIC PROCURATORATE LAW, supra note 151, Art. 4. See also "Henan Procuratorate Approves Arrest of Former Yiyang Official," FBIS-CHI-79-068 (April 6, 1979), at P2.


260. There has been a number of instances of "rehabilitation" and retrials in the PRC although the exact role of the procuracy in these processes is not clear. In some instances, the procuracy rehabilitated (i.e., released and cleared of charges) those who had allegedly been unjustly prosecuted before the capture of the Gang of Four. See, e.g., "AFP: Government Rehabilitates Prominent Dissident Writer," FBIS-CHI-80-223 (Nov. 17, 1980), at L9 (rehabilitation of Hu Feng, who was imprisoned by Mao Zedong as a counterrevolutionary); "Nei Mongol Completes Reexamination of Criminal Cases," FBIS-CHI-80-230 (Nov. 26, 1980), at S1; "Renmin Ribao on Redressing False, Wrong Cases," FBIS-CHI-81-002 (Jan. 5, 1981), at L11.

These articles reported on the wholesale reexamination of criminal cases by "judicial departments" and "courts," in order to rehabilitate wrongly accused Chinese. In practice, it appeared that the CCP issued the order for rehabilitation and the courts simply adjusted their decisions. In theory, there should have been some official procuratorial appeal to the courts to initiate the reexamination process, although this was not reported.

There has also been a smattering of criminal retrials, allegedly because of some deficiency in the application of the law. See, e.g., "Liaoning Higher Court Annuls Municipal Court Decision," FBIS-CHI-80-100 (May 21, 1980), at S1; "Beijing Radio Praises Liaoning Procuratorate Decision," FBIS-CHI-80-101 (May 22, 1980), at S2. These articles reported on an assault and robbery of three people. The Liaoning Higher Court annulled the municipal intermediate people's court sentence of two years imposed on the defendant for his conviction on the single offense of robbery. The Intermediate Court, on defendant's appeal, reversed the District People's Court's five-year sentence (on June 5, 1979). In February 1980, the Liaoning Provincial People's Procuratorate, pursuant to Art. 17 of the ORGANIC PROCURATORATE LAW, supra note 151, and Art. 149 of the PRC CRIMINAL PROCEDURE CODE, infra note 276, appealed to the Liaoning Provincial Higher People's Court on the ground...
that the sentence was too lenient. The higher court retried the case in April 1980, found the defendant guilty of multiple offenses, and sentenced him to seven years’ imprisonment.

See also "Liaoning Retries Cultural Revolution Criminal," FBIS-CHI-82-168 (Aug. 30, 1982), at 04 (alleging mass demand for retrial of Jing Dechun, whose five-year sentence was considered too light for his crimes); "Liaoning Resentences 'Archcriminal' to 20 Years," FBIS-CHI-82-176 (Sept. 10, 1982), at SI (resentencing Jing Dechun for murder, hooliganism, and graft). In Jing’s case, PRC legal theory would have dictated some form of procuratorial appeal of the original sentence, perhaps based on new evidence garnered by procuratorial and public security organs. The articles, however, are not specific in the roles of these organs in the subsequent disposition of the case.

But see "Supreme People's Court Overrules Shenyang Court Decision," FBIS-CHI-80-218 (Nov. 7, 1980), at L32. This appears to be the only publicized example of appellate remand as a result of too harsh a sentence. The Supreme People's Court overruled the Shenyang Intermediate Court’s pronouncement of death on a charge of embezzlement, stating that the defendants were guilty of the lesser crime of theft, for which capital punishment should not issue.

The procuratorial exercise of power in these instances indicates the degree of caution with which an arms inspectorate must approach this governmental body for requests of ruling modifications. Procuratorial power thus becomes a double-edged sword and can be used as readily by PRC authorities to obstruct inspection operations as it can by an inspectorate to protest administrative and judicial interference.

261. Yegorov, supra note 168, at 128.

262. Huang Huoqing, chief procurator of the Supreme People's Procuratorate in 1979, was alleged to have disclosed at the 11th meeting of the CCP Central Committee that procuratorates were not clear on the limits of their functions and power and that members of the CCP Central Committee did not have a good grasp of the law. The abruptness of the latter statement was probably one reason why the report of Hua's remarks did not surface in the PRC press, but, rather, appeared in the Hong Kong Communist Press. See "Ming Pao on 'Unsound' PRC Procuratorial System," FBIS-CHI-79-146 (July 27, 1979), at U1.

263. Article 9 of the ORGANIC PROCURATORATE LAW, supra note 151, declares:

People's procuratorates shall exercise their procuratorial authority independently in accordance with the
law and shall not be subject to interference by other administrative organs, organizations, or individuals.


Procuratorial integrity may be further undermined by the probability that many procurators are CCP members. Article 1 of the CCP Constitution, supra note 157, requires CCP members to "carry out Party decisions." Article 4 of the ORGANIC PROCURATORATE LAW, supra note 151, calls for procuratorial independence. It is not difficult to envision the conflict that might arise when CCP cadres engaged in procuratorial work are confronted with Party directives which bear on procuratorial functions. Cf. "Tianjin People's Procuratorate Issues Rules for Cadre Conduct," FBIS-CHI-79-185 (Sept. 21, 1979), at R4 (noting that duties included: upholding the principle of equality before the law; refusing to accept bribes; guarding state and Party secrets; strengthening investigatory work; and, exercising procuratorial work independently).

264. See note 151, supra.

265. See note 168, supra.


14, 1982, at 1; Five million mediators help solve civil cases, China Daily, Aug. 25, 1982, at 1.

269. Yegorov, supra not 168, at 128. PRC authorities are aware that volunteer judges cannot serve the same function as legally-trained ones and hence have made efforts to provide judicial instruction to large numbers of those involved in judicial procedure. See, e.g., "Tianjin Issues Rules of Discipline for Court Jurors," FBIS-CHI-79-165 (Aug. 23, 1979), at R2; "Beijing People's Courts Train Assessors," FBIS-CHI-79-141 (July 20, 1979), at R1 (noting that people's assessors were being trained pursuant to Article 9 of the Organic Court Law); "Chinese Schools Training More Students in Politics, Law," FBIS-CHI-79-091 (May 9, 1979), at R18; "Beijing Judicial Assistants," FBIS-CHI-79-051 (March 14, 1979), at R2 (noting that judicial assistants were being assigned to people's communes in Beijing municipality to help with civil disputes and minor criminal violations); "Fujian Court Vice-President's Suggestions on Legal System," FBIS-CHI-79-009 (Jan. 12, 1979), at Gl (calling for the reestablishment of all judicial organs).

270. "Two trials' actually means that the defendant is entitled to one appeal of right to the next highest court before judgment is final. See, e.g., "Beijing Municipal Court Rejects Wei Jingsheng's Appeal," FBIS-CHI-79-217 (Nov. 7, 1979), at L1.

271. Higher and intermediate people's courts have also set up "economic divisions" to handle "economic disputes." See "Beijing Wanbao Reports First 'Economic Trial'," FBIS-CHI-80-125 (June 26, 1980), at 113 (factory claim for restitution and punitive damages for delivery of faulty, obsolete machinery from supplier. The court rejected the claim but ordered the supplier to make the machinery suitable for its intended purpose). See also "More Economic Courts Established to Settle Disputes," FBIS-CHI-80-133 (July 9, 1980), at L6.

272. See also 1982 PRC CONSTITUTION, supra note 104, Art. 127.

273. Since 1979, the Supreme People's Court has had original jurisdiction in 4 cases: A) the Gang of Four; B) a case involving a 3-star Chinese general; C) a case involving an American air force pilot shot down over Manchuria; D) an unpublicized case. This information was imparted to the author by an anonymous PRC legal official.

274. Legal interpretation has since been divided among a number of organs including the NPC Standing Committee, local standing committees, the State Council, the Supreme People's Procuratorate, and the Supreme People's Court. For an explanation of the interpretive jurisdiction of each, see "NPC Standing Committee Meeting Concludes 10 June: Resolution on Law Interpretation," FBIS-CHI-81-112 (June 11, 1981), at K3. See also "Wang Harbin NPC Report on Law

275. Actually, Article 13 requires Supreme Court approval for all death sentences, but legislative fiat has since modified this provision. For certain capital offenses, Higher People's Court approval is sufficient. This modification is designed to expedite punishment and is in effect until Dec. 31, 1983. See "NPC Standing Committee Meeting Concludes 10 June: Decisions on Death Sentences," FBIS-CHI-81-112 (June 11, 1981), at K4.


277. See, e.g., note 260, supra. But see Article 136 of the PRC CRIMINAL PROCEDURE CODE, supra note 276, whih stipulates that cases in which factcial ambiguities exist are to be "returned for retrial to the . . . court which originally heard the case" (Art. 136(3)).

278. PRC CRIMINAL PROCEDURE CODE, supra note 276, Art. 131.

279. ORGANIC COURT LAW, supra note 151, Art. 29. A special court and special procuratorate were set up to try the Gang of Four. See "Late Report: Trial Arrangements Approved for Gang," FBIS-CHI-80-190 (Sept. 29, 1980), at L24.

280. Yegorov, supra note 168, at 126.


282. Yegorov, supra note 168, at 129.


284. Both the 1978 and 1982 PRC Constitutions have circumscribed the official duties of public security bodies and passed some of their functions to the procuratorate. The 1982 PRC Constitution, however, does not detail procuratorial powers as specifically as its predecessor, the 1978 Constitution,
other than noting that the procuratorate is a "state organ for supervising the law" (Art. 131). Impliedly, the 1982 PRC Constitution may therefore have restored some of the previous powers of public security organs, although the Organic Procuratorate Law is still valid.

285. Adopted at the sixth session of the Standing Committee of the Fifth NPC. The text may be found in "NPC Promulgates New Regulations on Arrests, Detentions: Text of Regulations," FBIS-CHI-79-039 (Feb. 26, 1979), at E3 [hereafter Arrest Regulations].

286. Article 2 of the Arrest Regulations, id., precludes arrest "except by the decision of a people's court or with the sanction of a people's procuratorate" (emphasis added). Article 4, para. 1, empowers public security organs to make arrests "as decided upon by a people's court or sanctioned by a people's procuratorate." However, Article 4, para. 2, notes that prior to an arrest by a public security organ, the "sanction of a people's procuratorate" must be obtained. The language is somewhat ambiguous, inasmuch as Article 2 and Article 4, para. 1, use the disjunctive [or] to indicate the requirement of the approval of either the courts or the procuratorates. Article 4, para. 2, on the other hand, appears to require procuratorial approval in all cases.

In practice, it appears as if procuratorial approval is always sought before arrest. See "Peng Zhen Discusses Task of Public Security Organs," FBIS-CHI-79-147 (July 30, 1979), at L1. Strong support for exclusive procuratorial approval is implied by Article 47 of the PRC CRIMINAL PROCEDURE CODE, supra note 276, which grants the people's procuratorate the power "to approve arrest, not to approve arrest, or to request a supplementary investigation."

287. Article 6 of the Arrest Regulations, supra note 285, reads:

A public security organ may in an emergency detain, before it has obtained a warrant, any active criminal whose crime justified his arrest or who is suspected of having committed a major crime provided he is:

1) A person who is preparing to commit a crime or is discovered immediately after committing a crime;

2) A person who is identified as having committed a crime by the victim of the crime or by an eyewitness;

3) A person who is found to be carrying criminal evidence on his person or keeping criminal evidence at his home.
4) A person who is attempting to commit suicide or to escape, or who is in flight after having committed a crime;

5) A person who destroys or fabricates evidence, or is suspected of being an accomplice in such acts;

6) A person who carries no identification papers and is suspected of having committed major crimes here and there;

7) A person who engages in beating, smashing, looting or (illegal confiscation? illegible Chinese-ed. note) or who is carrying out sabotage of work, production of social order.

Article 6 is substantively ambiguous. The first paragraph permits detention of "any active criminal", while the remainder of the provision invites a different reading: that anyone who arouses suspicion is vulnerable to detention. A perusal of PRC press reports from 1978-1980 did not turn up any publicized stories of detentions made on the basis of aroused suspicion, but an explanation of the term "detention" in a 1979 article explaining criminal procedure terms refers to the possibility of detaining a person "seriously suspected of a crime." See "Xinhua Publishes Explanation of Criminal Procedure Law Terms," FBIS-CHI-79-136 (July 13, 1979), at L2.

288. See Article 6 of the Arrest Regulations, supra note 285.

289. Public security organs detained an American student, teaching in the PRC, for the alleged violation of Chinese secrecy laws relating to agriculture. The United States claimed that PRC public security organs violated a bilateral consular agreement between the two countries in detaining her. See "American Expelled for 'Stealing China's Secrets'," FBIS-CHI-82-107 (June 3, 1982), at B1.

290. The PRC has no insurance system to cover instances of tort liability for harm to individuals. Thus, for example, in an accident involving two bicyclists in Beijing, a public security officer would fill out a report indicating whom he believed the tortfeasor to be. On this basis, the tortfeasor would be responsible for compensating the other injured party for medical bills, lost wages, etc. The tortfeasor would have no recourse to any judicial hearing prior to, or after this determination.

In practice, though, compensation is often limited because of the indigence of the tortfeasor and his relatives, who may also be required to make restitution.
This information was imparted to the author by an anonymous PRC legal official.

291. See Yegorov, supra note 168, at 129. See generally BUTTERFIELD, supra note 193, at 90-91, 334-35.


293. See also PRC ORGANIC PROCURATORATE LAW, supra note 151, Art. 5(3).

294. Detention in the PRC is not limited to formal imprisonment. The Chinese employ a vast network of labor reform camps populated by thousands of prisoners, many of whom are political prisoners and many of whom have been sentenced without the benefit of formal legal process. The PRC employs two resocialization techniques: reeducation through labor and rehabilitation (reform) through labor. The latter requires no judicial proceedings before nor judicial review during assignment, which may be up to four years. For a startling account of labor camp conditions, see BAO RUE-WANG, PRISONER OF MAO (1976). See also Amnesty International Report, Political Imprisonment in the People's Republic of China (1978). Compare "Peng Chong Visits Reeducation-Through-Labor Farm," FBIS-CHI-81-192 (Oct. 5, 1981), at K9; "Zhongguo Xinwen She on Visit to Beijing Prison," FBIS-CHI-81-204 (Oct. 22, 1981), at K6; "AFP Correspondents Write on Visit to Beijing Prison," FBIS-CHI-80-116 (June 13, 1980), at L4.

Given the informality, inconsistency, and relative secrecy of labor reform camp policy, its application to inspectorate personnel is doubtful.


In 1975, the PRC became the third nation to launch a reconnaissance satellite. See Leng, Arms Control and Disarmament in Chinese Global Policy [hereafter Leng] in CHINA IN THE GLOBAL COMMUNITY 164-86, 164 (Hsiung and Kim ed., 1980) [hereafter HSUHNG AND KIM].

Through March 15, 1978, the PRC had conducted 20 nuclear tests, the first of which was on Oct. 16, 1964. See "Satellite Launches, Nuclear Tests Listed," FBIS-CHI-79-186 (Sept. 24, 1979), at L12. Leng reported that 25 nuclear tests had been conducted by Dec. 14, 1978. See supra note 296, at 165. The PRC has also recently reported that it possesses nuclear-powered submarines. See Journal of Commerce, Sept. 29, 1980, at 9.


299. The most direct exception is the recent PRC accession to the UN Weapons Convention, supra note 238.

The PRC has also acceded to the 1925 Geneva Protocol for the prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods of Warfare on July 13, 1952. See JOHNSTON AND CHIU, supra note 64, at 275.


300. On Jan. 21, 1960, the NPC Standing Committee asserted that:

China has always favored universal disarmament and will unhesitatingly commit herself to international obligations to which she agrees. However, it must be pointed out that any international agreement concerning disarmament, without the formal participation and the signature of her delegate, cannot, of course, have any binding force on China. Beijing (Peking) Review, No. 4 (Jan. 26, 1960), at 14 cited in LENG AND CHIU, supra note 1, at 248.
301. See Leng, supra note 296, at 166; LENG AND CHIU, supra note 1, at 249.

302. The Chinese have characterized the superpower nuclear monopoly as an attempt to keep "the spear [while not allowing] others to have the shield." See "People's Daily on US-USSR Controversy Over Neutron Bomb," FBIS-CHI-78-080 (April 25, 1978), at Al. See also L. LIU, CHINA AS A NUCLEAR POWER IN WORLD POLITICS 25-26 (1972); LENG AND CHIU, supra note 1, at 246-50; KIM, supra note 20, at 172; U.N. DOC. A/8536 (Nov. 24, 1971), at 3; "U.S., USSR Nuclear Disarmament Roles Discussed," FBIS-CHI-82-188 (Sept. 28, 1982), at Al (condemning a comprehensive nuclear test ban as an effort to help the superpowers consolidate their nuclear superiority); "PRC UN Representative Condemns Superpowers' Arms Race," FBIS-CHI-78-208 (Oct. 26, 1978), at Al (arms control negotiations were a fraud designed to maintain the superpower nuclear monopoly); "Huang Hua to Attend UN Disarmament Meeting," FBIS-CHI-78-093 (May 12, 1978), at Al (PRC continued to oppose exclusive possession of nuclear weapons by superpowers); "US-USSR Interest in Test Ban Talks Revived," FBIS-CHI-77-246 (Dec. 22, 1977), at Al (comprehensive test ban treaty precluded other nations from conducting nuclear tests).

As late as mid-1980, the PRC exhorted Third World countries to break the superpower nuclear monopoly. See "PRC UN Official Addresses Disarmament Committee," FBIS-CHI-80-095 (May 14, 1980), at A6.

303. During the late 1950s, the Soviet Union began to modify its previous support for total nuclear disarmament in favor of limited nuclear arms control. The Soviets proposed, for instance, nuclear free zones in Germany (1956) and in the Middle East (1958). See Leng, supra note 296, at 166.

In the context of the developing Sino-Soviet rift, the PRC moved away from its support of Soviet arms control proposals and asserted its own position, calling for the "concrete, thorough, total, and resolute prohibition and destruction" of nuclear weapons. Peking (Beijing) Review, No. 31 (Aug. 2, 1963), at 8. See also People of the World, United for the Complete, Thorough, Total and Resolute Prohibition and Destruction of Nuclear Weapons (printed by the Foreign Language Press, Peking, 1963); A. YODER, CHINESE POLICIES TOWARD LIMITING NUCLEAR WEAPONS 22 (1980); Verbatim Record of the 27th Meeting of the First Committee, U.N. DOC. A/C.1/35/PV.27, at 13 (Nov. 4, 1980) (statement of Mr. Wu Zhen); Verbatim Record of the 10th Meeting of the First Committee, U.N. DOC. A/C.1/35/PV.109, at 26 (Oct. 22, 1980) (statement of Mr. Lai Yali); Speech by the Chairman of the Chinese Delegation at the First Substantive Session of the UN Disarmament Commission, PRC Press Release (May 15, 1979) (Annex); "Ji Pengfei Reiterates PRC Nuclear Policy," FBIS-CHI-82-091 (May 11, 1982), at A2; "PRC Delegate Addresses Geneva Disarmament Conference," FBIS-CHI-80-025 (Feb. 5,
The exclusion of any plan to eliminate conventional forces was based largely on the Mao Zedong concept of the atom bomb as a "paper tiger." In accordance with Mao's teachings, the atom bomb and other nuclear weapons would not play the decisive role in war: such weapons were useful from a tactical standpoint only and not from a strategic one. Rather, the "people's war [was] a hundred and a thousand times stronger than the power of . . . atomic weapons." See "The Atom Bomb is a Paper Tiger" SCMP no. 6382 (July 18, 1977), at 9. See also "Atom Bombs Are Also Paper Tigers," SCMP no. 6367 (June 24, 1977), at 178; Leng, Arms Control, in LENG AND CHIU, supra note 1, at 246-47; Powell, Great Powers and Atomic Bombs Are 'Paper Tigers', 23 CHINA Q. 55, 55-63 (July-Sept. 1965); Leng, supra note 296, at 165.

Mao considered bombs important for self-defense purposes. To a large degree, contemporary Chinese leaders have incorporated this philosophy into their justifications for modernizing and upgrading their weapons capability so as to assure themselves of a peaceful environment for pursuit of the four modernizations. However, current PRC policy has modified somewhat the earlier military philosophy of Mao. In its drive towards modernization, the PRC has recognized the need for parity of manpower, economic strength and weapons development. As such, the Chinese have begun to modernize their weapons system through such actions as the improvement of nuclear delivery systems and the purchase of up-to-date conventional weapons from England, West Germany, France, the United States and other Western nations. See Godwin, China and the Second World: The Search for Defense Technology, 2 CONTEM. CHINA 1, 3-9 (Fall, 1978); Leng, supra note 296, at 175. See also COPPER, supra note 186, at 39 (noting that the PRC does not possess abundant quantities of any of the critical metals used in weapons production or high-technology industry). Cf. Wren, U.S. to Raise Technological Level of Products the Chinese Can Buy, N.Y. Times, Feb. 7, 1982, at A1; U.S. and China Forging Closer Ties; Critics Fear That Pace is Too Swift, N.Y. Times, Dec. 8, 1980, at A1.
The importance of military modernization has produced some conflict among the upper crust of Chinese leadership as to the "pace of [military] modernization and its assignment priority as compared to that of the other three components of the modernization drive (agriculture, industry, and science and technology)." Leng, supra note 296, at 175. Michael Kau of Brown University recently remarked that competition between military and civilian sectors in the PRC for the allocation of resources is probably rather keen. M. Kau, Remarks at the 22nd Annual Meeting of the American Association for Chinese Studies and the 5th Annual Meeting of the Asian American Assembly for Policy Research (Charlottesville, Va., Nov. 15-16 (1980)).

Just prior to the 1979 war with Vietnam, Chinese pronouncements had deemphasized the importance of military modernization vis-a-vis the other three modernizations. Leng, supra note 296, at 176. Leng points out rather accurately that the 1979 military encounter with Vietnam "exposed some weaknesses of the PLA in equipment and techniques" and compelled the PRC to channel a larger share of its available resources into military modernization. Id.

Increases in PRC military expenditures take on an even greater significance when viewed in light of the concomitant Chinese announcement to slow down economic growth, cut back on or cancel foreign commercial contacts and reevaluate modernization plans. See Report on the Work of the Government, Beijing Review, No. 27 (July 6, 1979), at 9-20 (statement of Hua Guofeng at the 2nd Session of the Fifth NPC).

At least one author has surmised that the rehabilitation of Deng Xiaoping and a close political compatriot, Defense Minister Yeh, in 1977, Hua Guofeng's rise to power after Mao's death, and the arrest of the Gang of four (which had been accused of opposing military modernization) implied increased support for modernization programs for both conventional and nuclear weapons. See YODER, supra note 303, at 19.


306. Leng, supra note 296, at 169. Samuel Kim found that the most optimistic note in China's arms control and disarmament policy is the PRC's "firm, positive, and unequivocal support for the establishment of nuclear free zones around the globe." KIM, supra note 20, at 172.

307. A Dec. 22, 1974 Renmin ribao editorial, in denouncing the 1963 Nuclear Test Ban Treaty, modified the PRC's previous support for nuclear free zones -- a concept first preferred on July 31, 1963. The editorial asserted that "unless preceded by a 'no-first-use' agreement, the establishment of
such zones would only bind the 'hand and foot' of non-nuclear countries while leaving the nuclear powers to continue production, stockpiling or even the use of nuclear weapons." Leng, supra note 296, at 167.


For a good review of the development of the PRC's disarmament policy, see Leng, supra note 296, at 165-72.

309. The PRC voted against three 1971 draft resolutions calling for an end to nuclear testing, a 1972 Soviet resolution linking the prohibition of the use of nuclear weapons to the non-use of force, a 1974 Soviet resolution calling for a ten percent reduction of the military budgets and the permanent members of the Security Council, three 1974 resolutions concerning SALT talks, nuclear test bans and nuclear non-proliferation, and a number of 1976-77 resolutions at the Thirty-first and Thirty-second General Assembly Sessions on Arms Control and Disarmament. See Leng, supra note 296, at 169 and accompanying notes.

Moreover, China has argued against UN involvement in disarmament matters, not because of the lack of an appropriate international forum but because of "the lack of will for genuine disarmament on the part of the superpowers." See U.N. DOC. A/C.1/31/PV.50 (Dec. 2, 1976), at 6; "Chinese Representative Reiterates China's Principal Stand on Disarmament at UN First Committee," SCMP no. 6238 (Dec. 13, 1976), at 39; KIM, supra note 20, at 172.

The PRC refused to participate in the 35-member Special Committee of the World Disarmament Conference, although the Chinese voted for the Committee's establishment. Leng, supra note 296, at 171-72.

310. Leng, supra note 296, at 169.


Chinese attitudes on war and civilian defense as noted above undoubtedly increase the prevalence of internal secrecy regulations and make inspectorate work more difficult.

314. The phrase translates as "a wind sweeping through a tower heralds a rainstorm." It has appeared in PRC press reports in connection with mounting opposition to imperialism, colonialism, and hegemony from Third World Countries. It has also been less than accurately translated in these reports as "the wind sweeping through the tower heralds a rising storm in the mountains." See, e.g., "Third World—Motive Force of History," SCMP no. 5725 (Nov. 4, 1974), at 52.

315. This proverb was usually used to indicate that the superpowers had already passed the apex of their power and were no longer capable of controlling the fate of the international community. In press reports, it has been translated as "flowers fall off, do what one may." The phrase was particularly prevalent in the period from 1974-77. See, e.g., "An Chih-yuan Addresses UN First Committee," SCMP no. 5737 (Nov. 20, 1974), at 158; "Jen-min Jih-pao Article: Flowers Fall Off, Do What One May," SCMP no. 5713 (Oct 10, 1974), at 229.

316. This phrase was often employed to describe the task of Third World countries in fending off American and Soviet competing interests. It has been translated in PRC press reports as "letting the tiger in through the back door while repelling the wolf through the front gate," though this is technically inaccurate.

317. See "Second UN Special Disarmament Session Viewed," FBIS-CHI-82-111 (June 9, 1982), at A1 (noting, inter alia, that disarmament cannot be divorced from the international situation).


319. COPPER, supra note 186, at 13.

320. Id. Such Chinese reasoning has perpetuated the military doctrine of a people's war strategy, for even a nuclear strike directed at the PRC would not annihilate the Chinese, who would, in turn, be prepared to resist subsequent
invasion efforts. China's preparation for a nuclear war is also illustrated by Mao's philosophy of "dig tunnels deep, store grain everywhere," a concept that has prompted a number of Chinese civil defense efforts. See Middleton, Vast Array of Air-Raid Shelters tunnel Under China's Main Cities, N.Y. Times, Dec. 13, 1976, p. A1, 8, col. 1; Pollack, supra note 180, at 25-27. See also Coon, Defense Priorities in Post-Mao Peking, 8 PARAMETERS 13, 17-19 (No. 4, 1977); Kux, supra note 188, at 107-08. "AFP: Beijing Takes Nuclear, Chemical Warfare Precautions" FBIS-CHI-80-063 (March 31, 1980), at L13 (Beijing authorities launched a "mobilization and training campaign" to prepare residents for a nuclear or chemical attack); "Peking Municipality Building Underground Shelters," FBIS-CHI-78-213 (Nov. 2, 1978), at K2; "Chairman Mao's Guideline on War -- Su Yu's Article: Great Victory of Chairman Mao's Guideline on War," SCMP no. 6403 (Aug. 16, 1977), at 59 (China must be prepared against war and much dig tunnels deep and store grain everywhere); "Foreign Minister Chao Juan-hua Speaks of International Situation at Dinner for James R. Schlesinger," SCMP no. 6180 (Sept. 16, 1976), at 219 (dig tunnels deep, store grain everywhere).

321. COPPER, supra note 186, at 15.


cease their hegemonic policies and to halt infiltration, interference, aggression and subversion); "PRC UN Delegate Speaks on Social Imperialism," FBIS-CHI-79-207 (Oct. 24, 1979), at Al; "Commentary: Dance Atop Volcanoes," SCMP no. 6256 (Jan. 11, 1977), at 117 (popular Soviet Resentment will bury the Soviet military machine); "Commentary by Hsinhuei Correspondent: New Tsars! Military Exercises," SCMP no. 6129 (July 6, 1976), at 44. See generally, Garner, SALT II: China's Advice and Dissent, 19 ASIAN SURVEY 1224 (No. 12, Dec. 1979).

326. See Pollack, supra note 180, at 23. See also "Chairman Mao's Great Strategic Concept -- About Differentiating the Three Worlds," SCMP no. 6416 (Sept. 6, 1977), at 1.


329. See "Commentary: At Loggerheads Yet Dreaming the Same," SCMP no. 6321 (April 18, 1977), at 52.

330. See id. See also "Renmin Ribao Views Nuclear Disarmament Proposals," FBIS-CHI-82-109 (June 7, 1982); at Al; "Commentary Views USSR-U.S. Nuclear Talks," FBIS-CHI-82-071 (April 13, 1982), at Al.

331. See Leng, supra note 296, at 179.


Leng also cites to a Chinese proverb used to illustrate the unfair restrictions of the superpowers — "zhun zhouquan fanghuo buzhun baix inq d iandenq (The magistrates are allowed to set fires, while the common people are forbidden even to light lamps.) Translation by author. See speech by Shiao Juan-hua, Chairman of the Delegation of the PRC at the Plenary Meeting of the 27th Session of the UN General Assembly (1972) cited in Leng, supra note 296, at 179.

335. Leng, supra note 296, at 179. See also "People's Daily Views US-USSR Contention in Space," FBIS-CHI-78-111 (June 8, 1978), at A1. The Chinese have since attended the UN Outer Space Committee Session as an observer so as to broaden exchanges with other countries on the peaceful uses of outer space. See "PRC Delegate Speaks at UN Outer Space Committee Session," FBIS-CHI-80-132 (July 8, 1980), at A2; "Delegate to UN Meeting Enunciates Space Policy," FBIS-CHI-82-156 (Aug. 12, 1982), at A1.


337. See, e.g., "Chen Chu Speech," FBIS-CHI-78-128 (July 23, 1978), at A2 (expressing PRC support for small and medium-sized countries' proposals in the final document of the 1978 UN Disarmament Conference); "People's Daily Urges Third World Participation in Disarmament," FBIS-CHI-78-105 (May 31, 1978), at A2; "Huang Hua to Attend UN 'Disarmament' Meeting," FBIS-CHI-78-093 (May 12, 1978), at A1 (supporting third World efforts to develop nuclear weapons for self-defense purposes); "PRC to Attend Special Conference on Disarmament," FBIS-CHI-78-044 (March 6, 1978), at A1 (noting the Chinese decision to participate in the 1978 UN Disarmament Conference, though the PRC had shunned earlier participation because of superpower control of the discussions).

338. See, e.g., "Text of PRC Proposal at UN Disarmament Session," FBIS-CHI-82-127 (July 1, 1982), at A1; "Renmin Ribao Views Chemical Weapons Controversy," FBIS-CHI-82-045 (March 8, 1982), at A1; "PRC Envoy Assesses Results of Geneva Disarmament Session," FBIS-CHI-80-156 (Aug. 11, 1980), at A1 (noting that progress in negotiations on the prohibition of, inter alia, chemical and radiological weapons was "preliminary or . . . even superficial"); "PRC Proposes Chemical Disarmament at Geneva Conference," FBIS-CHI-80-121 (June 20, 1980), at A2; "PRC UN Official Addresses Disarmament Committee," FBIS-CHI-80-095 (May 14, 1980), at A6 (noting that "agreements on the prohibition of the research, production and use of all chemicals and toxic weapons and on the destruction of existing stockpiles of such weapons be concluded through negotiations as soon as possible"). See also Leng, supra note 296, at 179; "PRC Representative Speaks on Disarmament at UN Meeting," FBIS-CHI-79-210 (Oct. 29, 1979), at A1.


340. The 1982 disarmament proposal was entitled the "Proposal on Essential Measures for an Immediate Halt to the Arms Race and for Disarmament." It was presented at the Second Special Session of the UN General Assembly on Disarmament on June 21, 1982. For the text of the proposal, see The UN: China's Disarmament Proposal, Beijing Review, No. 28 (July 12, 1982), at 11; "Text of PRC Proposal at UN Disarmament Session," FBIS-CHI-82-127 (July 1, 1982), at A1.

For the text of the Comprehensive Programme on Disarmament, see Speech by the Chairman of the Chinese Delegation at the First Substantive Session of the UN Disarmament

341. See KIM, supra note 20, at 172.

342. See note 238 supra.

343. See KIM, supra note 20, at 172; Leng, supra note 296, at 179.


347. For these resolutions, see U.N. DOC. A/C.1/PV.2007 (Nov. 4, 1974), at 62; A/C.1/PV.2024 (Nov. 20, 1974), at 53-55; A/C.1/PV.2026 (Nov. 21, 1974), at 27; A/C.1/PV.2084 (Nov. 11, 1975), at 23-25; A/C.1/PV.2095 (Nov. 21, 1975), at 38 cited in KIM, supra note 20, at 173 n.165.

348. See, e.g., "Soviet Position Regarding Tlatelolco Treaty Attacked," FBIS-CHI-78-106 (June 1, 1978), at A7. The Soviets were denounced on the basis that their "acceptance" of the Protocol in 1978 was contingent upon the understanding that Latin American countries did not have the right to conduct nuclear explosions for peaceful purposes and that these countries would not receive Soviet recognition of declared Latin American sovereign rights over 200-mile exclusive economic fisheries zones. See also "NCNA Condemns Soviet 'Disarmament' Talk at UN," FBIS-CHI-77-230 (Nov. 30, 1977), at A1.


353. See id., at A3-8.

354. See id., at A4-5.
355. See id., at A10.

356. See id., at A10. See also Leng, supra note 296, at 170; "Developments at UN Disarmament Session Discussed," FBIS-CHI-78-109 (June 6, 1978), at A1 (noting that small and medium-sized countries were reasonably demanding that disarmament negotiations should extend to conventional as well as nuclear arms).


358. Id. See also "PRC Representative Speaks on Disarmament at UN Meeting," FBIS-CHI-79-112 (June 9, 1979), at A2.


362. See Leng, supra note 296, at 170-71.


366. See Leng, supra note 296, at 171.


371. Speech by the Chairman of the Chinese Delegation at the First Substantive Session of the UN Disarmament Committion, PRC Press Release (May 15, 1979) (Annex), reprinted in Beijing Review, No. 22 (June 1, 1979), at 17-19.


373. Art. III(5).

374. Art. III(6).


376. Art. III(1).

377. Id.

378. Art II(2).

379. Art. II(1)4.

380. Art. II(1)5.

381. Art. II(1)7.

(suggesting that the UN play a greater role in preserving international security).

383. YODER, supra note 303, at 24. Yoder noted that PRC willingness to endorse UN-sanctioned treaties might extend to the previously condemned test ban treaties. The Chinese position, however, has not borne out Yoder's conjecture. The PRC has subsequently reiterated its opposition to a comprehensive test ban, noting that the only way to eliminate the threat of a nuclear war is through the complete prohibition and destruction of nuclear weapons. Verbatim Record of the 27th Meeting of the First Committee (Agenda Items 31-49 and 121), U.N. DOC.A/C.1/35/PV.27, at 13 (Nov. 4, 1980) (statement of Mr. Wu Zhen). See also "U.S., USSR Nuclear Disarmament Roles Discussed," FBIS-CHI-82-188 (Sept. 28, 1982), at A1 (justifying PRC refusal to participate in nuclear test ban negotiations under the Geneva Disarmament Committee).

On October 22, 1980, Lai Yali of the Chinese Delegation asserted that the call for a comprehensive ban on nuclear testing was "understandable" and that other nuclear states would cease nuclear tests when the superpowers had. Verbatim Record of the 10th Meeting of the First Committee (Agenda Items 3-49 and 121), U.N. DOC.A/C.1/35/PV.10, at 26 (Oct. 22, 1980) (statement of Mr. Lai Yali).

384. See note 372 supra and accompanying text.
386. See note 340 supra.
387. Id.
388. In addition to the inherent problems in the most recent PRC disarmament proposal, there are also issues arising out of the Chinese philosophical construct for the atmosphere of disarmament negotiations. For example, the PRC appears unwilling to convene a world disarmament conference until certain basic demands are met, including the withdrawal of all foreign troops, the cessation of foreign military aggression (particularly in Kampuchea and Afghanistan) and occupation, and the preservation of and respect for the independence, sovereignty and territorial integrity of all countries. See Verbatim Record of the 27th Meeting of the First Committee (Agenda Items 31-49 and 121), U.N. DOC.A/C.1/35/PV.27, at 11 (Nov. 4, 1980) (statement of Mr. Wu Zhen). Much of Chinese opposition is based on the perception that the aggression perpetrated by the Soviets in Afghanistan and the Vietnamese in Kampuchea violates the UN Charter and specific UN resolutions. See "Xinhua Views UN Resolution on Afghanistan," FBIS-CHI-81-224 (Nov. 20, 1981) at A1; "UN Envoy on USSR-SRV Threat to Southeast Asia," FBIS-CHI-81-212 (Nov. 3, 1981), at A1; "Xinhua Says Vietnamese, Soviets Threaten Southeast Asia," FBIS-CHI-80-097
See also note 298, supra.


390. See, e.g., "Reports of Nuclear Material to S. Africa Unfounded," FBIS-CHI-81-228 (Nov. 27, 1981), at U6; "PRC Representative Speaks on Disarmament at UN Meeting," FBIS-CHI-79-210 (Oct. 29, 1979), at Al; "PRC Delegate to Arms Conference Comments on Restrictions," FBIS-CHI-79-179 (Sept. 13, 1979), at Al (asserting that Third world and other small and medium-sized countries have the right to develop their armed forces for self-defense purposes).


392. See Pollack, supra note 180, at 26.
393. Id.
394. Id.
395. See Whiting, China After Mao, 17 ASIAN SURVEY 1028, 1034 (No. 11, Nov. 1977).


398. Of course, the PRC retains its sovereign right to control the movement of foreigners within its jurisdiction particularly for national security reasons, but it is quite probable that the parties to an inspection arrangement will attempt to delimit, to the extent possible, the permissible scope of unrestricted movement of inspectors to ensure effective verification (i.e., that relevant military installations are monitored). Such efforts would lead to uniform and reciprocal activities that permit predictability in inspection operations.

PART II: LEGAL PROBLEMS ASSOCIATED WITH THE EXISTENCE AND OPERATION OF AN INSPECTORATE ON PRC SOIL

Chapter 3. THE STATUS OF FOREIGN NATIONALS ON CHINESE TERRITORY

The presence of inspectorate personnel on Chinese soil will present delicate and complex legal and administrative problems compounded by the present ambiguous legal posture of the Chinese toward the concept of privileges and immunities. Chinese sensitivity to infringements on sovereign rights as well as the PRC's somewhat hesitant approach towards foreign contact create serious obstacles to the effective operation of inspectorate components -- the organization, inspectors, and staff -- in the PRC.

Under international law, the PRC is empowered to prescribe and enforce rules governing the activities of an inspectorate while its members are within Chinese territorial jurisdiction. The power to enact laws governing the rights of foreigners is implicitly vested in the National People's Congress (the rubber stamp legislative organ of the Chinese Communist Party) under the 1982 PRC Constitution, Article 62(3). There is at present no single unified national legislation on the rights and duties of foreign nationals in the PRC and so, resort must be had to numerous individual legislative enactments to determine their applicability to foreign nationals.

Applicable rules are found in the Act Regulating the Entry, Exit, Transit, Residence, and Travel of Foreign Nationals (hereafter Foreign National's Act) as well as in other national, provincial and municipal legislation. The PRC has also concluded a number of treaties containing provisions regulating the status of foreign nationals in China. Article 2 of the Foreign Nation's Act provides that "foreign nationals in China shall observe the laws and decrees of China." At least in principle, therefore, foreign nationals have rights and obligations under Chinese law similar to those of Chinese citizens, subject, undoubtedly, to exceptions.

The absence of these rights would probably have little impact on foreign inspectorate personnel. Other exceptions, however, may affect inspectorate operations, particularly where they may apply to Chinese nationals associated with the inspection team. For example, Chinese administrative -- and legal -- impediments to marriage between Chinese and foreign nationals may have a practical, though indirect, impact on inspection operations. Still other exceptions, such as Chinese restrictions on photography, travel and the gathering of information may have a profound influence on the effectiveness of verification procedures.

At present, the National People's Congress, its Standing Committee, and the relevant Party organs are considering the provisions of a comprehensive Civil Code, whose provisions affect the rights and obligations of foreign nationals. However, the degree of protection to be afforded foreign interests in areas
such as copyright, inheritance, and other property and non-property laws is, as yet, unclear. Moreover, the extent to which the PRC will provide for specific legislative enactments which could circumvent the rights of foreign nationals in extraordinary circumstances for purposes of national security is at best speculative.

The impact of the forthcoming PRC Civil Code on foreign nationals will depend to some degree upon the element of reciprocity. Exemptions or retaliatory restrictions may be imposed by the Chinese Communist Party or the National People's Congress to coincide with special privileges or limitations placed on Chinese nationals in particular countries abroad, despite the possible discriminatory effects on different groups of foreign nationals within the PRC. Exceptions to the general rule of equality between foreign nationals and Chinese citizens and between groups of foreign nationals are especially justifiable where the PRC deems them to be in the interest of state or economic security.

A. Disputes Arising Out of the Activities of An Inspectorate

Some arms inspection experts have already noted the potential for deliberate or inadvertent inspectorate violations of Chinese domestic law. The potential rights and duties of inspectorate members under the PRC Civil Procedure Code are still unclear although the recently circulated provisional code indicated that "cases involving foreign nationals and organizations or international organizations enjoying judicial immunity" will be handled pursuant to PRC laws and the provisions of treaties to which the PRC is a party. Cases involving foreigners who have not been accorded relevant privileges and immunities are to be handled by an intermediate people's court as the court of first instance.

The application of the PRC Criminal Code to foreign nationals also appears to be speculative, despite the fact that it was promulgated in 1979. Pursuant to Article 3 of the Criminal Code, the criminal law applies to foreigners who commit crimes within Chinese territory, unless otherwise specified by law.

Nevertheless, the Chinese have inconsistently applied the Criminal Code to different foreign nationals. For example, the PRC expelled an American teacher in June 1982 for violating PRC secrecy laws relating to agriculture, and a Soviet national was sentenced to 7 years imprisonment in 1980 for violating PRC secrecy laws relating to military intelligence. Although the latter violation may appear more egregious, both acts were punishable under the counterrevolutionary provisions of the PRC Criminal Code (Arts. 90-104) which require a minimum three year sentence upon conviction. Moreover, the brevity of the reports on the two different cases offered no clues as to justifications for the variance in applied sanctions. Undoubtedly, these inconsistencies will cause anxiety for inspectorate members and
prompt the suggestion of seeking full prosecutorial immunity to ensure full and fair inspection operations.

B. General Procedural Application of the PRC Criminal Law to an Inspectorate

The PRC Criminal Code is primarily concerned with offenses committed in Chinese territory by a citizen of the PRC or of a third country or by a stateless person. By territory, the PRC law refers to territorial land, sea and air, including foreign ships navigating on the high seas or docked at PRC ports and airplanes flying within PRC air space, or parked at Chinese airports.22

There are also explicit provisions for offenses committed outside Chinese territory by Chinese citizens. For serious offenses considered to jeopardize the state, such as counterrevolutionary acts, betrayal of state secrets, forgery of national currency, embezzlement, or bribery, Chinese citizens are punishable under the PRC Criminal Code regardless of whether the act is considered an offense under the law in the place of commission.23 Other offenses are punishable under Chinese law when the sentence in the PRC would not be less than three years and when the crime is also punishable under the place of commission.24

Chinese judicial organs may also prosecute a foreign national when he comes within the territorial jurisdiction of the PRC for acts considered an offense punishable by law in the place of commission; for acts punishable under Chinese law committed against the PRC or a Chinese citizen; or, for an act punishable by not less than three years' imprisonment under Chinese law.25

Article 19 of the PRC Criminal Procedure Code provides for the jurisdiction of a people's court "in the place where the crime is perpetrated," except where it is "more appropriate" to try the accused in the jurisdiction in which he has resided. Judging by the present lack of trained judicial personnel in many of the PRC's rural areas and by the publicity a criminal trial of a foreign national would draw, it is likely that Article 19 would be used to justify moving a trial to one of the larger cities, such as Beijing. Concepts of venue and forum non conveniens appear to be foreign to the PRC.

Depending on the severity of the offense, the case may be heard in the first instance by a lower people's court,26 an intermediate people's court where the offense has a bearing on the entire province,27 a higher people's court,28 or the Supreme People's Court where the offense has a bearing on the whole country.29 An open trial shall be conducted unless state secrets, personal shameful secrets, or juvenile delinquency are involved.30 Furthermore, pursuant to Article 62 (15) of the 1982 PRC Constitution, the National People's Congress is empowered to "exercise such other functions and powers" as it deems necessary.
In the recent trial of the Gang of Four, the Fifth National People's Congress Standing Committee set up a special procuratorate and a special court to prosecute and try the ten defendants involved. Though a number of scholars questioned the legal basis for their establishment, it remains conceivable that, on the basis of the sensitive nature of a prosecution of an inspectorate member within the PRC, special organs may be established. Such organs, by virtue of their special status and exposure to scrutiny by outside parties, could be used by the Chinese both to attempt to portray to the outside world total impartiality and evenhandedness in dealing with foreign nationals and to convince the Chinese masses, by the use of "special" treatment, of the seriousness of the offense.

C. The Criminal Justice System in the PRC and Its Application to an Inspectorate

1. Arrest and Detention

The recently enacted Arrest and Detention Regulations outline the procedures involved in the arrest and pretrial detention of a criminal defendant. Under the Regulations, the arrest of a criminal is to be carried out by a public security organ after obtaining a warrant pursuant to a "decision of a people's court or with the sanction of a people's procuratorate" within the local jurisdiction. Moreover, evidence against any arrested criminal is supposed to be submitted to an appropriate people's procuratorate within three days, or, in extraordinary circumstances, within seven days after the arrest is made.

The period of detention pending preliminary investigation is dictated by Article 92 of the Criminal Procedure Law, which provides for a maximum of two months for an accused. This period, however, may be extended by one month on approval of a people's procuratorate at the next higher level. If a case is particularly serious and complicated, the Supreme People's Procuratorate shall report the case to the Standing Committee of the National People's Congress for approval of a further extension on the detention period in order to complete an investigation.

Under a 1954 Act, reconfirmed in 1979, the accused is to be detained in a detention house, used for confining minor offenders pending adjudication of their cases. The detention house differs from a jail cell, which is used to hold "counterrevolutionary offenders and other important criminal offenders whose cases have already been adjudged."

Although these provisions are designed to protect a defendant pending completion of an investigation, the most sensational trial in PRC history -- the trial of the Gang of Four -- violated a number of procedural and substantive safeguards embodied in the newly enacted criminal codes, leading one to believe that justice in the PRC may become very often the slave of political expediency. The potential impact on an inspectorate team is immense, since the extremely sensitive nature of inspection operations and the potential seriousness of any violations of Chinese criminal
laws creates an atmosphere of uncertainty as to both the application of criminal law provisions and the possibility of redress for Chinese violations of their own legal codes.

Article 105 of the PRC Criminal Procedure Code provides that trials in a higher people's court or the Supreme People's Court as a court of first instance should be conducted by a "collegiate tribunal composed of from one to three judges and two to four people's assessors," except in simple civil cases or minor criminal ones. Assessors, too, were curiously absent from the Gang of Four trial. Such omissions and commissions by the highest legal organs of the PRC suggest problems for inspection operations by evincing a willingness on behalf of Chinese authorities to circumvent or ignore established legal provisions when it is in PRC interests to do so.

2. Legal Assistance

Provisions for legal assistance are an essential component of an arms control agreement, for one might expect instances in which inspectorate personnel will require legal counsel, relating to either official or personal affairs.

There are several alternatives for providing legal assistance, including a legal staff composed of international civil servants or an internal international legal staff working in conjunction with PRC legal advisory offices. Provisions for non-Chinese legal counsel would be desirable from a foreign point of view to ensure impartiality on the part of counsel. The Chinese, however, have effectively cut off foreign legal practice in the PRC, creating problems in representation, devotion to operations, and discretion in handling sensitive inspectorate matters.

The primary impediment to foreign representation in the PRC is the statute entitled the "Provisional Regulations on Lawyers." Article 8 stipulates that: "Those citizens who cherish the PRC, support the socialist system and have the right to elect and be elected are eligible to be lawyers after passing an examination . . . . " Despite the lack of reference in the regulations to what foreign law firms or lawyers may or may not do in the PRC, Article 8 appears to preclude foreign representation. This presumption is supported by recent PRC statements. In January 1982, Jiang Datao of the Ministry of Justice noted that foreign lawyers "cannot qualify as lawyers and cannot work as lawyers in China." In addition, a preliminary outline of the draft Civil Code and the provisional Civil Procedure Law indicated that no foreign organization or individual may intervene in a civil trial and that all legal representation must be entrusted to PRC legal advisory office attorneys because private practice is non-existent in the PRC. Thus, the supposedly inherent right of representation, pursuant to Article 26 of the Criminal Procedure Code, is more restrictive than it at first appears to be.

A second major stumbling block to legal assistance in the PRC is the absence in the Chinese criminal justice system of the
"assumption [sic] of innocence" of a criminal defendant. This is supported by the fact that the Chinese do not perceive the defense lawyer as an advocate for the accused. Rather, a defense lawyer is an advocate of the "legitimate rights and interests" of the accused, which officials in the PRC have noted compels him to "base his case on facts, using the law as a guide" and thereby protect the rights of the Chinese people as a whole. The attorney is thereby relegated to a position of acting not to defend the accused on the merits of the claim but rather of serving as an advocate for leniency in punishment. The most logical conclusion to draw from this is that the interests of the Chinese people and the criminal defendant would best be served by a Chinese attorney because a Chinese attorney in all likelihood would be more capable of protecting the client within the framework of the PRC legal system.

Several other issues arise in the context of Chinese representation. Law schools and legal societies have only recently been reestablished. Legal research is in its incipiency and the number of lawyers is pitifully small. The lack of trained professionals is even reflected in the PRC Criminal Procedure Code, which provides for legal representation by lawyers, close relatives or guardians of the accused, other citizens, or the defendant himself. The recent promulgation of the PRC legal code for the development of judicial experience. Application of statutory provisions is sporadic, the concept of stare decisis is unknown, and punishment is often meted out for political motives rather than on the basis of sound legal doctrine. Moreover, the Chinese legal system continues to be beset by problems of judicial and procuratorial dependence on the Chinese Communist Party.

Despite the fact that PRC legal advisory offices in many areas maintain separate departments to handle foreign legal affairs, Chinese legal personnel in these offices are trained only to handle cases involving maritime accidents or foreign trade disputes. Moreover, many of these cases are eventually turned over to arbitration bodies for final resolution and few, if any, of these attorneys have been compelled to protect foreign interests from the beginning to the end of a dispute. Because there is no specific legislative act or administrative practice providing for the extension of legal advisory services to non-juridical persons, a question arises as to whether legal advisory offices may offer their services to any form of inspectorate, or whether such services would be restricted to those juridical personalities recognized by Chinese law.

The most desirable alternative for an arms inspectorate is the establishment of a coordinated body of non-Chinese staff attorneys who work in conjunction with the relevant departments of PRC advisory offices on general retainer. This particular legal advisory form possesses a number of advantages over other suggested bodies. First, the international composition of the legal staff ensures a dispassionate professional commitment to the interests of an inspectorate in its conflicts with the Chinese system. Second, it provides personnel familiar with the
potentially complicated machinations of differing legal systems. Third, the use of PRC "advisory offices" guarantees the presence of Chinese attorneys most familiar with the political and proprietary underpinnings of the PRC legal system and avoids any conflict with PRC regulations on exclusive Chinese legal representation in Chinese courts. Fourth, resort to "advisory offices" is a flexible concept in that where appropriate, Chinese legal advisors can suggest alternative methods of dispute resolution. This avoids the formal rudiments of adversarial litigation which the Chinese have traditionally abhorred.

Despite its advantages for an arms inspectorate, this composite legal advisory body will require two acts. First, an amendment of PRC law to incorporate a specific provision on foreign legal representation in the PRC judicial system would be needed. Second, it would be necessary to obtain the procurement of guaranteed assurances of independent legal authority before any recruitment of Chinese attorneys takes place. Absent these two requirements, the legal staff would be unable to maintain the delicate balance of impartiality, commitment to inspection operations, and familiarity with the Chinese legal system that are crucial to adequate legal assistance.

D. Vexatious Criminal Statutory Provisions

According to Article 2 of the PRC Criminal Code, the task of the criminal law is to punish criminals -- particularly counterrevolutionary offenses -- and protect the public order. Article 10 then offers an extremely broad, confusing, and disturbingly vague definition of a criminal offense.

Because of the extreme sensitivity of the PRC to the principle of the inviolability of state sovereignty, an inspectorate team must remain alert to the scrutiny its operations are likely to receive from Chinese authorities and to the potential for creating explosive political issues through its activities. The ambiguity and broad sweep of many of the provisions of Chinese laws are often designed to serve a political purpose. Inspectorate team members are, therefore, vulnerable to the shifting tides of Chinese political expediency and national security.

Though foreign offenses will often be treated pursuant to Article 30 of the PRC Criminal Code, which provides for deportation as an exclusive penalty, the same provision notes that deportation may be a "supplementary penalty." Hence, other provisions must be examined for relevance.

Of significant import to PRC citizens connected with inspection procedures and to foreign nationals unprotected by diplomatic immunity is the use of the criminal law term "counterrevolutionary acts" (fangemingzui). Despite the fact that a full chapter, comprising fifteen articles, is devoted to counterrevolutionary crimes in the PRC Criminal Code, the term is defined only nebulously as an act "jeopardizing the People's Republic of China by aiming at overthrowing the political power
of the proletariat or the socialist system." The impact of this particular section of the present PRC Criminal Code on the inspectorate cannot be overestimated. Almost any action an inspector may wish to take within the purview of his official duties may conceivably violate the provisions on counterrevolutionary acts.

One Chinese authority has defined counterrevolutionary crimes to include collusion with a foreign country, splitting the country, jeopardizing the motherland and engaging in espionage. This latter term, espionage, is defined somewhat further in Article 97 of the PRC Criminal Code, which lists "stealing, spying and supplying information to the enemy . . . supplying arms or other military materials to the enemy, [or] joining a secret service or espionage organization" as counterrevolutionary activities.66 Nowhere in the relevant laws of the PRC, however, are espionage and other terms explicitly defined.

Moreover, the Criminal Code's ambiguities extend to other statutes. The PRC secrecy statute -- the 1951 Provisional Regulations on Guarding State Secrets -- is designed, inter alia, to prevent counterrevolutionaries from "gathering intelligence [or] selling . . . leaking or losing state secrets." The provision which lists information that is considered a "state secret" is, in essence, an amalgam of military, economic, political and social secrets, incorporating everything from military logistical information to weather reports. In practice, the statute has been used to classify additional matters, including the telephone numbers of Beijing residents. Yet, nowhere in this statute -- the violation of which is considered a counterrevolutionary act punishable under the PRC Criminal Code -- are terms like "state secrets," "secret information," "spies," "counterrevolutionary act" and the like, further explained. In addition, the State Secrets Regulations are buttressed by a common PRC legislative practice known as the "all-encompassing provision," by virtue of which the law becomes sweeping legislation. The catch-all provision of the State Secrets Regulations connotes state secrets as "all other state affairs which should be kept quiet," thus subsuming almost any matter the Chinese Communist Party deems necessary in a particular instance. It is therefore quite likely that the present broad scope of these provisions can only serve to impede inspection functions. Improper authorization for verification activities, insufficient documentation to support inspection operations, potential ultra vires verification procedures, or blatantly illegal action may well constitute proscribed acts. This may be particularly true of indigenous personnel who perform inspection functions and who are more likely to be held accountable under Chinese law for indiscretions and infractions.

Several articles of the PRC Criminal Code list counterrevolutionary activities for which either a prison sentence or death may be imposed. Yet, the exact distinction between a counterrevolutionary crime and an ordinary one, for which punishment is less severe, is difficult to draw. According to one PRC author, the difference depends on "the aim of the perpetrator."
If that statement holds any legal weight, then all counterrevolutionary crimes appear to be intentional crimes, despite the fact that the PRC Criminal Code does not stipulate that the perpetrator recognize that his acts will harm the PRC; nor that he foresee the harm; nor that he wish (direct intent) or consciously permit (indirect intent) the harm to occur. Crimes of negligence are, in most instances, omitted from the category of counterrevolutionary acts, though if the act is egregious, it could be prosecuted under this section.74

Perhaps the most terse distinction between an ordinary crime and a counterrevolutionary one is that the latter causes the more direct harm to the state. Crimes such as speculation, profiteering and theft, though they undermine the socialist economic system, are carried out by criminals for individual objectives. Absent counterrevolutionary intent, such activities would not constitute counterrevolutionary crimes in most instances.

Another significant legal concept in the PRC Criminal Code is one not admitted in Western legal doctrine -- the use of analogy (leisi).75 By analogy, the Chinese refer to the legal justification for treating an act not listed in the law as criminal, a concept in direct contravention to the Western legal maxim nullem crimen sine lege (no crime without an existing law making an act a crime).76 Although the PRC has cited the use of analogy as a necessary stipulation in order to "avoid constantly changing the criminal law,"77 it is not difficult to imagine the potential for abuse by PRC authorities if and when it became necessary to hamper the performance of the duties of an inspectorate.

Counterrevolutionary crime and analogy are not the only pitfalls in the Criminal Code confronting inspectorate members. Foreign nationals or aliens not granted diplomatic privileges and immunities or granted diplomatic privileges and immunities, but engaging in egregious criminal activities, are also vulnerable to prosecution under the provisions against violations of public security.78 Crimes harmful to public security include arson; breaking dikes; sabotaging bridges, houses, airfields and navigation passages; and, causing explosions or using other dangerous means to destroy factories and other industrial facilities, rivers and water sources, public or private property.79 Sabotaging airlines, shipping lines, railroads and other transportation facilities; sabotaging radio stations and other communication facilities; and, sabotaging gas, electric, or other flammable facilities are also violations of public security.80 Once again, though, the main thrust of these provisions dealing with sabotage is not clearly defined, leaving ample room for difficult disputes over the proper scope of inspection activities and the application of Chinese criminal law provisions.

Chinese law is also unique in that criminals are often rewarded with reductions or remissions of penalties if they surrender voluntarily81 or engage in self-denunciation, a direct
application of the PRC policy of "leniency to confessors, severity to resisters." Thus, the full thrust of PRC criminal code provisions is an effective deterrent to unauthorized or ultra vires activities. Statutory provisions are sweeping and ambiguous, capable of incorporating most or all of inspectorate operations not explicitly exempted from their scope.

As a result, it is readily apparent that arms inspectorate operations would be only marginally effective in policing arms control agreements if appropriate inspectorate personnel were not granted immunities from, or privileges with respect to, Chinese substantive and procedural laws and regulations.

E. Informal Social Control of Inspectorate Functions

One additional factor merits consideration with respect to potential disputes arising out of inspectorate operations and operative PRC control over such activities. Western political analysts have often observed that Communist countries often tend to suffer from a rampant political paranoia. This phenomenon may be expressed in several ways, but perhaps its most appropriate description for the purposes of an inspectorate would be peer group jurisdiction. Peer groups such as Communist Youth Leagues, urban neighborhood committees, people's mediation committees, social order committees and the like operate on the fringes of administrative and criminal law in the PRC. They are often established for broad and nebulous purposes such as maintaining social order; enforcing patriotic and law abiding education; informing against and conducting surveillance of counterrevolutionaries; carrying out propaganda and education on policies and laws; and, supervising the masses.

These peer groups are often aided in their endeavors by common citizens, by the People's Liberation Army (the PRC armed forces) and by the public security organs. Though such groups would probably offer only minimal prolonged physical interference with inspection activities, their danger lies in their nuisance value. Furthermore, the lack of experience that inspectorate foreign nationals can be expected to have with such institutions may cause more serious consequences. Strong reactions by inspectorate personnel to peer group efforts may result in criminal culpability under the rather sweeping provision of the PRC Criminal Code, which stipulates that "no one is allowed to disrupt public order by any means whatsoever." Such groups do not technically exercise formal criminal, civil or administrative jurisdiction. By and large, many of these peer groups have no formal enforcement powers and only some are legally recognized as surveillance forces within the PRC. But, they are encouraged to oversee daily activities, including the registration of building tenants and guests, the mediation of intra-familial squabbles, reports on suspicious activities, and even the monitoring of the menstrual cycles of young women to ensure compliance with population control regulations. Provisions in present bilateral and multilateral agreements calling for immunity from such jurisdiction (i.e., civil, criminal, or
administrative) would therefore be insufficient and irrelevant. As such, the recognition of this phenomenon should compel the parties to an arms control agreement to revise the provisions on jurisdictional immunities to encompass the potential activities of these groups. In general, the individuals who comprise an inspectorate team, as well as the inspectorate enterprise, would be severely hampered in their operations if they were not in some way protected from the brunt of Chinese state jurisdiction. It is therefore helpful to examine privileges and immunities provided under Chinese law which may be available to inspectorates and inspectorate operations.

Chapter 4. DIPLOMATIC PRIVILEGES AND IMMUNITIES UNDER EXISTING CHINESE LAW

A. General Observations

The grant of diplomatic privileges and immunities to inspectorate personnel would permit "the free and unhampered exercise of the organization's functions and maintain the dignity of the organization and the individuals associated with it." In accordance with the norms of international relations, the Chinese may grant a privilege or immunity from either PRC enforcement jurisdiction (such as arrest, detention and prosecution) or prescription jurisdiction (such as the right to demand compliance with Chinese laws). In practice, the PRC grants an immunity from enforcement jurisdiction only.

The Chinese term for immunity -- mianchu -- translates literally as "an exemption" and thereby imparts an understanding that such immunity connotes an exemption from all aspects of a particular law -- i.e., an exemption from PRC enforcement and prescription jurisdiction. However, such a term is contrary to customary Chinese practice, which recognizes that foreign diplomats and certain international personnel are accorded specific diplomatic privileges but are not relieved from the obligation to respect the laws and regulations of the PRC. As such, the Chinese are empowered to call for the expulsion of "privileged" diplomats who have "acted wildly in defiance of the law." The PRC has noted that criminal violations by foreign representatives are usually handled through diplomatic channels: the PRC may ask the sending state to deal with the offenders in accordance with the law [of the sending state] or it may declare the foreign representative persona non grata and demand his immediate recall from the PRC.

B. Privileges and Immunities Under the Diplomatic Convention

The Chinese, by virtue of their ratification of the Vienna Convention on Diplomatic Relations [hereafter Diplomatic Convention], have recognized, at least in principle, that persons granted full diplomatic privileges and immunities enjoy personal inviolability and are "immune from the criminal jurisdiction of the receiving state." A diplomatic agent is not subject to "any form of arrest or detention" and "is not obliged to give
Moreover, the receiving state is expected to treat a diplomatic agent "with due respect and . . . [to] take all appropriate steps to prevent any attack on his person, freedom or dignity." 

Article 8 of the PRC Criminal Code incorporates the customary right to diplomatic privileges and immunities from enforcement jurisdiction, providing that criminal liability for "foreigners who enjoy diplomatic privileges and immunity shall be resolved through diplomatic channels." The wording of Article 8 appears to be deliberately circumscribed: those accorded special treatment are apparently restricted to formal diplomatic personnel. Among those protected would be heads of state, ambassadors, ministers, chargés d'affaires and armed forces attaches.

The precise wording of Article 8 is significant, for it appears that the privileges and immunities of personnel, other than those not subject to Chinese criminal jurisdiction by virtue of treaties concluded by the PRC (such as upper level diplomatic agents), would not automatically be incorporated into Chinese domestic law. Thus, immunities and privileges granted to lower-level inspectorate personnel would have to be incorporated into Chinese domestic law by direct legislation. Article 11 of the PRC Criminal Procedure Code stipulates that no criminal prosecution will be sought against those "exempt from criminal responsibilities as stipulated by law and decrees." From this provision, it is possible to conclude that there are numerous forms of PRC legislation which may be used to grant privileges and immunities to those other than recognized diplomatic personnel and which would automatically be incorporated into PRC domestic law. The demarcation between those forms of PRC legislative acts which do and those which do not automatically incorporate privileges and immunities into Chinese domestic law is not clear, particularly in light of the recent conflict involving the U.S.-PRC Consular Convention and the detention of an American teacher for allegedly violating Chinese secrecy laws relating to agriculture.

Chinese laws do not broach the subject of whether measures involving direct physical restraint of diplomatic personnel are permissible in extraordinary circumstances. Although some articles on diplomatic privileges and immunities which appeared in the PRC during the Cultural Revolution suggested the absolute inviolability of the person of diplomatic personnel, both concomitant Chinese practice and subsequent international law treatises have suggested that restraint is permissible at least in circumstances involving self-defense or the prevention of the commission of a crime by a diplomatic personage. Because of the sensitive nature of material inspectorate agents are likely to seek, certain PRC policies must be clarified. Furthermore, in light of PRC practices, it would be unwise and unsafe to presume automatic incorporation of broad privileges and immunities into PRC domestic law.
C. Privileges and Immunities of Consular Officials and Personnel of International Organizations

Persons associated with international and consular organizations are granted more limited privileges and immunities than those granted diplomats. The 1963 Vienna Convention on Consular Relations\(^\text{108}\) [hereafter Consular Convention], which the PRC ratified in August 1979,\(^\text{109}\) provides, inter alia, that "consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority."\(^\text{110}\) Consular personnel may be called upon to give evidence in the course of judicial or administrative proceedings,\(^\text{111}\) but are not obligated to testify or to produce evidence on matters pertaining to official consular functions.\(^\text{112}\) Moreover, there is immunity from the judicial or administrative jurisdiction of the receiving state with respect to official acts.\(^\text{113}\)

The Consular Convention is inadequate for purposes of granting privileges and immunities to inspectorate agents. First, consular personnel under the Consular Convention are still susceptible to the criminal jurisdiction of the receiving state.\(^\text{114}\) Moreover, there is no provision for the absolute inviolability of consular premises. The effect on inspectorate operations would therefore be quite severe. Operations may be hampered by potential arrests, detentions, prosecutions, and confinements of inspectorate personnel. In addition, the inspection team's premises and equipment could be subject to the intrusion of the host state, a fact which could lead to interference with operations, harassments of personnel, or tampering with facilities or equipment.

With respect to international organizations, the PRC's recent accession to the UN Convention on the Privileges and Immunities of the Specialized Agencies\(^\text{115}\) [hereafter UN Convention on Privileges], is an unprecedented step in Chinese historical and political doctrine towards recognition of international organizations as juridical personalities under international law. Pursuant to the UN Convention on Privileges, the specialized agencies\(^\text{116}\) "shall possess juridical personality" and "shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, [and] (c) to institute legal proceedings."\(^\text{117}\) The specialized agencies, their property and assets "shall enjoy immunity from every form of legal process except insofar as in any particular case they have expressly waived their immunity."\(^\text{118}\)

The PRC's accession, however, is not necessarily an indication of unequivocal Chinese recognition of international organizations as a legitimate subject of international law, nor does it signal firm support for participation in multilateral conventions for the protection of diplomatic and international personalities. First, the PRC has refused to accede to the UN Convention on
Privileges as it applied to all international organizations enumerated therein.\textsuperscript{119} Second, the PRC has not ratified any convention directly granting the United Nations recognized juridical status.\textsuperscript{120} Third, the PRC has continued to oppose compulsory jurisdiction of the International Court of Justice and has refused to ratify the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.\textsuperscript{121} Moreover, as a self-proclaimed non-aligned nation, the PRC is not party to any regional convention such as ASEAN\textsuperscript{122} and presumably, therefore, recognizes no special privileges and immunities for such an organization. Because of this, it would also be difficult to predict whether Chinese treatment of communist international organizations would differ from the treatment of non-communist ones.

Nevertheless, by virtue of PRC accession to the UN Convention on Privileges, to which the Soviet Union has already acceded,\textsuperscript{123} there now exists a mutually agreeable framework from which to conclude subsequent agreements concerning international immunities. Moreover, Chinese accession to the UN Convention on Privileges is illustrative of a change of heart by the PRC. Where once the Chinese had refused to grant specialized international (UN) agencies even limited protection because of their dependence on the United Nations, itself a non-juridical personality, they now have offered them a breadth and scope of protection similar to those accorded diplomatic agents.

Within the framework of the UN Convention on Privileges and pursuant to the PRC's new approach, no censorship shall be applied to the official communications and correspondences of the specialized agencies.\textsuperscript{124} Moreover, the archives, documents and premises of these agencies shall be inviolable.\textsuperscript{125} Property of the specialized agencies is "immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action."\textsuperscript{126}

Aside from the formal, juridical recognition of international UN agencies, the PRC has even granted legal status -- albeit limited -- to other international\textsuperscript{127} and foreign government entities.\textsuperscript{128} These limited immunities may be recognized in order to protect appropriate personnel in the exercise of their official functions. These immunities do not represent clear customary rules of international law, but are the result of the special status of certain foreign official personnel, who may be required to engage in limited activities, including business ventures, educational and cultural exchanges, and political negotiations.\textsuperscript{129}

Despite affirmative steps by the PRC to broaden its perceptions of legitimate privileges and immunities, wholesale optimism regarding future PRC positions on the subject is discouraged. Patterns of unequivocal Chinese behavior have only just emerged, and past practice has indicated a willingness by the PRC to alter its international legal and diplomatic positions, often without
apparent cause, particularly when prevailing political winds change their course.\textsuperscript{130}

Because the status of an inspectorate determines the scope of its privileges and immunities, it is crucial that the parties to an arms control agreement carefully choose the form of inspectorate and endow its members with broad well-defined privileges and immunities. Recognition that present practice provides for more limited preferential treatment for consular and international organizations would seem to mandate a provision for specific and comprehensive privileges and immunities for the members of inspectorate teams.

D. Chinese Reactions to Privileges and Immunities\textsuperscript{131}

According to the Chinese view, "diplomatic privileges are the special rights and preferential treatment, based on the principles of equality and reciprocity . . . mutually granted by countries which have established diplomatic relations with each other."\textsuperscript{132} In practice, however, the Chinese have recognized limited privileges and immunities for representatives of governments or entities with which the PRC did not have full diplomatic relations.\textsuperscript{133} Furthermore, the Chinese have often ignored those privileges and immunities rightfully granted to diplomatic representatives of foreign states.\textsuperscript{134} Since its admission to the United Nations, however, the PRC has been much more consistent in according and respecting the privileges attached to the conduct of diplomatic personnel and in granting them immunity from local administrative, civil and criminal processes and sanctions. In addition, the PRC has adhered to general international practice in allowing these privileges and immunities to remain in effect as long as diplomatic departure from this is considered to be reasonably connected to official duties.\textsuperscript{135}

The modern international practice granting governments both the right to declare those who have abused their privileges and immunities person\textit{a} non grata and the right to deport them creates a problem. Subject to potential protest or retaliatory action from the sending state, this rule is a function of unilateral determination.\textsuperscript{136} No justification need be given by a government for invoking it.\textsuperscript{137} In addition, what constitutes abusive conduct by a diplomatic agent is itself open to unilateral interpretation.\textsuperscript{138} The issue of abuse of privileges and immunities subsumes questions of fact and questions of law, regarding the nature of the conduct, the application of relevant laws to such conduct and the consequences of a finding of abuse.\textsuperscript{139}

Uncertainty as to what constitutes abusive conduct in a particular country can create potential inhibiting factors for effective verification procedures. Recently, for example, the PRC expelled a British student for writing the slogan "Long Live the Gang of Four" on a classroom blackboard.\textsuperscript{140} Though international practice does not accord to foreign students any official privileges and immunities, this incident indicates the potential explosive nature of unilateral determination of abuse. As a result, if an arms inspectorate is considered an international
organization, the provisions of the arms control agreement should specifically identify the requisite international privileges and immunities and should provide for a method of dispute settlement of alleged abuse cases which does not permit unilateral determinations of abusive conduct. Previous international agreements have failed in this respect. Provisions regarding privileges and immunities to be accorded appropriate personnel working for particular international organizations have been so general as to vest in member states ultimate interpretive power. The UN Charter, for example, obligates member states to grant the Organization "such privileges and immunities as are necessary for the fulfillment of its purposes" and to grant representatives of the United Nations "such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization." Ultimately, the extent of privileges and immunities and their proper interpretations rest with individual sovereign nations and are thereby susceptible of various and sundry legal constructions.

Although both the Soviets and the Chinese have traditionally opposed the compulsory jurisdiction of the International Court of Justice, the Chinese have been much more receptive to negotiation, conciliation, and arbitration as methods of dispute settlement. The PRC has, for instance, consistently abided by arbitral awards involving its domestic corporations and nationals despite the fact that it is not a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

By emphasizing the role of the peaceful settlement of disputes through nonadversarial means, the signatories to an arms control agreement can avoid disagreeable incidents of unilateral declarations of privileges and immunities, and interference with the effective operation of verification and inspection.

If an arms control inspectorate is composed strictly of foreign nationals, presumably from states which are signatories to the arms agreement, then inspection operations could probably be conducted utilizing the privileges and immunities which presently comprise the rules of diplomatic intercourse. Foreign inspectors could presumably be endowed with the same privileges and immunities as high-level embassy personnel, with additional privileges being granted by the host PRC when necessary for effective operations. They may also be subjected to similar diplomatic procedures such as persona non grata declarations for claimed abuses.

Whether or not one considers some of the present methods for addressing diplomatic abuses simple to work with in arms control agreements because they are the most familiar, there are certain pitfalls. Persona non grata procedure is still instituted upon unilateral determination. Swift deportation of undesirable personnel, even if justified, would still be expected to interfere with orderly verification and inspection processes.
One possible approach, similar to that contained in Draft Annex II of the Proposed Nuclear Test Ban Treaty, is to postpone deportation of persona non grata until the arrival of an appropriate replacement. Undue delays in sending replacement personnel may be avoided by providing for reasonable time limits for dispatch (persona non grata may be confined to inspectorate headquarters in the interim), assuming, of course, that the time required for bilateral personal security checks of replacement officials can be minimized through mutual agreement.

E. Conclusion

Concern for the image of the PRC, particularly in the wake of formal diplomatic relations with the United States, has led the Chinese to deal leniently with minor transgressions by foreigners and extremely harshly with incidents involving Chinese attacks on foreign nationals. It is hardly correct, however, to assert that the Chinese would be unperturbed by major transgressions committed by foreigners. In fact, the PRC can be expected to be rather sensitive to such incidents, particularly where they may interfere with Chinese national interests. Because of such sensitivity, harsh, radical measures to correct any injustices could not be entirely ruled out. One must always remember that the true nature of the PRC's treatment of official foreign personnel is inevitably politically motivated, international norms of diplomatic privileges and immunities notwithstanding.

In a country as vast and tightly controlled as the PRC, it becomes fairly simple to regulate events. By maintaining effective control over the media, for instance, the PRC is capable of quelling or inflaming public opinion on certain events. Incidents involving inspectorate members, regardless of the degree of privileges and immunities accorded such personages, may have a detrimental effect on inspection operations by making them seem less acceptable to the Chinese people, with whom inspectorate personnel must interact and upon whom inspectorate personnel must rely to some degree to discharge their duties. This is true particularly if the PRC considers it necessary to publicize such an incident, accompanied by the often acerbic ballyhoo of press and radio commentaries, editorials, letter write-ins, and published public reactions.

At the same time, Chinese reactions to these incidents will have repercussions on Chinese foreign relations. The PRC will at some point be required to balance its own interests against the potential impact of international reaction. The choice the PRC makes will illustrate its willingness or reluctance to create strong affirmative support for arms inspection.
Chapter 5. FREEDOM OF MOVEMENT AND OPERATIONS IN THE PRC: SPECIFIC PRIVILEGES, IMMUNITIES AND ARMS CONTROL AGREEMENT PROVISIONS NECESSARY TO AN INSPECTORATE

A. Entry Into and Exit From the PRC

Entry (ruijin) and exit (chujin) continue to be regulated by the Foreign National's Act. Pursuant to this act, after a foreign national obtains a passport (huzhao) visas (qianzheng) for entry into the PRC are issued abroad by Chinese diplomatic and consular organs (Art. 4). Within China, visa applications are handled by appropriate public security bureaus (Art. 4). The issuance of visas for those holding official passports (gongwu huzhao) are handled by the Ministry of Foreign Affairs and, to a lesser extent, appropriate alien affairs offices and public security bureaus (Art. 4). In practice, the Ministry of Foreign Affairs is informed of all applications for visas, thus giving it, for the most part, full discretion in granting or refusing permission to enter or leave the PRC. Since such decisions are considered administrative affairs, they are not subject to judicial review. In extreme circumstances, though, it would be conceivable to file a complaint with the procuracy and have the Procuratorate, pursuant to Article 176 of the PRC Criminal Code, prosecute state functionaries for abusing their discretion.

PRC visa restrictions are similar to those of the Soviet Union: a single visa is not valid for use throughout the entire country, but only for destinations specifically authorized in the visa (Art. 8). Prior permission must be obtained for travel outside the scope of the visa and separate visas are necessary for travel to each individual city.

A recent significant development in Chinese visa regulations has been PRC authorization of multiple entry-and-exit visas, which permit unlimited entry and exit at proper checkpoints (e.g., two years) of the visa. Procurement of such visas would greatly expedite inspectorate operations, where frequent and necessary border crossings by inspectorate personnel may be indispensable to such operations.

Delay in the issuance of a visa is one potential concern for inspectorate personnel, though such concern may be alleviated by provisions in the arms control agreement for reasonable processing periods and by good faith among the parties.

To regulate the movement of foreign nationals into and through the PRC, the Foreign National's Act provides for checkpoints, both at the border (Art. 9) and throughout the country (Art. 16). It is at these points that travel documents and proper immunization certificates are inspected and customs procedures instituted. Official entry-exit points are scattered throughout the PRC, giving an arms inspectorate adequate access to the country. Should circumstances arise, additional passage points could
conceivably be authorized by international agreement or domestic decree.

Passage across the Chinese border is also governed by a number of other domestic legislative acts. The Act on Frontier Defense Inspection assigns the protection of PRC border regions to People's Liberation Army (PLA) defense forces at frontier defense inspection stations. All persons and the means of communication and transportation for entering or leaving the country, as well as accompanying baggage and goods, must pass through specially designated harbor, airport, and national boundary [ground transportation] stations at which frontier defense inspection stations are located (Art. 1-3). All flights of foreign aircraft, or Chinese aircraft arriving from or leaving for foreign destinations must report their flight patterns and manifests and have them approved by the Ministry of Foreign Affairs

Any attempt to cross the border into the PRC without appropriate authorization is punishable under Article 176 of the PRC Criminal Code, which provides for imprisonment of up to one year, detention, or surveillance for illegal crossings of "the national boundary (frontier) in violation of border control regulations." Furthermore, Article 17 of the PRC Foreign National's Act stipulates that violations may be punishable by warnings, fines, or expulsion. Violations committed by foreign nationals possessing diplomatic immunity are supposed to be handled through diplomatic channels.

Perhaps the most obvious suggestion in alleviating some of the restrictions now before arms inspectorate personnel regarding their entry into and exit from the PRC is to request an exemption from the requirements of the aforementioned acts directly from the Ministry of Foreign Affairs. This would appear to be the simplest and most expeditious method to secure freedom of passage. An arms control agreement could also stipulate for an amendment to the relevant acts to permit freedom of entry and departure without special permission. Another balanced solution might be some form of domestic legislation designating unnecessary Chinese interference with the entry and exit of inspectorate team members as a crime and requiring procuratorial prosecution of Chinese officials who obstruct their freedom of passage.

B. Customs

Because of the official and extraordinary nature of inspection operations, it is unlikely that the full range of customs regulations would apply to the passage of inspectorate personnel and their cargo, equipment, documents, and personal items across the PRC border. Customs regulations are embodied in three Chinese statutes, though they are augmented by additional customs orders promulgated by the PRC from time to time. These three statutes are the provisional regulations governing the entry and exit of passengers, crews and baggage of aircraft, rail transport, and sea-going vessels. The regulations also contain a number of overlapping provisions dealing with entry into and
exit from the PRC. The regulations are fairly uniform in content, permitting consistency in inspection for compliance with customs, health\(^\text{169}\) and tariff regulations.\(^\text{170}\) Inspection procedures are exercised at the stations of first entry and departure.\(^\text{171}\)

Pursuant to each of the three regulations, the "special cases" posed by the entrance or departure of foreign attaches and diplomatic agents should be referred to the Chinese Ministry of Foreign Affairs,\(^\text{172}\) which handles customs inspection for such personnel according to separate rules, regulations and agreements and in conformance with international practice. Undoubtedly, though, there will be some overlap between these separate rules and ordinary customs regulations, particularly as they apply to PRC bans on the import or export of Chinese national currency, firearms, ammunition, military weapons, lottery or raffle tickets and books, journals, photographs, movies, film, files and tapes that would be harmful to or cast aspersion on the political or cultural relations of the PRC.\(^\text{173}\)

Smuggling is the most serious customs violation in the PRC. The illegal possession, storage, sale, or transfer of such goods as Chinese currency, precious metals and valuable cultural relics may result in punishment under Articles 116, 117, 118, and 173 of the PRC Criminal Code of up to ten years' imprisonment, fines and the confiscation of the property in question. Smuggling is today a major business in the PRC and the Chinese are vigilant in enforcing customs regulations in order to reduce the amount of contraband flowing in and out of the PRC.\(^\text{174}\)

Regardless of the means of transportation used to enter into or exit from the PRC, it is likely that customs measures would defer to the specific inspectorate arrangements, which would presumably include extensive privileges and immunities from strict inspection measures.

Official correspondence is often transferred into and out of the PRC through the use of the diplomatic pouch, an internationally recognized means of protecting the inviolability of such communications. Chinese practice has heretofore protected the diplomatic pouch,\(^\text{175}\) but the wording of the Diplomatic Convention may permit the pouch to be opened or detained if PRC authorities suspect that it may contain items other than "diplomatic documents or articles intended for official use (Art. 27(4))",\(^\text{176}\) although such inspection must be in the presence of the diplomatic agent (Art. 36). The courier who accompanies the pouch enjoys the right of personal inviolability (Art. 27(5)). There appears to be no publicized evidence that the Chinese will protect the pouch only when the courier is within reasonable proximity to it, though courier accompaniment appears to be standard practice. Soviet customs officials, on the other hand, have been known to open the pouch in instances where the courier is not within reasonable proximity.\(^\text{177}\)

Under the Diplomatic Convention, personal baggage of diplomatic agents is not subject to customs inspection unless
there are "serious grounds for presuming that it contains articles not covered in paragraph 1 [such as items imported or exported in commercial quantities or items not intended for personal use]. . . . , or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving state" (Art. 36(2)). Once again, however, the Chinese reservation attached to Article 37(2)-(4) of the Diplomatic Convention obscures somewhat the application of these privileges to administrative, technical and service personnel attached to a foreign embassy.

Chinese regulations prohibit the sale of imported goods by foreigners, so it must be assumed that diplomatic effects remain diplomatic property and eventually must be removed from the PRC.

Past and present Chinese practices indicate the need for changes in customs regulations and conventions in order to ensure the smooth operation of inspection procedures. As a general rule, the scope of privileges and immunities will, of course, depend on the composition of an arms inspector (adversary or international).

But it appears that current PRC recognition of privileges and immunities would be insufficiently broad under either arrangement. The PRC is on record as opposing full juridicial recognition of international organizations. The status of personnel associated with these organizations has not yet been broached officially by the Chinese. As for official foreign personnel, PRC recognition of privileges and immunities is limited, at best. In some instances, there has simply been no precedent for preferential customs treatment peculiar to an arms inspectorate (e.g., operational equipment shipments). In other instances, customs privileges currently accorded, for example, secondary diplomatic personnel (i.e., technical, administrative, and service staff) are inadequate for inspectorate purposes. Technical personnel, in particular, would probably be required to perform many of the more arduous tasks of controlling the movement of equipment, records, and supplies. For the arms inspection effort, customs delays, tariff burdens and complicated clearance procedures imposed on secondary personnel may interfere with the completion of the mission. The relatively small number of personnel involved should make a broad grant of privileges and immunities to all inspectorate members at least reasonably feasible.

C. Housing, Accommodations and Services

As is the case in the Soviet Union, most tangible property in the PRC, aside from small private agricultural plots, is socialistically owned, i.e., belongs to the state or to collective organizations controlled by the State and the CCP. For the purposes of inspectorate members' accommodations, there appears to be no known practice of permitting foreign or international personnel access to Chinese socialist housing. Moreover, there is a significant urban housing shortage in China which
makes any Chinese decision to extend access to housing facilities to foreigners a very unlikely proposition.

Hotel accommodations are also in extremely short supply. According to a recent U.S. State Department report, for example, even Chinese organizations are unable to secure reservations for foreign guests in Beijing's (Peking's) better hotels until one or two days before arrival. The impact of increased numbers of long-term diplomatic residences and business visitors has forced the PRC to often make use of very poor accommodations.

Under these circumstances, the most suitable arrangement for inspectorate accommodations may be to request separately built facilities from the Chinese government, with such housing leases operating extra legem. In fact, such an arrangement has legal precedent. Under present diplomatic and consular practices, for example,

1) [a] receiving state shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending state of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2) It shall also, where necessary, assist missions in obtaining suitable accommodations for their members.

In addition, arrangements for special accommodations for inspectorate personnel has precedent in PRC practice, as well. Because of the housing shortage, the Chinese have recently begun making separate guest houses available to prominent business delegations. Such segregated housing also offers administrative advantages to both sides:

[It] assures conditions more commensurate with the outsider's standard of living, and gives the [Chinese] state better control over the visitors' activities and contacts with the local population. It also enhances the security of the visitors' premises. When special premises are thus set aside, it is easier to safeguard their inviolability (if any). Being segregated, the residents are insulated to a certain extent from ordinary intercourse with the local populace and petty officialdom. Finally, [Chinese] authorities find it easier to provide the necessary external protection (police, fire) to concentrated residential premises.

Most service organizations in the PRC are state enterprises directly subordinate to China's State Council. What this means is that foreigners who seek to visit or work in the PRC must consult with, and obtain the active cooperation of, Chinese state commissions, ministries, offices or special agencies. In practice, a single venture in the PRC requires contact with
numerous agencies. For example, foreign joint venture partners will have contact with their Chinese counterpart, as well as the Foreign Investment Commission, the General Administration for Industry and Commerce and the Bank of China in order merely to initiate venture operations. Inspectorate personnel who seek access to restricted areas of the PRC in order to conduct some form of inspection procedure -- say, of an industrial facility -- may need to contact the Ministry of Foreign Affairs, the Ministry of National Defense, the Ministry of Public Security and perhaps the Ministry directly in charge of the facility to be visited, such as the Third Ministry of Machinery.

An inspectorate may not only be required to deal with these types of Chinese state organizations. For some purposes, the PRC has established commissions and agencies for dealing specifically with foreign requests; inspectorate members would be obligated to deal with these entities. Undoubtedly, inspectorate members might wish to voluntarily deal with such specialized agencies or commissions where the latter are able to secure better goods or services -- such as food or transportation -- than ordinary channels would permit.

It is not difficult to envision the potential for interference with inspection operations if the Chinese choose to harass an inspectorate or force the temporary curtailment of operations by creating various obstacles to obtaining proper food, supplies and services in the PRC. In such instances, it would be unlikely that inspectorate personnel could circumvent the problem by importing the items. Chinese customs regulations, tariff considerations, clearance procedures and time lags could all prove prohibitive. Of course, the import of such items will probably be necessary at intervals during inspectorate operations, but it may be preferable for an inspectorate to limit quantities and regulate the intervals between shipments. In very many ways, the procurement of housing, goods, supplies and services in the PRC is one of the more significant tests of Chinese commitment to arms inspection.

Under these circumstances, it becomes imperative than an arms control agreement specifically enumerate the necessary procedures involved for the procurement of necessary goods, supplies and services from the appropriate governmental organs of the PRC. In addition, the agreement should stipulate reasonable time periods in which the requests should be filled. At the very least, the parties involved should commit themselves in general terms to facilitating the procurement of such items.

D. Communications

Communications will probably qualify as one of the more sensitive aspects of arms inspection arrangements in the PRC. An arms inspectorate has two choices: it may rely exclusively on the Chinese public communications network or it may establish its own communication system. In each instance, the parties to an arms control accord will be required to balance the needs of an inspectorate for rapid and confidential communication with what
traditionally has been full Chinese state control over the public communications network.

The Chinese Ministry of Communications is the organ mainly responsible for the communications network in the PRC, though a separate Ministry -- the Ministry of Post and Telecommunications -- has administrative responsibility for mail services. Communications responsibilities are also shared with a number of specialized agencies, including the Ministry of Radio and Television and the Ministry of Electronics Industry, both of which are subordinate to the State Council.

There are little hard data at present which indicate the difficulties in negotiating with these organs, but undoubtedly the ease with which separate communications agreements are concluded will impact on the choice between utilizing Chinese communications or establishing independent facilities. The PRC has not made publicly available much direct domestic legislation on communications, but it is bound to a number of international agreements and has promulgated supplementary regulations which will affect inspectorate communications.

Perhaps the most secure form of international communications which currently exists is the diplomatic pouch. There are, however, limits on its confidentiality. As was previously indicated, the pouch -- pursuant to the Diplomatic Convention -- may be used to transfer official documents only (Art. 27(4)). Furthermore, there is still the unanswered question of whether the PRC will resort to its sovereign right to open the pouch when violations are suspected. It should be recognized that the potential for interference with the contents of the pouch is mitigated somewhat by the provision of the Diplomatic Convention permitting "the mission [to] employ all appropriate means, including diplomatic couriers and messages in code or cipher" (Art. 27(1)). Chinese accession to the Diplomatic Convention and recognition of the use of the pouch for diplomatic and consular personnel should permit at least a presumption that the PRC would be willing to grant to an inspectorate the unhampered use of the pouch procedure.

Though the diplomatic pouch guarantees, for the most part, security and accuracy of communications, emergency situations may require more rapid means of communication. Telephone, telex, or cable relays ought to be considered in such instances, though their present deficiencies in the PRC are less than encouraging for inspectorate needs. For example, the quality of telephone service in the PRC is not always satisfactory and is often very poor with respect to long distance telephone connections. In addition, there is at present no form of emergency "hot-line" connection between the PRC and the major powers, such as that which exists between the United States and the Soviet Union, which the Chinese might employ as a prototype for confidential inspectorate telephone service.

Foreigners are permitted to use public telex facilities, which exist in Beijing and Guangzhou, but they must punch their
Moreover, adequate two-way Chinese telex communications are non-existent. More promisingly, foreign business companies with offices outside hotels in Beijing have been allowed to install their own telex lines using foreign equipment. Should an inspectorate be granted the same privilege, it would undoubtedly facilitate communications, but the telex system is currently too restricted to be of major value.

However, the importance of developing international communications systems is not lost on the Chinese, who are actively engaged in the work of the International Telecommunications Union and its various organs. The PRC is also party to the International Telecommunications Convention, a provision of which calls for the establishment, operation, maintenance and protection of "channels and installations necessary to carry on the rapid and uninterrupted exchange of international telecommunications" (Art. 36). The Convention is particularly relevant to the establishment of an inspectorate under the auspices of the United Nations, since Article 29 already grants to UN telecommunications operations the rights and obligations of the Convention's provisions. The effectiveness of the Convention as a framework for the standards and administration of international communications systems is significantly enervated by Article 33, which grants to each member and associate member "the right to suspend the international telecommunication service for an indefinite time either generally or only for certain relations and/or for certain kinds of correspondence . . . " upon notification of other members.

For purposes of postal communications, reliance on the Constitution of the Universal Postal Union would also prove ineffective as a standard for conditions of service for inspection operations. Though the Constitution calls for "freedom of transit" for postal communications (Art. 1(1)), other provisions ensure the inviolability of national sovereignty and the protection of each member's vital security interests. Thus, the Constitution declares that "the provisions of the Acts of the Union do not infringe upon the legislation of any country in anything which is not expressly provided for by those Acts", and prohibits the mailing of items "whose import or circulation is prohibited in the country of destination" (Art. 28(1)(d)).

The vulnerability of international communications traffic to unilateral domestic restrictions creates the potential need for independent communications systems. Where speed, accuracy, and secrecy are of utmost importance, perhaps the most judicious method is to permit an arms inspectorate to operate its own shortwave radio transmitters. Unfortunately, current Chinese law prohibits the use of radio transmitters by unlicensed operators. Chinese law also prohibits any foreigner from owning private radio transmitters in the PRC. There are also a number of other unrelated regulations with peripheral importance to inspectorate communications. Two -- the Measures Governing Foreign Vessels Entering and Leaving Port and the Measures Governing Foreign Vessels on Bordering Rivers -- preclude the use of, inter alia, wireless transmitters and radio telephones by
foreign vessels in inland Chinese waters except in emergency circumstances. More recently, the PRC's National People's Congress (NPC) has promulgated additional regulations on foreign ships, a chapter of which deals specifically with communications, though its contents have not been made generally available.

Ideally, the inspectorate should either seek some form of Chinese legislation exempting it from such restrictions or obtain the active cooperation of the appropriate Chinese authorities to procure necessary licenses. However, reliance on any form of communication system -- particularly when used across Chinese borders -- will not be free from the practical implications of modern international relations, which often dictate the need for routing surveillance of communications to and from its territory by a host state.

The 1982 PRC Constitution and Chinese criminal laws address communications interference, although they do not explicitly prescribe or authorize surveillance of correspondence as a general operational practice. Rather, relevant legal provisions indicate that surveillance procedures are to be conducted in strict conformity with the law and only on a showing of cause. Article 40 of the 1982 PRC Constitution, for example, protects a PRC citizen's freedom and privacy in correspondence, except where public security or procuratorial organs may check and censure correspondence "to meet the needs of state security or of investigation into criminal offenses." In theory, therefore, interference with communications would seem to require some prerequisite showing of good or probable cause to initiate surveillance. In practice, the language of the Constitution is ambiguous enough -- and due process in the PRC vague enough -- to permit periodic and random monitoring by public security and procuratorial organs of any suspicious communications.

Article 86 of the PRC Criminal Procedure Code authorizes the seizure of mail and telegrams "of an accused." Such wording implies that seizure of communications is unauthorized in the absence of some prior criminal culpability, though, practically speaking, the information in the seized documents may occur only with the "approval of a public security organ or people's procuratorate, at which time the appropriate post and telecommunications office(s) are obligated to surrender the items." The articles of communication are expected to be held by PRC authorities only if they prove relevant to the case (Art. 87).

The PRC Criminal Code also punishes any postal or telecommunications worker who opens, hides, or destroys letters or telegrams without permission by detention or imprisonment for not more than two years (Art. 191).

International communications are often subject to interference for reasons of national security. The means employed are significantly more surreptitious than those mentioned in Chinese laws and regulations. The preoccupation of the PRC with the prevention of security leaks has led to the promulgation of broadly
worded provisional regulations on guarding state and military secrets, by virtue of which even the more subtle forms of communications interference -- such as the monitoring of telephone conversations and the inspection of incoming or outgoing foreign mail -- could not be ruled out. Though a Chinese Embassy attaché recently stated that wiretapping and electronic eavesdropping by Chinese officials were prohibited in the PRC, there appear to be no statutory restrictions regulating or forbidding the practice, aside from broadly-worded Constitutional guarantees of inviolability of the person (Art. 37), correspondence (Art. 40), and home (Art. 39). Where necessary or appropriate for national security reasons, however, Chinese communications agencies can be expected to utilize surveillance techniques. In extreme instances, these agencies may even assist inspectorate personnel in wiretapping or eavesdropping.

Notwithstanding international agreement provisions to the contrary, inspectorate personnel should probably be prepared for such practices, though the extent to which they are used by the PRC may depend greatly on the amount of involvement and participation of Chinese officials in inspection operations. To the extent procedures are jointly operated or carefully overseen by Chinese authorities, there would probably be less reason to monitor or interfere with the transmission of confidential inspectorate information, since Chinese nationals would have access to much of the information as active inspectorate personnel.

E. Freedom of Movement of Personnel, Equipment and Supplies in the PRC

1) General Observations

Any study of the PRC's approach to Chinese domestic travel by foreign personnel is an empty exercise without at least a rudimentary understanding of China's concern for the preservation and protection of its sovereignty. Chinese positions vis-a-vis freedom of movement in the PRC are at once the product of a traditional fear of foreign encroachment and a desire to reinstate the PRC as a major cultural and economic mecca through more open contacts with foreigners. The polarity of such concerns has engendered a policy of oversight and supervision in the PRC that may be unmatched anywhere else in the world -- with the possible exception of the Soviet Union. Though such surveillance may be distracting and disconcerting to the foreign visitor, it is undoubtedly indispensable to contemporary Chinese economic, cultural, political, and military security.

There are a number of published laws and regulations governing domestic travel by foreign visitors, though more importantly, there are also practical and sometimes more subtle restrictions which are communicated among cadres only by word of mouth or restricted-circulation directives (e.g., among PRC officials or CCP members). The implementation of an effective inspection arrangement requires a Chinese commitment to divulge all appropriate regulations and policies, to repeal those which are
most offensive to unhindered operations and to permit unimpeded access to inspection points within and beyond Chinese borders.

Recent Chinese practices regarding freedom of movement by foreigners yield ambiguous results with respect to PRC acceptance of liberal policies toward domestic travel.

2) Movement of Personnel

Chinese contacts with foreign nationals have increased dramatically in recent years, as the PRC strives to implement its four modernizations program and establish itself as a major force in world politics. The influx of foreigners has placed a significant strain on the political fabric of the PRC, which must straddle the line between a traditional Marxist-Leninist-Maoist philosophy that stresses the "poisonous influence" of foreign elements and a proclivity for exchanges with foreign nations that further contemporary Chinese interests. The current tendency of the Chinese to embrace more liberal travel policies should not mislead the reader into believing that restrictions on foreigners are insignificant or nonexistent. In fact, the PRC still maintains rather severe restrictions on the mobility of foreigners in China and the pages of the PRC press are frequently peppered with articles calling for caution in Chinese dealings with foreign visitors.

For an arms inspectorate, a reasonable degree of mobility in the PRC is essential to inspection operations. Inspectors, observers, staff personnel and others associated with verification procedures must be free to move about in China to the extent necessary to carry out their official functions. Unimpeded movement between inspectorate headquarters and inspection sites as well as between headquarters and points abroad should be guaranteed. The freedom of movement of essential equipment, records and supplies of an inspectorate should likewise be provided for in any inspection agreement.

Chinese restrictions on freedom of travel must be understood on two levels: there are direct impediments on free movement of foreigners, embodied in rules, regulations and accepted reciprocal practices; and, there are indirect restrictions, such as those created by potential dependence on government controlled means of transportation. An adequate inspection arrangement should address both levels.

At present, certain areas of the PRC are absolutely closed to foreigners; other areas, such as those containing non-secret defense facilities and factories, are usually closed to foreign visitors, though the Chinese have infrequently granted permission to foreign officials to visit such installations. There are also restrictions on travel in "open" (freely accessible) areas. Foreign visitors man journey to open cities but find "closed" (restricted) highways and facilities. Foreigners on temporary visits to the PRC face even greater restrictions, for the China Travel Service -- like Intourist in the
Soviet Union -- will map out an itinerary which maximizes Chinese-supervised travel to designated areas along assigned routes and minimizes uncontrolled free movement. This, of course, is not to assert that the PRC authorities are inflexible with regard to travel arrangements. Individually-proposed travel plans were very recently made possible though the itinerary must be approved by the proper Chinese administrative organs, is subject to modification or cancellation on short notice and requires various check-in-points to facilitate control. Special permission from public security bureaus (gonganju) in the PRC -- which, in instances involving internal travel permits for foreigners, may, in turn, be required to obtain the authorization of the Information Department of the Foreign Ministry -- is necessary before travel to many areas will be permitted.

Travel restrictions are often embodied in unpublished regulations. However, the Chinese press has occasionally published the more significant governmental policy decisions to relax travel restrictions, probably as an indication to the Chinese and foreign public of the PRC commitment to political liberalization.

One significant facet of travel in the PRC is the present requirement of assigning all aspects of the trip of a foreign visitor to various host organizations, a fairly common bureaucratic oversight and surveillance technique in Communist countries. The initial host organization may be the China Travel Service, Chinese universities, Chinese business organizations, the Foreign Trade Ministry, or the Ministry of Foreign Affairs. However, in many instances, there are additional organizations which must be contacted or informed of travel arrangements. For example, restricted industrial installations may be opened to foreign military and political personnel on rare occasions, provided approval is first obtained from the Foreign Ministry, the Ministry of National Defense, public security bureaus and often the Ministry directly supervising the facility (e.g., the Second Ministry of Machine Building). Such overlapping and variegated control channels can create delay, tedium, and the necessity for learning the procedures and idiosyncrasies of different organizations and for developing working relationships with different groups of people. Though not necessarily peculiar or unusual, the sheer number of enterprises which may be required to participate in any given foreign venture would tend to work to the disadvantage of an inspectorate, to which prompt inspection operations may be essential.

Currently, most travel arrangements are initiated either through requests to the Information Department of the Foreign Ministry (official personnel) or to the China Travel Service (for tourists and other foreign visitors). The China Travel Service is by no means the insidious organization that Intourist (of the Soviet Union) has been known to be, though, understandably, the participation of the Agency in handling domestic travel arrangements for an inspectorate may cut both ways. Any preferences granted the China Travel Agency in booking flight and room reservations may facilitate inspectorate movement throughout the PRC.
Conversely, the Agency can impede travel through its monopolization of travel procedures; it may book bogus plan reservations or allege full seating, for example, in order to ensure that inspectorate members are not able to travel on a particular flight.221 These observations dictate the need for either careful negotiation of travel arrangements by conventional means or for special transportation services for inspection members.

Outside of particular modes of travel for foreign visitors in the PRC, there is one important Chinese law which governs the movement of foreign persons in China -- the Foreign National's Act.222 The Act is designed with PRC national security in mind and is indicative of the form of strict control over foreigners which is accomplished by significant and constant contact between foreign visitors and public security bureaus (gonganju).

Pursuant to the Foreign National's Act, foreigners are required to obtain special permission to travel when they seek to travel outside the jurisdiction of the major administrative unit they reside in (Art. 14).223 The traveller is expected to follow the routes, use the means of communication, reside in the places and ride the means of transportation noted in the travel documents (Art. 15). Residence and travel of foreign nationals in "important national defense and military localities and restricted areas" (emphasis added) is prohibited (Art. 6). Public security bureaus are empowered to check on foreign nationals with regard to their observance of the provisions of the Act, and foreign nationals are expected to comply with such checks (Art. 16).224

Presumably, if a travel route must be changed for reasons of accident or illness, a foreign visitor would be obligated to notify and receive the approval of a local public security bureau. Moreover, when an alien travels alone to designated cities or towns, one may assume that he would not be entitled to stop off in any cities or towns en route without advance permission from a local public security bureau and a proper or justifiable reason for the stay.225

Permission to reside in the PRC is governed by Chapter III of the Foreign National's Act. In effect, the provisions of this chapter extend control over the movement of foreign nationals to various other official and quasi-official organs including schools, enterprises, hotels and private residents226 who accommodate them (Arts. 3, 11). All foreign nationals must apply for residence registration and be registered in the place in which they reside (Arts. 10, 11). Changes of residence require the certification of appropriate documents by competent Chinese organs (Art. 13). Moreover, foreign nationals residing in the PRC are obligated to "proceed to public security organs within a specified period of time" to present documents for examination (Art. 12).

The Act is not specific as to permissible durations for temporary residence of foreign nationals, though its predecessor stipulated for stays ranging from six months to five years.227
There is also no provision in the Act as to the appropriate method for addressing situations where travel documents are lost, damaged, or destroyed during the period of travel. Presumably, a foreign national would be required to report his problem to a local public security bureau for replacement. In the Provisional Rules that were subsequently abrogated by the Foreign National's Act, a foreign national, after losing his travel documents, was required to place an ad in a local newspaper "declaring that the documents were null and void" (shengming zuofei). Under the Foreign National's Act, however, this deed is no longer required.

Foreigners are required to obey Chinese laws and decrees (Art. 2). Infractions are addressed by Article 17, which grants to public security organs the power to enforce administrative and criminal sanctions against violators. Though Article 17 does not enumerate prohibited actions beyond those violations of the Foreign National's Act, it would seem that the possession of fraudulent (zaqi), forged (weizao), materially altered (yuequan) or unauthorized (wuquan) documents; the possession of items prohibited by law (such as contraband or weapons); or, the violation of other laws and decrees of the PRC would also fall within the purview of Article 17. These violations may also fall within the ambit of Article 5, which gives organs handling applications for entry, exit, transit, residence and travel of foreign nationals apparent carte blanche "authority to cancel or declare null and void" travel documents (including visas) for whatever reason. The Foreign National's Act is indicative of the tight supervision over foreign travel in the PRC, the potential pitfalls that beset an inspectorate by broad and ambiguous language and the need for appropriate privileges and immunities to permit less restricted personal mobility by inspectorate members. Moreover, the movement of inspectorate personnel is inextricably intertwined with the problems of, and regulations governing, access to state-owned and inspectorate-owned means of transportation.

3) Means of Transportation in the PRC and the Movement of Personnel and Supplies

a) Chinese Transportation

State-controlled means of transportation are currently the major mode of access to points in the PRC. Private means of transportation, with the exception of bicycles, are virtually non-existent in the PRC and there are currently no private means of transportation for hire. As such, any form of inspectorate travel arrangements calling for the chartering of transportation will require the active participation of numerous Chinese state agencies. Once more, the monopolization of services by the state lends itself to potential abuse and infringement of inspection operations.

It is not altogether clear what administrative agencies oversee Chinese transportation services. There is, for example, a separate ministry for railways in the PRC, though there are no ministerial-level agencies responsible for maritime transport or
civil aviation. Though a special agency exists for civil aviation -- the Civil Aviation Administration -- the Vessel and Aircraft Regulations of the PRC call for the participation of Maritime and Aviation Administrative Bureaus in entry-exit inspection procedures. It is not certain which existing agencies handle these duties, nor whether such agencies are in any way similar to, or have replaced, the older ones. The presumption of probable overlapping functions among transportation agencies, particularly with respect to travel service for foreigners, creates confusion, delay and the potential for such problems as: last-minute flight cancellations; the exclusion of certain types of material or equipment from carriage by rail or boat; damage or loss of equipment caused by negligent or intentionally malicious handling; and, the possibility of unauthorized inspections of inspectorate documents or equipment en route by Chinese personnel.

b) Inspectorate-Supplied Transportation

Just how permissive Chinese authorities are with regard to the alternative of allowing foreign visitors to import and use their own private means of transportation is not known. Automobiles, arguably the most essential form of inspectorate transportation next to air transport, are a notable exception. Chinese legal practice does permit diplomatic envos, attaches and other official personnel to own and operate automobiles in the PRC, though arrangements are controlled by the PRC Ministry of Foreign Affairs and handled through diplomatic channels. Though this practice provides at least a starting point for alternative transportation services, it is obviously not entirely free from Chinese control.

According to Chinese officials, there are no privileges and immunities accorded diplomatic personnel with respect to driving regulations. All foreigners desiring to drive automobiles in the PRC are required to pass a written test and a road test in order to obtain a Chinese driver's license. Arrangement for the testing procedures are made through the Traffic Safety Division of the local Public Security Bureau (gonganju) in the PRC.

The Chinese do not currently have motor vehicle insurance regulations in effect. According to Chinese officials, at least part of the reason for this lies in the paucity of foreign automobiles in the PRC. Accordingly, expenses incurred as a result of accidents are not handled through liability or comprehensive insurance coverage; rather, they are dealt with through diplomatic and administrative channels. Thus, costs are borne, in some cases, by the sending state and, in other cases, by private or public organizations with which a foreign national involved in an accident is employed.

Chinese Embassy officials in the United States have stated that all drivers in the PRC must abide by traffic regulations, though the 1957 Public Security Regulations currently applicable permit the waiver of penalties for violations in instances
where the offender was "definitely ignorant of the regulations." Although the PRC is not a party to the 1949 Convention on Road Traffic, indications are that major Chinese traffic regulations do conform to Convention provisions. There is also a number of secondary traffic rules which occasionally find their way into current Chinese publications. Some of these, in fact, could be used to the detriment of inspection operations. Indisputably, inspectorate members should be provided with copies of relevant regulations and amendments to avoid potential interference with Chinese laws and the inspectorate's mission.

Though conformity with Chinese traffic regulations appears to be the rule for all foreigners in the PRC, Chinese enforcement procedures may be weakened by PRC adherence to international diplomatic conventions, which recognize full immunity from criminal, civil and administrative jurisdiction of Chinese organs. Moreover, specific provisions in these conventions oblige the receiving state to ensure freedom of movement and travel, though they are often couched in terms which permit unilateral alterations of regulations and policy in the interests of national security.

The severity of Chinese treatment of foreigners involved in serious traffic accidents will depend probably on both the nature of the accident and the status of the foreigner involved. The PRC Criminal Code does not directly address the issue of the liability of an operator of a motor vehicle involved in a serious accident, but the Code does provide for punishment for manslaughter (Art. 133) and for unintentional bodily injury (Art. 125). Even in the absence of local regulations, Chinese acceptance of the use of analogy (Art. 79) would arguably permit serious auto accidents to be brought within the purview of such Criminal Code provisions. Although it appears that Chinese ratification of international conventions on privileges and immunities would probably insulate most inspectorate personnel from criminal liability in traffic accident cases, adequate privileges and immunities covering all inspectorate personnel (including staff and service personnel, who would be likely candidates for criminal prosecution by virtue of Chinese reservations to international diplomatic conventions) should be obtained. Additionally, there is little information available on the right of local Chinese public security bureaus to impound vehicles involved in traffic accidents. One might envision the degree of interference which local police might impose on inspectorate agents involved in minor accidents causing only slight property damage if impoundment was standard procedure in all or many accident cases. It is imperative therefore, that certain privileges and immunities from Chinese jurisdiction also be extended to motor vehicles used by inspectorate members.

The most convenient long-distance mode of travel for inspectorate purposes would be by air. International law recognizes the principle of the exclusive sovereignty of a state over the airspace above its territory. In conformity with this principle, the Chinese announced in 1958 that "no foreign ves-
sels for military use and no foreign aircraft may enter China's territorial sea and the airspace above it without [PRC] permission . . . . °251

On the basis of this sovereign jurisdiction, the PRC State Council promulgated on the Flight Rules Governing Foreign Civil Aircraft252 in 1964. Though these rules, like those of the Chicago Convention, are applicable to civil aircraft and may not cover, therefore, certain non-civilian inspectorate aircraft, they are nevertheless useful as a gauge of Chinese attitudes toward, and tolerance of, foreign aircraft over and in PRC territory. The flight rules were made public by the Civil Aviation Administration of China.253 According to the rules, foreign civil aircraft can enter or leave China or fly within China only in accordance with bilateral or multilateral agreements to which the PRC is a party, or with the permission of the Chinese government obtained through diplomatic channels. Foreign civil aircraft are required to obey the orders of the air traffic control departments designated by the Civil Aviation Administration and abide by the flight regulations.

Foreign civil aircraft, its crew members and its passengers must abide by the laws of the PRC while in China and must adhere to the decrees and regulations for entrance, departure and transit through China.

Chinese PLA air defense planes on duty may order foreign civil aircraft to land at designated airfields if they violate the rules governing flight within China. Such aircraft may continue their flights only with the permission of the PRC Civil Aviation Administration.

These regulations generally reflect much of what was embodied in the Convention on International Civil Aviation254 [hereafter Chicago Convention], to which the PRC acceded on February 20, 1946.255

The Chinese have closely adhered to Chicago Convention provisions256 both in subsequent bilateral air navigation agreements257 and in unilateral declarations regarding specified restricted and non-restricted areas for overflights in Chinese territory.258 However, the PRC has objected to unregulated fifth freedom traffic as envisioned in the Chicago Convention, though its objection apparently parallels those of many other states.259

The Chinese have also recently expressed condemnation of aircraft hijackings and other aerial crimes. The PRC acceded to both the Convention on Offenses and Certain Other Acts Committed on Board Aircraft260 and the Convention for the Suppression of Unlawful Seizure of Aircraft.261 Hijacking is also a punishable offense under the PRC Criminal Code (Art. 100).262

In short, the viability of inspectorate aircraft as a means of transportation within the PRC depends greatly upon Chinese
cooperation. The PRC adamantly rejects any notion that international law advocates unrestricted innocent passage along unspecified air corridors within domestic airspace. The amount of Chinese territory open to foreign overflights is probably rather small, as is the number of airfields and air corridors available. Chinese concessions in these areas are expected to be rather circumscribed.

The significance of familiarity with all available Chinese laws and regulations regarding air flight cannot be overestimated. Any agreement on the use of inspectorate aircraft will require full Chinese cooperation in disclosing the composite of PRC air law as it presently exists. As a first step, the PRC should be compelled to exchange "all basic laws and regulations covering foreign air transportation, navigation and operation of aircraft, air traffic rules, immigration, customs, landing permits, passports, currency, quarantine, aircraft registration, aircraft airworthiness, communications licensing, airmen personnel licensing, accident investigation, and airport noise regulations." Some authors have also suggested that interference between inspectorate air travel and domestic air services might be minimized by the establishment and operation independent inspectorate facilities and installations, the use of long-range aircraft and the requirement of prior notification of intended travel plans.

The seasonal and temporal disadvantages of using vessels as a means of transportation for inspectorate personnel probably outweigh any advantages. Nevertheless, the use of ships may be contemplated for transporting oversized equipment or for offshore monitoring. Therefore, some familiarity with Chinese regulations concerning access to and activities in ports and internal waterways is necessary.

For purposes of exercising territorial jurisdiction, the PRC claims as its internal waters: 1) harbor areas; 2) inland gulfs or bays inside a closing line not exceeding 24 nautical miles; 3) straits and other waters which have historically belong to the PRC; and 4) a territorial sea extending twelve nautical miles. Chinese regulations on maritime traffic are embodied in three sets of PRC rules, the 1964 Rules Regulating Passage of Foreign Nonmilitary Vessels Through the Qiongzhou Strait [hereafter Qiongzhou Strait Regulations], the 1957 Measures Governing Foreign Vessels Entering and Leaving Port [hereafter Port Regulations], and the 1966 Measures Governing Foreign Vessels on Bordering Rivers [hereafter River Regulations].

These three regulations are bound by a common thread -- the preservation of Chinese security. For example, passage through the Qiongzhou Strait is limited to daytime hours only (Art. 6). Under the Port Regulations, only certain ports designated by the Ministry of Communications are open to foreign vessels. Foreign ships may not enter or leave a port on a river bordering the PRC and other countries or on a Chinese river.
reaching neighboring countries; except in accordance with a bilateral commercial agreement or with prior PRC government approval.272

The captain of a vessel is required to fill out inbound and outbound reports -- including information on passengers and cargo -- for inspection by local port administration authorities.273 Foreign vessels in Chinese ports must also submit to customs procedures and all ships must observe health and quarantine regulations.274 Crews and passengers are subject to both personal and luggage inspection pursuant to the Provisional Regulations Concerning Inspection of Incoming and Outgoing Vessels, Passengers, Crew and Baggage.275 Pilotage is compulsory for entry into and departure from a port on a bordering river.276 Failure to comply with the orders of a Chinese pilot is a violation of harbor regulations and in one instance, "resulted in detention followed by an order requiring the offending vessel to leave the port immediately, and in a ban on the Master from returning."277

Maritime accidents occurring in PRC waters and ports must be expeditiously reported.278 The use of wireless transmitters, radar, rocket signals and other similar equipment is forbidden except in emergency circumstances.279 Under the Port Regulations, weapons and ammunition must be sealed and stored (Art. 7(1)).

Under the River Regulations, weapons and ammunition "should be delivered to the Port Affairs Supervision Office for custody" (Art. 8(1)). Passengers and crews of foreign vessels are strictly prohibited from taking photographs or making sketches or drawings, or otherwise engaging in conduct violating the laws and decrees of the PRC.280 The departure of vessels may be temporarily delayed or prohibited for a multiplicity of violations, including, inter alia, violations of PRC laws,281 violations of technical and tariff regulations282 and unseaworthiness.283 Previous strict prohibitions against shoreleave for foreign seamen have yielded to more liberal regulations.284 Though little is actually known about Chinese jurisdiction over criminal and civil disputes involving foreigners in port areas, it is most likely that Chinese authorities would assert jurisdiction on the basis of territorial sovereignty.285

The preceding rules and regulations indicate that, at present, access to PRC ports and inland waterways and general mobility of foreign vessels in the PRC are extremely limited. An inspectorate should be apprised on the probability that Chinese concessions regarding jurisdiction over port areas and inland water routes may well be minimal because of their vital importance to PRC military and economic security. Nevertheless, inspectorate operations will undoubtedly require some utilization of water routes and harbors. It is suggested that the inspectorate members employ their own means of transport and resort to PRC vessels only for secondary support functions. Ideally, the Chinese should be requested to provide limited privileges and immunities for both crews and vessels.
c) Transportation of Inanimate Cargo

The conveyance of inanimate movable cargo within the PRC is an issue requiring a careful enumeration of specific privileges and immunities. By virtue of its accession to the Diplomatic Convention, the Consular Convention and the UN Convention on Privileges, the PRC is on record as advocating a fairly broad immunity for movable property of diplomatic and consular agents and for representatives of international organizations. However, the provisions of the relevant instruments differ in scope. For example, both the Diplomatic and Consular Conventions provide for the inviolability of archives, documents and official correspondence. The Diplomatic Convention also immunizes the personal baggage of a diplomatic agent, provided there are no serious grounds for assuming it contains articles not covered by permissible exemptions. The UN Convention on Privileges provides for a more unqualified immunity -- albeit one that may provoke more technical legal and semantic arguments. Section 13(a) accords to representatives of members "immunity from . . . seizure [not inspection] of their personal baggage." At the same time, Section 13(f) accords to representatives the same immunities with respect to personal baggage as are accorded to diplomatic agents -- to wit, immunity from inspection (in ordinary circumstances).

Where some provisions are given strict legal effect, two problems arise. First, the relevant provisions would appear to immunize certain forms of inspectorate cargo, without immunizing the means by which it is transported. Thus, it would be permissible to search the means of transportation carrying such items -- although not the cargo -- and may result in considerable delay in transporting equipment and documents.

Second, where cargo is immunized, the relevant convention provisions refer to official archives, documents and correspondence. Additional problems are created when "the cargo contains things that are not subsumed by [these] categories." The problem is sufficiently acute with respect to inanimate cargo transported by inspectorate means of transportation; it is, however, compounded when cargo is shipped via Chinese transportation. Under these circumstances, and absent additional privileges and immunities, inspectorate cargo may be no different from ordinary Chinese cargo. As such, it is susceptible of seizure under the PRC Criminal Procedure Code, which authorizes Chinese investigators to conduct examinations and searches in order to collect criminal evidence and to seize objects and documents which may be used to prove the accused guilty or not guilty.

To ensure the inviolability of inanimate, movable cargo used for inspection purposes, the parties to an arms control agreement must distinguish among and identify items or articles intended to be transported as part of verification procedures and extend to them requisite privileges and immunities. Within a framework currently existing in international diplomatic relations, certain inspectorate items could be transported by
diplomatic pouch. However, in its current recognized form, the pouch is not a viable means of transporting most inspectorate cargo. Undoubtedly, arrangements should be made to protect all inspectorate cargo and transportation with adequate immunities and to broaden the base of acceptable pouch items to include environmental sampling for laboratory analysis at facilities outside the PRC.
1. This is a recognized principle of sovereignty. See "Renmin Ribao Discusses Laws Applicable to Foreigners," Foreign Broadcast Information Service on China [hereafter cited as FBIS-CHI] No. 027, 1980 [hereafter cited by year and number e.g., 80-027] (Feb. 7, 1980), at L21. According to the article, "without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty not to interfere in the internal affairs of the state." The obligation of foreign nationals to obey the laws and regulations of the PRC while within its jurisdiction is also noted in Art. 32 of the 1982 PRC Constitution, [Zhonghua renmin gongheguo xianfa] which states: "The People's Republic of China protects the lawful rights and interest of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law of the People's Republic of China." See "Text of New PRC Constitution Published," FBIS-CHI-82-235 (Dec. 7, 1982), at K1 [hereafter cited as PRC CONSTITUTION].

2. Chinese on the mainland have sarcastically remarked that NPC representatives have two roles: to applaud the speeches of Chinese Communist Party (CCP) leaders and to raise their hands to vote yes. F. BUTTERFIELD, CHINA: ALIVE IN THE BITTER SEA 421 (1982).

3. PRC CONSTITUTION, supra note 1. Article 62(3) grants to the National People's Congress (NPC) the power to "enact and amend basic statutes ...."


This is the basic statute still regulating the movement of foreigners.

5. Other laws may be found in COHEN AND CHIU, id., at chaps. 15-18, passim, and in a recent collection of public security laws promulgated from 1950-79 by the PRC and published in Chinese. See Gongan fagui huibian, 1950-79 [Collection of Public Security Laws], printed by the Commission on the
Applicable laws include customs regulations, health and immunization regulations, border security regulations, civil aircraft regulations, and the like.

6. See text accompanying notes 18-21, infra.

7. Recently, a Chinese woman was given a two-year sentence of reeducation through labor for living with a French diplomat prior to marriage, despite the fact that both had already obtained official PRC permission to marry. The French diplomat was asked to leave by the Chinese government. See French Press China to Free Envoy's Lover, Balto. Sun., Nov. 11, 1981, at A3. (Marriage to foreigners is not explicitly forbidden in the PRC's new marriage law). See also "Marriage Law Adopted by Fifth National People's Congress," FBIS-CHI-80-184 (Sept. 19, 1980), at L22. But mixed marriages have been frowned upon. See COHEN AND CHIU, supra note 4, at 662-67.

Other incidents involving foreigners and Chinese nationals in unauthorized contact have helped to chill intimate relationships in the PRC. See, e.g., Zhonggong yan zhuofang sudian jianu ming bubai zhiyuan (Communists claim "hotel incident"; Canadian woman declares her innocence) World Journal, Sept. 10, 1982, at 1. (In this case, public security officials detained a female Canadian citizen of Chinese extraction who was a guest of an American news correspondent in his hotel room. For not reporting the meeting in advance, he was fined 140 renminbi (appx. $90 at that time). See also "AFP: Chinese Girl Forced From Diplomats Car," FBIS-CHI-82-201 (Oct. 18, 1982), at K13 (young Chinese girl forced from French diplomat's car by "scores" of unidentified Chinese).

8. The PRC prohibits 16 mm. photography as a result of an unflattering documentary of China made by an Italian movie director. This information was supplied to the author by a State Department official.

Restrictions on gathering information are the most significant obstacles to inspectorate operations. See Provisional Regulations on Keeping State Secrets [Baoshou guojia jimi zhanxing tiaoli], in Gongan faqu huibian, su pra note 5, at 472-76 [hereafter cited as State Secrets Regulations], passed June 1, 1951 by the National People's Congress Standing Committee at its 87th meeting and promulgated on June 8, 1951. A translation of the text may be found in "Xinhua Publishes Regulations on Guarding State Secrets," FBIS-CHI-80-073 (April 14, 1980), at L7. The Act lists broad categories of information, including weather reports and telephone numbers, which fall within the ambit of State Secrets (Id., Art. 2). This law is designed to
prevent unauthorized leaks in the PRC, a country where information is parceled out like fine tea, to few people and in small quantities.


10. Fox Butterfield reported that PRC publishing services publish foreign materials without compensating their authors, in violation of internation copyright conventions, which the PRC has chosen not to ratify. See BUTTERFIELD, supra note 2, at 390.

11. For an example of the use of reciprocity concerning exemptions from customs duties, see Art. 10 of the Consular Agreement Between the Union Of Soviet Socialist Republics and the People's Republic of China (June 23, 1959) cited in G. RHODE AND R. WHITLOCK, TREATIES OF THE PEOPLE'S REPUBLIC OF CHINA, 1949-1978: AN ANNOTATED COMPILATION (1980). Note also PRC retaliatory actions, such as the Chinese request of the SRV (Vietnam) to close down the latter's three consulate-generals in Canton, Kunming, and Nanning provinces after the SRV, in effect, had prevented the PRC from setting up a Chinese consulate-general in Ho Chi Minh City. See "Sino-Vietnamese Relations Continue to Deteriorate: Appointment of Consul-General Canceled." FBIS-CHI-78-120 (June 21, 1978), at A10.

12. It is within the realm of reasonable foreseeability that persons performing arms inspection functions [in the PRC] would occasionally commit or be accused of committing violations of laws for the protection of [Chinese] public order. This would be so even if certain kinds of normally culpable conduct were deemed privileged in the interest of arms inspection activities . . . . The relatively small number of individuals involved, combined with their probable character traits, would be bound to keep down the count of such incidents, but their total absence could not be guaranteed. Leaving aside spectacular instances of violence and vice, there would still remain countless opportunities for breaching rules of conduct by reason of ignorance, inattention, misunderstanding, or other common human failings.

Z. ZILE, R. SHARLET AND J. LOVE, THE SOVIET LEGAL SYSTEM AND ARMS INSPECTION: A CASE STUDY IN POLICY IMPLEMENTATION 197 (1972) [hereafter cited as ZILE, SHARLET AND LOVE].

13. See "NPC Standing Committee Session Ends in Beijing: Civil Procedure Law," FBIS-CHI-82-045 (March 8, 1982), at K6. Presumably, organizations and international organizations would include diplomatic missions, consular delegations, and certain of the UN Specialized Agencies, all by virtue of PRC ratification of international conventions, whose
provisions envelop such organizations. See notes 95, 108 and 115, infra.

An inspectorate could reasonably appear in one of two forms: adversary (composed of members of certain other parties to an ACD agreement) or international (composed of members of disinterested countries, perhaps under (UN auspices). The PRC is on record as supporting an international verification body, though this may not be akin to support for an international on-site inspection team.

Although an inspectorate is not entitled to privileges and immunities as a matter of law, at least within the ambit of convention provisions acceded to by the PRC, it appears that the Chinese suggestion of an international verification organization may have been prompted by PRC recognition of the probability—and more palatable belief—that personnel of an international organization would be less likely to cause serious national security concerns. This is particularly true when one investigates frequent PRC press reports that condemn at least one other nuclear power, the Soviet Union (a probable member of an adversary inspectorate), for the constant, oppressive, and dangerous clandestine activities of the KGB in third countries. See, e.g., "Renmin Ribao Looks at KGB Activities in U.S., FBIS-CHI-81-234 (Dec. 7, 1981), at BI. See also note 89, infra.


15. The PRC CRIMINAL CODE was passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and was promulgated on Jan. 1, 1980. See Gongan fagui huibian, supra note 5, at 4-33. For the English text of the PRC CRIMINAL CODE, see "Seven PRC Laws Adopted at Fifth NPC Second Session," FBIS-CHI-79-146 (July 27, 1979) PART I: Supp. no. 019 [hereafter cited as Supp. no. 019] at 33-62.

16. Article 12 of the PRC CRIMINAL PROCEDURE CODE is also applicable to foreigners who commit crimes in the PRC. This effectively grants foreign nationals the full spectrum of procedural rights due them when criminal prosecution is initiated. The PRC CRIMINAL PROCEDURE CODE was passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and entered into force on Jan. 1, 1980. See Gongan fagui huibian, supra note 5, at 34-65. For the English text of the CRIMINAL PROCEDURE CODE, see "Seven PRC Laws Adopted at Fifth NPC Second Session, FBIS-CHI-79-146 (July 27, 1979) PART II: Supp. no. 020 [hereafter cited as Supp. no. 020], at 1-31.

17. The phrase "unless otherwise specified by law" applies to foreigners who enjoy diplomatic privileges and immunities and will be addressed more fully in text infra at Chapter 4.


20. Sentences range from 3 years for less serious cases to the death sentence for more serious offenses.

21. Lisa Wichser, the American teacher, was treated leniently by the Beijing Municipal Public Security Bureau, and expelled for violating Chinese secrecy laws--presumably, the 1951 Provisional Regulations on Keeping State Secrets, supra note 8—which is punishable as counterrevolutionary activity under the PRC CRIMINAL CODE, supra note 15, Arts. 90-104.

The Soviet spy, Nikolay Petrovich Zhang, was sentenced under Article 3 (which makes the PRC CRIMINAL CODE applicable to foreigners) and Article 97, para. 3 (supporting the enemy by joining an "espionage organization").

Though the explanation for the differences in the laws' application was most probably politically motivated, it is important to note that there is a legal basis for Wichsler's dissimilar treatment. Article 30 of the PRC CRIMINAL CODE, supra note 15, states:

Deportation may be applied as an exclusive or supplementary penalty to a foreigner who has committed an offense. [emphasis added]

22. See COHEN AND CHIU, supra note 4, at 321.


24. See id. See also PRC CRIMINAL CODE, supra note 15, Article 3.

25. PRC CRIMINAL CODE, supra note 15, Art. 5.


27. Id., Art. 15.

28. Id., Art. 16.

29. Id., Art. 17.

30. See Article 7 of the PRC ORGANIC LAW FOR PEOPLE'S COURTS, passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and entered into force on Jan. 1, 1980, in Gongan fagui huibian, supra note 5, at 449-57.
For the English text, see Supp. no. 19, supra note 15, at 20-27.

31. See "Fifth NPC Standing Committee Reportage Continues: 'Special Court, Procuratorate Members'," FBIS-CHI-80-191 (Sept. 30, 1980), at 15.

32. For example, Prof. Hungdah Chiu attacked the legal grounds for the establishment of the special organs on the basis of the fact that Articles 20 and 31 cited below provide for the establishment of permanent (standing) divisions and not mere ad hoc creations. He also pointed out the legal defects in the composition of the special procuratorate and special court. See Chiu, Certain Legal Aspects of the Recent Peking Trials of the "Gang of Four" and Others, OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD., No. 3-1981 (40), at 27-38 [hereafter cited as "Gang of Four Trial"]. See also The ORGANIC LAW FOR PEOPLE'S PROCURATORATES, passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and entered into force on Jan. 1, 1980, in Gongan fagui huibian, supra note 5, at 458-64. The English text may be found in Supp. no. 019, supra note 47, at 27-33. Article 20 of this law states: "The Supreme People's Procuratorate shall establish criminal, disciplinary, prison and economic procuratorial divisions. It may also, according to its need, establish other organs."

Article 31 of the PRC ORGANIC LAW FOR PEOPLE'S COURTS, supra note 30, states: "The Supreme People's Court shall establish a criminal court, a civil court and an economic court and may also set up other courts as needed."

PRC jurist Zhang Youyu defended the establishment of the special court on the basis of the latter provision. See Jianpan Wu and Tao Ouyang, "On Problems of the Application of Law Concerning the Trails in the Counterrevolutionary Cases of Lin Biao and Jiang Qing," Faxue Yanjiu (Legal Studies), No. 6, p. 3 (1980).

33. See "NPC Promulgates New Regulations on Arrest, Detentions," FBIS-CHI-79-039 (Feb. 26, 1979), at E2 [hereafter cited as Arrest and Detention Regulations]. Prior to the enactment of these regulations, detention was frequently arbitrary. For example, the PRC detained two Americans who had inadvertently strayed into PRC territorial waters in their yacht for almost 10 months -- Feb. 16 - Dec. 6, 1969. No charges were ever filed against the Americans in that period. See H. KISSINGER, WHITE HOUSE YEARS 188 (1979).

34. See Arrest and Detention Regulations, id., Art. 4.

35. Id., Art. 5. There are no indications in these regulations that the issuance of warrants in the PRC depends on such Western concepts as probable cause. It appears sufficient that the warrant is requested by official personnel.
36. Id., Art. 2.
37. Id., Art. 8.
38. PRC CRIMINAL PROCEDURE CODE, supra note 16, Art. 92, para. 2.
40. See the 1954 Act of the PRC for Reform Through Labor, id., Art. 8. This Act is used as the basis for removing undesirables from the mainstream of Chinese society much like Soviet psychiatric institutions are used against dissidents in the USSR. See also P. SHORT, THE DRAGON AND THE BEAR 114-16 (1982).
41. Id. The jail cell is designed to isolate serious criminal offenders from minor offenders.
42. See "Gang of Four Trial," supra note 32, at 27-38. See also text accompanying notes 18-21 supra and notes 130 and 154 infra.
43. PRC CRIMINAL PROCEDURE CODE, supra note 16, Art. 105, para. 2. See also Articles 9 and 10 of the PRC ORGANIC LAW FOR PEOPLE'S COURTS, supra note 30.

People's assessors are unlike jurors as we know them in the United States. But see "Shanghai Districts Elect, Train People's Court Juries," FBIS-CII-80-154 (Aug. 7, 1980) (This article was probably mistranslated, incorrectly substituting "juries" for "assessors." There are no juries in the PRC.) First, the assessors are usually intimately familiar with the facts of the defendant's case before trial. Most often, they are chosen from the defendant's danwei or workplace and have an unfavorable predisposition toward the defendant's action. This is in keeping with the Chinese principles of isolation and confrontation: singling out the accused, confronting him with his acts, and securing his confessions and repentance, usually in the form of self-criticism. Assessors serve only in the court.
of first instance. At the appellate level there are three judges and no assessors.

Second, there are no legal devices such as voir dire with its attendant rights of dismissal for cause or peremptory challenges as Western legal systems know them. Assessors, once appointed (ostensibly, they are to be elected by the people, although they are often selected by local officials) are expected to serve; no lawyer will challenge their presence neither with cause nor without. See, e.g., "Hunan's Use of People's Assessors Proves Effective," FBIS-CHI-80-205 (Oct. 21, 1980), at L7 (Hunan assessors "chosen" for 3-4 year terms and may be removed at any time for incompetence or negligence.) Cf. "Jiefangjun Bao on System of Assessors for Military Courts," FBIS-CHI-80-197 (Oct. 8, 1980), at L8.

44. See ZILE, SHARLET AND LOVE, supra note 12, at 215.


46. See Peking Restricts Foreign Legal Firms, Dealing Setback to Some U.S. Lawyers, Asian Wall St. Journal, Jan. 1, 1982, p. 6. There are American firms in the PRC, including Baker & McKenzie, with offices in Beijing hotels, but their work is confined largely to trade negotiations and issues. None of the US attorneys, however, is licensed to practice law in the PRC.

There are no provisions in the Provisional Regulations on Lawyers for foreign representation of foreign nationals, including foreign official personnel.


49. See "Wang Harbin on Legal Question on Trial," FBIS-CHI-80-241 (Dec. 12, 1980) at L5; "Gang of Four Trials Opens in Beijing; Indictment Read: 'Jurist Interviewed on Trial'," FBIS-CHI-80-226 (Nov. 20, 1980), at L2. This is not to say that the "presumption of innocence" has been completely ignored. Prior to the promulgation of the PRC CRIMINAL
CODE, a Renmin Ribao article called for the "assumption of innocence" to be included in the CODE. "Renmin Ribao Article Discusses Judicial Procedure," FBIS-CHI-79-046 (March 7, 1979), at E7.


51. The attorney in the PRC is a state functionary who represents a particular client only on the advice and consent of the Chinese Communist Party. The attorney is not expected to defend his client's interests too zealously, and his main function is merely to present to the court mitigating circumstances of his client's guilt. No attorney in the PRC fights for the innocence of his client, and, within at least a tacit understanding between the Chinese Communist Party and PRC lawyers, no defendant is ever really innocent. This information was provided to the author on Dec. 6, 1982, by a PRC attorney currently enrolled in a US educational institution.

For an overview of the Chinese code of "leniency to those who confess, severity for those who resist," see "Leniency For Those Who Confess Crimes Advocated," FBIS-CHI-82-066 (April 6, 1982), at K4; "Renmin Ribao on Criminal Law: Leniency, Severity," FBIS-CHI-81-314 (Dec. 7, 1981), at K24 (noting that the "leniency, severity" code dates back as far as 1940 and was part of Mao Zedong's 1952 directive on the Struggle Against the "Three Evils" and the "Five Evils.")


56. The PRC socialist legal system is organized as a civil law system. Stare decisis, a principle of the common law, is unlikely to prevail in a country having the civil law as the basis of its jurisprudence.

57. See, e.g., text accompanying notes 18 and 19, supra.


60. See PRC CRIMINAL CODE, supra note 15, Art. 2. According to Article 2, the task of the criminal law is to:
Struggle against counterrevolutionary crimes and acts of criminal offenses . . . protect the personal rights, democratic rights, and other rights of citizens, maintain public order and order in production, work teaching, scientific research and the life of masses . . .

61. Article 10 of the PRC CRIMINAL CODE, supra note 15, defines a criminal offense as:

Any action which endangers state sovereignty and territorial integrity, jeopardizes the dictatorship of the proletariat, sabotages socialist revolution and socialist construction, disrupts public order, encroaches upon the property of the whole people, the collective or legitimate private property, infringes upon the personal rights, democratic rights and other rights of citizens or any other act which endangers society and is punishable according to law is an offence. However, if the offense is obviously a minor one and if its harm is negligible, it should not be considered a crime.

62. Inspectorate personnel will more than likely be accorded a certain range of privileges and immunities in operating within PRC territory. Violations of domestic law by immunized foreign nationals is customarily handled by persona non grata proceedings (i.e. expulsion). See text accompanying note 94, infra. But, expulsion is likely to be viewed as a supplementary penalty in instances where violations are egregious (eg: Stealing military secrets during inspectorate operations). In such an event, the act is so ultra vires that it might not protect an otherwise immunized foreign official from criminal prosecution. Cf. PRC CRIMINAL CODE, supra note 15, Art. 30; note 21, supra.

63. See PRC CRIMINAL CODE, supra note 15, PART 2: CHAPTER I, Arts. 90-104.


66. PRC CRIMINAL CODE, supra note 15, Art. 97(1) - (3).

67. See note 8, supra.

68. State Secrets Regulations, supra note 8, Art. 1.
69. Id., Art. 2.

70. This information was imparted to the author by Professor Jan Prybyla, Pennsylvania State University, at the recent 24th Annual Conference of the American Association for Chinese Studies, held in Baltimore, MD., November 6-7, 1982.

71. State Secrets Regulations, supra note 8, Art. 2, para. 17. See also P. SHORT, supra note 40, at 362.

72. See PRC CRIMINAL CODE, supra note 15, Art. 91-97, 100-103. Note that a recent NPC Standing Committee decision suspended the death sentence review procedure of the Supreme People's Court for certain criminal offenses (all capital crimes except embezzlement and counterrevolution) until 1983. See "NPC Standing Committee Concludes 10 June: Decisions on Death Sentences," FBIS-CHI-81-112 (June 11, 1981), at K4.

73. "Renmin Ribao Article on Counterrevolutionary Crimes," FBIS-CHI-79-148 (July 31, 1949), at L6. See also "Shanghai Lecture on Crimes Against Public Safety," FBIS-CHI-79-233 (Nov. 16, 1979), at 011 (intentional acts of saboteurs should be severely punished while negligent acts endangering public safety should be dealt with according to "legal action", which is, presumably, less severe); Faxue Cidian, supra note 64, at 118; Lecture V: Suppress All Counterrevolutionary Criminals; Advance the Consolidation of the Dictatorship of the Proletariat, 13 CHINESE LAI'I' & GOV'T. 38, 41 (No. 2, Summer 1980).

74. See, e.g., "Further Reportage on Bohai No. 2 Accident," FBIS-CHI-80-173 (Sept. 4, 1980), at L21 (noting that 4 men who were accused of dereliction of duty in relation to the Bohai No. 2 oil rig accident that killed 72 Chinese received prison sentences ranging from one to four years).

75. See PRC CRIMINAL CODE, supra note 15, Art. 79, which states:

Those who commit offenses not explicitly defined in specific articles of the criminal law may be convicted and sentenced according to the most approximate article in the criminal law. However, permission must be obtained from the Supreme People's Court.

76. Arguably, Western creative statutory interpretation often fills the analogy role. See e.g., United States v. Mandel, 591 F.2d 1347 (4th Cir. 1979), cert. denied 445 U.S. 961 (1980) (noting the ever expanding use of the mail fraud statute to cover activities previously considered to be within the exclusive jurisdiction of state regulation).

78. See PRC CRIMINAL CODE, supra note 15, PART 2, CHAPTER II, Arts. 105-115.

79. Id.


81. PRC CRIMINAL CODE, supra note 15, Art. 63.

82. See note 51, supra. See also "Jeifang Ribao Comments on Maintaining Social Order," FBIS-CHI-80-002 (Jan. 3, 1980), at 06. For examples of cases where criminals were exempted from punishment or given lighter sentences because of self-denunciations (admissions of guilt), see "Henan Sentences Man for 'Appealing' Wei Jingsheng Case," FBIS-CHI-79-246 (Dec. 20, 1979), at 04; "Beijing Press Highlights Execution of Convicted Murderer," FBIS-CHI-80-059 (March 25, 1980), at L8.


84. Cf. ZILE, SHARLET AND LOVE, supra note 12, at 198.

85. An excellent example of such committees and their respective purposes is offered by the 1980 reintroduction of four sets of regulations, previously enacted in 1952. The Organic Regulations of the Urban Neighborhood Committee, the Organic Regulations of the Subdistrict Office, the Temporary Organic Regulations of the People's Mediation Committee and the Temporary Regulations of the Social Order and Security Committees were repromulgated by the NPC. See "Central Press Publishes NPC Regulations on Local Organizations," FBIS-CHI-80-017 (Jan. 24, 1980), at L2-9. Cf. "Renmin Ribao Notes Effectiveness of Criminal Surveillance," FBIS-CHI-80-005 (Jan. 8, 1980), at L17.16

Surveillance by the masses may be a throwback to the Shan Yang era (circa 350 B.C.), where failure to denounce an offender was punishable by death. See D. BLOODWORTH, THE CHINESE LOOKING GLASS 36 (1980 ed.).

86. See ZILE, SHARLET AND LOVE, supra note 12, at 198. One can envision the potential for such groups to utilize obscure regulations to harass an inspectorate. For example, a new Beijing (Peking) sanitation regulation calls for fines to be imposed on those who spit on, urinate in, or litter the streets of Beijing. See "Peking Municipality Issues New Sanitation Regulations," FBIS-CHI-78-242 (Dec. 15, 1978), at K2; "Beijing Vice Mayor Urges Stricter Sanitation Laws," FBIS-CHI-81-152 (Aug. 7, 1981), at R1. See also "1957

87. PRC CRIMINAL CODE, supra note 15, Art. 158.

88. See e.g., Butterfield, How the Chinese Police Themselves, N.Y. Times, April 18, 1982, at 32 (Magazine).


90. See e.g., "Further Commentary on Netherlands Sub Sale: 'Ranking of Envoys Explained'," FBIS-CHI-81-013 (Jan. 21, 1981), at G4 (noting that diplomatic envoys "diplomatic privileges" and not "diplomatic privileges and immunities"). But see "Renmin Ribao Discusses Laws Applicable to Foreigners," FBIS-CHI-80-027 (Feb 7, 1980), at L21 (addressing the effect of the criminal law on those who enjoy "diplomatic privileges and immunity"); Article 8 of the PRC CRIMINAL CODE, supra note 15, also addresses those with diplomatic privileges and immunities.

The apparent ambiguity is probably more the result of the imprecision in press reporting than the pronouncement of differing Chinese legal standards. Cf. "PRC Protests KGB Attempt to Force PRC Diplomat to Defect," FBIS-CHI-80-170 (Aug. 29, 1980), at Cl (PRC note protesting KGB attempts to incite Chinese diplomatic defection in violation of international laws and norms on relations between countries).

The nature of the difference between privilege and immunity can also be gleaned from an examination of Chinese domestic news reports. A recent Jiangsu circular, for example, decreed the use of "special privileges" by Party (CCP) members in housing construction projects. See "Jiangsu Circular Forbids Special Privileges," FBIS-CHI-80-246 (Dec. 19, 1980), at 04. The suggestion is that the term "privilege" connotes special treatment over and above the usual treatment, but does not refer to special treatment outside the usual, a phrase best described by an exemption, or, in English translation, an immunity (mian-chu). For instance, certain Chinese officials may be expected to travel fairly freely within the PRC. Where such officials receive better accommodations en route, they are receiving privileges. However, an average PRC citizen, who
is not permitted to travel freely, would require an exemp-

tion to travel to a restricted area.

Chinese recognition of diplomatic privileges and im-
munities may extend back as far as the Boxer Rebellion in
1900. The Chinese commander-in-chief in Peking sent a
telegram to the viceroy of South China, stating. "When
two countries are at war, it has been customary since an-
tiquity not to injure the envoys. . . ."BLOODWORTH, supra
note 85, at 26.

91. See "Renmin Ribao Discusses Laws Applicable to Foreigners,"
FBIS-CHI-80-027 (Feb 7, 1980), at L21. According to the
article, "without prejudice to their privileges and immuni-
ties, it is the duty of all persons enjoying such privile-

ges and immunities to respect the laws and regulations of
the receiving state. They also have a duty not to inter-
fere in the internal affairs of that state." See also Ar-
ticle 41 of the Diplomatic Convention, infra note 95.

92. See "Renmin Ribao Discusses Laws Applicable to Foreigners,"
FBIS-CHI-80-027 (Feb 7, 1980), at L21.

93. Parties to an inspection arrangement must address the issue
of the waiver of immunity by a sending state, which is in-
corporated in the Diplomatic Convention infra note 95, the
Consular Convention, infra note 108 and the UN Convention
on Privileges, infra note 115. By virtue of such an inter-
national practice, a grant of extensive, jurisdictional
immunities to foreign inspectorate personnel would not
necessarily immunize these agents from legal process, since
absent immunity granted to them by the sending state for
acts performed within the scope of official duties, the
host state might couple expulsion of personnel for trans-
gressions in the host country with a formal request for
prosecution by the sending state.

In practice, requests of this nature are rarely made or
honored, because of the inability of the requesting state
to enforce its request in the sending state.

94. Article 41 of the Diplomatic Convention, infra note 95.
See also "AFP: PRC Expels Dutch Newspaper Correspondent,"
FBIS-CHI-81-096 (May 19, 1981), at G2 (for activities "in-
compatible with the status of a correspondent"). See
generally, COHEN AND CHIU, supra note 4, at 929-1108.

95. Vienna Convention of Diplomatic Relations, April 18, 1961,
23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95
[hereafter cited as Diplomatic Convention] The PRC
deposited its accession on Nov. 26, 1975 with reservations
concerning "the provisions about nuncios and the represen-
tative of the Holy see in Arts. 14 and 16 and on the provi-
sions of paragraphs 2, 3 and 4 of Art. 37 (regarding the
privileges and immunities of service, technical and ad-
ministrative personnel). See H. CHIU, AGREEMENTS OF THE
people's republic of china, a calendar of events 1966-1980, 217 (1981) [hereafter cited as prc agreements 1966-80]. see also s. kim, china, the united nations and world order 425-26 (1979).

96. Diplomatic Convention, supra note 95, Art. 29.
97. Id., Art. 31(1).
98. Id., Art. 29.
99. Id., Art. 31(2).
100. Id., Art. 29.
102. There is little available information on automatic incorporation of PRC-ratified treaties into PRC municipal law. For example, in the most recent compilation of PRC domestic laws and regulations, no treaties are included. See Gongan fagui huibian, supra note 5.

However, the recently circulated PRC Provisional Civil Procedure Law contains provisions noting that, in the absence of strict language to the contrary, any conflict between international treaties and conventions (to which the PRC is a party) and the Law of Civil Procedure, will be resolved in favor of those international treaties and conventions, except where specific contractual clauses designate that PRC law will apply. See Yanling, supra note 48, at 22.
103. PRC Criminal Procedure Code, supra note 16, Art. 11, para. 6.
104. See note 18 supra. The US Embassy protested alleged Chinese disregard for the US-PRC Consular Convention for detaining Ms. Wichser, the American graduate student teaching in Beijing. Embassy officials claimed they had not been notified of the arrest in timely fashion and had been unable to visit her during 4 days of detention despite provisions of the bilateral consular convention permitting speedy access to imprisoned Americans. See also Weisskopf, China Reported Set to Expel American Held in Spy Case, Washington Post, June 3, 1982, p. A1. Note that prior to the promulgation of Chinese detention regulations and the ratification of the Diplomatic Convention, supra note 95, the PRC was often arbitrary in its treatment of foreigners
who violated Chinese Law. In two separate instances in 1969, for example, the PRC detained American yachtsmen who had inadvertently strayed into Chinese territorial waters. Two of them were detained without formal charges for almost 10 months (from Feb. 16, 1969 to Dec. 6, 1979). See KIS-SINGER, supra note 33, at 180,188.


106. See Diplomatic Convention, supra note 95, Art. 29.

107. See L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 791-92 (Vol. I: Peace, H. Lauterpacht ed., 8th ed, 1955). Oppenheim suggested that diplomatic agents may be restrained upon the commission of acts which disturb the internal order of the state. Id., at 791. Cf., Chung-hua ien-min kung-ho kuo min-fa chi-pan wen-t' i (Fundamental problems of the civil law of the PRC; Peking, 1958) p. 41 cited in COHEN AND CHIU, supra note 4, at 1001. "Diplomatic immunity is a matter of comity in international relations. It does not affect the uniformity and independence of [the PRC's] legal sovereignty." Id. See also "Jenmin Chipec Article: Dirty, Ugly Espionage Activities of Soviet Revisionists," SCMP no.5580 (March 26, 1974), at G5 (Chinese arrests of Soviet KGB agents are in conformance with "generally accepted norms of international law").


109. See PRC AGREEMENTS 1966-80, supra note 95, at 218.

110. Consular Convention, supra note 108, Art. 41. Grave crime is not further defined in the Convention, but would probably include all capital offenses in the state where the act was committed.

111. Id., Art. 44(1).

112. Id., Art. 44(3)

113. Id., Art. 43.

114. Id., Art. 41.

The PRC's accession was with respect to the UN Food and Agricultural Organization (second revised text of annex II), the International Civil Aviation Organization (annex III), the UN Educational, Scientific and Cultural Organization (annex IV), the World Health Organization (third revised text of annex VII), the Universal Postal Union (annex VIII), the International Telecommunications Union (annex IX) and the International Maritime Consultative Organization (revised text of annex XII). See Statement of Treaties and International Agreements Registered on Filed and Recorded with the Secretariat During the Month of September 1979, at 510 no. 521, U.N. DOC. ST/LEG/SER.A/391 (1981).

The PRC did not accede to the UN Convention on Privileges with respect to the International Labor Organization, the International Monetary Fund, the International Bank for Reconstruction and Development and other UN agencies in the accordance with Articles 57 and 63 of the UN charter. The PRC has also not acceded to the Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418, T.I.A.S. No. 6900, 1 U.N.T.S. 15, nor has it apparently acquiesced to Section 32 of the UN Convention on Privileges, which permits International Court of Justice jurisdiction over disputes arising under the Convention.

Within the UN Convention on Privileges, two distinct classes of international persons are recognized: representatives of members and officials. Representatives of members of specialized agencies, in the course of their official function, enjoy the following privileges and immunities:

a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;

b) Inviolability for all papers and documents;

c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State in which they are visiting or through which they are passing in the exercise of their functions;

e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions (Article V, Section 13).
Under Section 19, officials of the specialized agencies shall:

a) Be immune from legal process in respect of works spoken or written and all acts performed by them in their official capacity;
b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;
c) Be immune, together with their spouses and relatives dependent on them, from immigration restriction and alien registration;
d) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
e) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

116. The specialized agencies are basically international organizations operating under UN auspices and created for the purpose of coordinating activities connected with international trade, communication, and human welfare. The specialized agencies covered by the UN Convention on Privileges, supra note 115, are enumerated therein.

117. UN Convention on Privileges, supra note 115, Art. II, Sec. 3.

118. Id., Art. III, Sec. 5.

119. See note 115, supra.


122. ASEAN is the acronym for the Association of Southeast Asian Nations, composed of Thailand, Malaysia, Singapore and the Philippines. It is a regional organization designed to foster economic and security relations among members and between ASEAN and the United States and Japan. See generally Sours, ASEAN and U.S. Foreign Policy, in ASIA AND U.S. FOREIGN POLICY 173-90 (Hsiung and Chai ed. 1982)

124. UN Convention on Privileges, supra note 115, Sec. 12.

125. Id., Secs. 5 and 6.

126. Id., Sec. 5.

127. To facilitate the purchase and delivery of foreign high technology equipment, for example, the PRC has recently recognized and accepted the safeguard clause for an export license issued by the Coordinating Committee for Export Controls (COCOM). COCOM is a Paris-based, fifteen nation organization comprised of Western nations which trade with Communist countries. The clause, known as Form 629, allegedly permits periodic COCOM on-site inspection of installations in the PRC to verify that the commodities supplied are being used for the purpose for which they were intended (i.e., civilian, non-military use). See China Recognizes Form 629: Permits Monitoring of Sensitive Equipment, 6 CHINA BUS. REV. 55 (No. 4, July-Aug. 1979). But see Miller, U.S. is Holding up Peking Atom Talks, N.Y. Times, Sept. 19, 1982, p. All.

COCOM inspector privileges would seem to be implied by the nature of the agreement, which requires the Chinese to admit COCOM agents into limited-access areas to monitor the use of purchased equipment.

128. Recent reports have cited the existence and operation of a joint US-PRC electronic intelligence gathering station in the Xinjiang Uighur Autonomous Region in western China, to monitor Soviet missile and suspected electromagnetic pulse testing. See, e.g., U.S., China jointly run spy station, Balt. Sun, June 18, 1981, p. A1, col. 1; "PRC Refuses Comment on U.S. Radar Station," FBIS-CHI-81-116 (June 19, 1981), at kl. See also "Kyodo: U.S. Sets Up Military Base in PRC," FBIS-CHI-82-002 (Jan. 5, 1982), at B1 (issued by Japanese wire service); "APF: PRC Refuses Comment on Report of U.S. Base," FBIS-CHI-82-003 (Jan 6, 1982), at B1. According to the report, CIA agents occasionally visit the facility. Presumably, they are accorded limited privileges, such as customs exemptions, and are permitted into an obviously restricted area.

129. Foreign government officials performing official acts in a third country have been extended certain diplomatic privileges and immunities in the 1969 United Nations Convention on Special Missions. U.N. Doc. A/7375, Annex I, Dec. 11, 1968. The Chinese have not ratified this Convention, but some of its provisions would be useful in formulating
requisite privileges and immunities for an arms inspectorate. See ZILE, SHARLET AND LOVE, supra note 12, at 89-92.

Another potential source for the formulation of arms inspectorate privileges and immunities is the Draft Annex II on the Privileges and Immunities of the Control Organization Under the Proposed Nuclear Test Ban Treaty. Discussion of the latter is omitted from this paper because of consistently vehement Chinese objections to the Nuclear Test Ban Treaty, but an excellent treatment of the Annex and its relationship to inspectorate privileges and immunities as they apply to the Soviet Union may be found in id., at 108-10.

130. See, e.g., PRC disregard of the US-PRC Consular Convention in detaining Lisa Wichser, supra note 104. Note that this incident, the first major one involving a US national since US-PRC normalization in 1979, occurred at a time where US-PRC relations had cooled significantly as a result of American insistance on the US right to continue arms sales to Taiwan, in what the PRC considered a violation of PRC sovereignty. See, e.g., "Xinhua Hits Helms Over Arms Sales to Taiwan," FBIS-CHI-82-021 (Feb. 1, 1982), at B1; "Sino-U.S. Ties Based on Respect for Sovereignty," FBIS-CHI-82-024 (Feb. 4, 1982), at B1.

131. See generally, ZILE, SHARLET AND LOVE, supra note 12, at 113-19.


133. The PRC, for instance, has permitted the PLO to maintain an office in Beijing (Peking). This information was supplied to the author by Prof. Hungdah Chiu of the University of Maryland School of Law and by the Chinese Embassy in Washington, D.C.

134. See generally COHEN AND CHIU, supra note 4, at 931-1042. The PRC has, in fact, protested some of the same acts it had performed when such acts were performed by others. See e.g., "Chinese Government Strongly Protects Against Soviet Authorities Fascist Atrocities of Kidnapping Chinese Diplomat and Brutal Treatment of China's International Train," SCMP no. 5545 (Feb. 4, 1974), at 35 (protesting the kidnapping and unlawful questioning of Kuan Heng-kuang, who was returning to the PRC after completing a tour of the Chinese Embassy in the Soviet Union.

137. See, e.g., note 154, infra.
138. See, e.g., text accompanying note 110, supra.
139. See, e.g., note 21, supra.


Actually, the British student was accused of writing two slogans. Both slogans siren bang wansui [Long Live the Gang of Four] and Weidade shehui zhuyizhe Jiang Qing wansui [Long Live the Great Socialist Jiang Qing]--were not specifically branded as counterrevolutionary by Chinese authorities, but the PRC immediately informed the British Embassy that the youth was to be deported.

141. U.N. CHARTER, 59 STAT. 1031, 3 BEVANS 1153 (1945), ART. 105 (1).

142. Id., Art. 105(2). A U.S. District Court recently held that international practice did not grant to foreign nationals employed by the United Nations the same degree of immunity as foreign diplomats. Thus, the seizure of illegally obtained national security information from a foreign minister did not violate his right to diplomatic immunity. United States v. Enger, 442 F.Supp. 490 (D.N.J. 1978).

143. ZILE, SHARLET AND LOVE, supra note 12, at 117; S. KIM, supra note 95, at 418.


145. Where the arbitral awards are fair and do not violate Chinese laws and policies, PRC enterprises will usually execute them. Where they refuse to execute the award, the party requesting enforcement may petition the relevant PRC government department or the China Council for the Promotion of International Trade (CCPIT) or appeal to the Chinese courts to enforce the award. Ten Tsien-Hsin [sic] and Lin Shao-Shan, "People's Republic of China," 3 YEARBOOK - COMMERCIAL ARBITRATION 160 (1978).


147. Despite the fact that the PRC does not belong to the International Atomic Energy Agency (IAEA) and has not ratified the Agreement on the Privileges and Immunities of the IAEA, the latter document may also serve as a useful referent for
the formulation of an acceptable agreement concerning the scope of the immunities to be enjoyed by an arms inspectorate.

The IAEA Agreement, for example, provides for mutual consultation between a protesting state and the Agency when an abuse of privileges and immunities is alleged (Art. 26). If such an abuse has in fact occurred, the State party may withhold from the Agency the benefits of the privileges or immunities so abused, provided it does not interfere with the principal functions of the Agency (Art. 30). See ZILE, SHARLET AND LOVE, supra note 12, at 104-07.

148. The PRC has even indicated its willingness to use third country arbitration sites and to apply the law of the locus of arbitration. See Ellis and Shea, supra note 144, at 169.

149. See text accompanying notes 136-39 supra.

150. Under Draft Annex II of the Proposed Nuclear Test Ban Treaty, after consultation and in the event of continued disagreement on whether an abuse has occurred, the complaining Party may request a replacement (Art. 7 (B)(3)), though the departure of the first member must not take place until the arrival of the replacement. See generally ZILE, SHARLET AND LOVE, supra note 12, at 108-110, 117-19.

151. Chinese tolerance of proprietary violations is limited. In a case recently reported to this author by an ABC news correspondent, an American businessman was expelled from the PRC for engaging in sexual relations with a Chinese prostitute. Prostitution is illegal under Article 5(8) of the 1957 Public Security Regulations, repromulgated in 1980. See "1957 Public Security Regulations Published," FBIS-CHI-80-039 (Feb. 26, 1980), at L8-15. Punishment of nationals under that provision was set at: 1) detention under 10 days; 2) a fine of not more than 20 yuan (approx. $8 at that time); or 3) a warning. See also "Pornographic Sound, Video Recordings Banned," FBIS-CHI-82-050 (March 15, 1982), at K15.

Moreover, the PRC has published incidents between foreign nationals in China such as the recent clash between African and Arab students attending the Chinese Medical College. One African student allegedly was killed. Though Shenyang public security and judicial departments were put in charge of investigating the incident, the two relevant embassies were informed and, presumably, the matter was further handled through diplomatic channels although this latter point was not subsequently confirmed by FBIS reports. See "Shenyang Investigates Fatal Brawl Among Foreign Students," FBIS-CHI-80-117 (June 16, 1980), at A2. See also "Education Ministry Statement," id.
152. See, e.g., "Chinese Court Pronounces Death Sentence on Counterrevolutionary Criminal," SCMP no. 3720 (June 17, 1966), at 1-3 cited in COHEN AND CHIU, supra note 4, at 995-99.

153. See note 19 supra (Chinese national, who had defected to the USSR and returned to the PRC for clandestine activities, executed by firing squad.)

154. A case in point is the recent AFP report of the expulsion of a Dutch newspaper correspondent for "activities incompatible with the status of a correspondent," official parlance for what are often subversive or clandestine activities. "AFP: PRC Expels Dutch Newspaper Correspondent," FBIS-CHI-81-096 (May 19, 1981), at G2. Ironically enough, the PRC press, which usually reports on such cases as an indication of the effectiveness of Chinese counterintelligence operations, did not publicize the case (AFP is Agence France Press, a foreign news service operating in East Asia). The AFP report came on the heels of the PRC's extreme disapproval with the Netherlands' sale of Dutch submarines to Taiwan. The implication, of course is that the journalist was removed partly as a retaliatory measure for the Netherlands' act. See also note 21 supra and accompanying text. The treatment of Ms. Wichser may have been indirectly linked to the growing resentment of the PRC towards U.S. arms sales to Taiwan, a topic that often found its way into the PRC press during 1982, prior to the issuance of the second US-PRC Joint Communique in August 1982.

155. A barrage of PRC press reports on U.S. arms sales to Taiwan and Chinese claims of regaining sovereignty over Hong Kong when the Treaty of Nanjing lapses in 1997 attest to the number of articles and the vitriolic language employed in order to gain mass support for PRC policies. See, e.g., "Ta Kung Pao Hits Shultz Statement on Taiwan," FBIS-CHI-82-116 (July 15, 1982), at W1; "U.S. Taiwan Lobby, Kuomintang 'Conspiracy' Hit," FBIS-CHI-82-138 (July 19, 1982), at B1; "Conservatives' Aim to Create 'Two Chinas' Scored," FBIS-CHI-82-185 (Sept. 23, 1982), at W1; "PRC's Sovereignty Over Hong Kong Reviewed," FBIS-CHI-82-183 (Sept. 21, 1982), at W1; "Wen Wei Po Comments on Sino-British Talks," FBIS-82-187 (Sept. 27, 1982), at W3.

156. See note 4, supra.

157. Inspectorate personnel of an international inspectorate team may be issued a UN laissez passer or a comparable certificate noting their official business. See ZILE, SHARLET AND LOVE, supra note 12, at 123-24.

158. This information was provided to the author by a cultural attaché of the Chinese Mission in New York on June 29, 1981.
159. Observers reported that the Chinese government had eased its policy on granting visas for Chinese nationals to travel abroad. See “Difficulties in Obtaining Exit Visas From PRC Noted,” FBIS-CHI-78-132 (July 25, 1978), at E17. Since 1978, however, the PRC has not, in practice, been as lenient as reported. One reason may be Chinese concern for defection. See Bernstein, Peking is Troubled by Rise in Defections to West, N.Y. Times, Dec. 5, 1982, at A22. See also "Regulations on Studying Abroad Approved," FBIS-CHI-82-147 (July 30, 1982), at K9.

Exit and reentry permits are authorized for foreigners by the Foreign Ministry and the Public Security bureau involved. See BERNSTEIN, supra note 83, at 94.

The purpose of requiring permits is simple: it allows for identification, numbering, and control of foreigners.


162. See Crew Members of Aircraft and Vessels, United States People's Republic of China Agreement, T.I.A.S. No. 9965 (Jan 7, 1981). The visas are provided on a reciprocal basis.

163. Zile, Sharlet and Love suggested the possibility of including an exhortatory provision in the arms control agreement patterned after Section 30 of the Agreement on the Privileges and Immunities of the IAEA, which calls for dealing with visa applications "as speedily as possible." ZILE, SHARLET AND LOVE, supra note 12, at 125.

164. An illustration of these border regulations was found in a recent Chinese publication. These particular regulations were set up for Yunnan province and designated, inter alia, that prior permission must be obtained before outsiders
could enter Yunnan (Art. ); that passes must be carried at all times (Art. 4); that all cars and people entering the province must submit to inspection (Art. 9); and that smuggling was prohibited (Art 8). See Yunnan jiaqiang bianjing guanli (Yunnan strengthens border management) reprinted in Zhonggong wenti ziliao (Reference Materials on Chinese Issues), No. 125 (March 8, 1982), at 11-13. See also "Xizang Issues Rules on Entry from Other Provinces," FBIS-CHI-81-218 (Nov. 12, 1981), at Q1.


165. Information was provided to the author in an interview with a PRC official at the Chinese Embassy in Washington, D.C., June 26, 1981. Note also that the PRC does not issue roundtrip tickets for transportation within the county. Return reservations must be made or reconfirmed at each departure point. See Frustrations of Expatriate Life in Peking, Asian Wall St. Journal, Jan. 18, 1982, at 11.

166. Jinchukou feiji jiyuan luke xinglijiancha zhanxing tongze [Provisional Regulations Concerning Inspection of Incoming and Outgoing Aircraft Passengers, Crew and Baggage] (May 24, 1951) [hereafter AIRCRAFT REGULATIONS] reprinted in Gongan faqui huibian, supra note 5, at 277. Translation by author.


169. For example, the VESSEL REGULATIONS, id., stipulate that foreign sailors must have a valid visa before entry into the PRC will be permitted (Art. 8).
170. See generally Zhonghua renmin gonghеguo quoj ing weisheng jianyi tiaoli (Chinese Border Regulations Regarding Health and Immunization) (March 6, 1951) Art. 2(3) reprinted in Gongan fagui huibian, supra note 5, at 297; RAILWAY REGULATIONS, supra note 167, Art. 2(2); VESSEL REGULATIONS, supra note 168, Art. 2(4).

The Aircraft Regulations, presumably the most applicable statute based on the likelihood of the use of aircraft as a means of transportation, also stipulate that inspection is conducted only once at the port of entry and the port of departure, "unless special circumstances exist" [emphasis added], Art. 3. Special circumstances are not further defined.


172. Such procedures technically apply to foreigners and their means of transportation. Nevertheless, domestic airline flights may be required to undergo inspection procedures in at least two instances: 1) where the flight destination includes areas where smuggling is rampant; and, 2) in special cases. AIRCRAFT REGULATIONS, supra note 166, Art. 9(1), 9(2). The "special cases" exception is one of the more appropriate examples of the type of sweeping contextual legal definitions that can play havoc with inspection operations. The entire nature of inspection operations is "special" and leads to an interesting supposition: since this "special case" escape clause applies to flights which would otherwise be exempt from inspection, query its analogous use by the Chinese to circumvent customs and inspection exemptions and immunities usually accorded diplomatic agents and their goods?

173. See AIRCRAFT REGULATIONS, supra note 166, Art. 6; RAILWAY REGULATIONS, supra note 167, Art. 5; VESSEL REGULATIONS, supra note 168, Art. 7.

174. See generally, U.S. DEPT. OF COMMERCE, DOING BUSINESS WITH CHINA 31 (Nov. 1980) [hereafter DOING BUSINESS WITH CHINA].


To help combat smuggling activity and "safeguard the socialist economic order," the PRC recently promulgated "Customs Measures to Reward Those Who Assist in the Investigation of Smuggling" in order to help expose major smuggling operations. Rewards include material incentives,
such as bonuses and prizes. See "Ta Kung Pao Publishes PRC Customs Measures," FBIS-CHI-79-214 (Nov. 2, 1979), at U4.

176. This statement was confirmed by Mr. Jeffrey Buczacki, China Division, Department of State, Washington, D.C. in an interview on June 26, 1981.


178. See ZILE, SHARLET AND LOVE, supra note 12, at 131. These authors cited an example of a train ride. Ordinarily, a courier who rides a train in which the pouch travels in a separate baggage car would be considered within "reasonable proximity" to the pouch. However, if the courier were to ride in a car which became decoupled from the baggage car, such "reasonable proximity" vanishes and customs officials may dispense with any courtesies and open the pouch.

179. A recent 1981 article stated that a Hong Kong businessman was fined 12000 yuan (approx. $7000 at that time) for buying cars from foreign embassies and trying to sell them in Beijing (Peking), in violation of a rule prohibiting foreigners from selling imported goods. See "Businessman's Illegal Activities," FBIS-CHI-81-009 (Jan. 14, 1981), at E2.


182. See DOING BUSINESS WITH CHINA, supra note 174, at 32.

183. The same suggestion was offered by other authors with respect to inspection operations in the Soviet Union. ZILE, SHARLET AND LOVE, supra note 12, at 184-85. Unquestionably, tight state control practiced by the Soviet and Chinese governments and similar concern for administrative problems in handling foreigners account for the similarity in suggestions regarding inspection operations in both countries.

184. See Diplomatic Convention, supra note 95, Art. 11; Consular Convention, supra note 108, Art. 30.
185. See DOING BUSINESS WITH CHINA, supra note 174, at 32.

186. The Chinese desire to isolate foreigners from prolonged contact with Chinese citizens was shown in a recent AFP report from China which stated that PRC authorities had restricted Chinese contacts with foreigners by stipulating, inter alia, that Chinese could no longer visit a foreigner's living quarters or eat with him in restaurants without specific permission from their work units. Ostensibly, at least, the restrictions were declared for the purpose of "block[ing] up the canal of security leaks" to foreigners in the PRC. See "AFP: Restrictions Placed on Chinese Contacts with Foreigners," FBIS-CI-79-105 (May 30, 1979), at L2. See also "Shandong Meeting Discusses (sic) Foreign Students," FBIS-CI-81-238 (Dec. 11, 1981), at K9 (admonishing Chinese to be friendly but circumspect); "Fujian Bans Gifts in Dealing With Foreign Firms," FBIS-CI-82-033 (Feb. 18, 1982), at O2 (banning Chinese from accepting foreign gifts, which ironically and probably unintentionally, makes the PRC one of the few Asian countries enforcing provisions similar to those of the U.S. Foreign Corrupt Practices Act, Pub. L. No. 95-213, Sections 102, 103, 104, 91 Stat. 1494 (codified at 15 U.S.C. Sections 78a, 78dd-1, 78dd-2, 78ff (Supp. I 1977))). See generally "State Council Announces Decision on Tourism," FBIS-CI-81-202 (Oct. 20, 1981), at K9 (calling on Chinese to display to tourists the superiority of the socialist system).

187. ZILE, SHARLET AND LOVE, supra note 12, at 184.


190. Telecommunications services remain somewhat limited in light of the fact that 1981 reports indicate that the PRC operates only 3 standard international communications ground stations. See U.S. DEP'T OF STATE BACKGROUND NOTES CHINA 16 (June 1981). However, the PRC allegedly announced that it will launch its first communications satellite in 1983 or 1984. See "AFP Reports Space Program Outlined at Conference," FBIS-CI-82-153 (Aug. 9, 1982), at K4. As a result of the development of Chinese satellite communications, the PRC has also taken a stronger stand on the issue of geostationary orbit. See "Delegate to UN Meeting Enunciates Space Policy," FBIS-CI-82-156 (Aug. 12, 1982), at Al.

191. The Ministry of Radio and Television was established to replace the Central Broadcasting Administration. The Ministry of Electronics Industry was established as the organ which merged the Fourth Ministry of Machine Building, the


193. See also Consular Convention, supra note 108, Art. 35(1).

194. See DOING BUSINESS WITH CHINA, supra note 174, at 34.

195. The absence of a US-PRC hotline, arguably the only potential hot line that might exist between the PRC and another major power, was confirmed by a State Department source in a phone interview on June 25, 1981.

196. See DOING BUSINESS WITH CHINA, supra note 174, at 34.

197. Id.

198. Id.


200. PRC accession with a reservation was deposited on November 16, 1972. PRC AGREEMENTS 1966-80, supra note 95, at 213. For the Convention, see 18 U.S.T. 575, T.I.A.S. No. 6257 (1967).


202. See Zhongyang remian zhengfu gonganbu bugao [Bulletin of the Central People's Government's Division of Public Safety] (March 12, 1950) reprinted in Gongan fagui huibian, supra note 5, at 258. Translation by author. See also "Beijing Wanbao: Private Radio Station Dismantled," FBIS-CHI-81-115 (June 16, 1981), at K4. Private radio transmitters were banned ostensibly because of their potential for interfering with PRC sovereignty and because of their propaganda value. For example, a Sept. 16, 1969 London Evening News article reported the existence of a clandestine anti-Mao radio station operating the the PRC. See KIS-SINGER, supra note 33, at 185 (1979).
203. See Regulations Governing the Use of Private Radio Transmitters, supra note 202, Art. 1. Article 1 also stipulates that violators will be severely punished. Article 2 called for the dismantling of any previously owned foreign transmitters within 7 days of the promulgation of the rule. Since the rule was promulgated in 1950, no foreign transmitters have been permitted in the PRC and it is likely that Article 2 is currently obsolete.

204. Promulgated by the Ministry of Communications of the PRC, March 14, 1957. Reprinted in COHEN AND CHIU, supra note 4, at 559-61. In Chinese the Regulations are known as Zhonghua renmin gongheguo dui waiguojii chuanbo jinchu guanli ban fa and may be found in Gongan faqu huibian, supra note 5, at 287 [hereafter PORT REGULATIONS]. Translation by author.


206. See PORT REGULATIONS, supra note 204, Art. 7(2). See also RIVER REGULATIONS, supra note 205, Art. 8(2).


209. The interview was conducted by the author on June 26, 1981.

210. Both the Diplomatic Convention (Art. 27), supra note 95, and the Consular Convention (Art. 35), supra note 108, provide for the inviolability of official correspondence.


One accepted practice is the restriction placed on the freedom of movement of foreign attaches in Beijing (Peking). According to one PRC official at the Chinese Embassy in Washington, D.C. (interview conducted on June 26, 1981), there are no hard and fast limits on travel, but foreign attaches are generally accorded the right of free movement in a circumscribed area of up to 70 km. from the embassies. However, the maximum limit depends on what areas are encompassed. For example, within Beijing, unrestricted travel may extend 70 km. north-eastward but only 15 kms. southward. But see BERNSTEIN, supra note 83, at 94 (noting a 15 mile radius around the whole of Beijing beyond which foreigners could not go). Restricted areas are located south of Beijing.

The 70 km. northeastward limit, which is significantly greater than 40 km. restriction generally imposed by the Soviet Union on foreign diplomats, exists because that part of the Great Wall is located rather far from Beijing and is open to foreigners without special permission.

214. See, e.g., "Xisha Quandao Designed Restricted Military Zone," FBIS-CHI-82-225 (Nov. 22, 1982), at W5 (noting that the Paracel Islands and 12-mile territorial waters surrounding them were declared a military zone [no civilian access]); "USSR-PRC Rift Said to Hold Apart Two Mongolias," FBIS-CHI-82-1212 (Nov. 2, 1982) at C2 (reporting, interalia, that the 100-mile border area between Inner and Outer Mongolia is a military zone). Article 6 of the FOREIGN NATIONAL'S ACT, supra note 4, states that residence and travel of foreign nationals in important defense and military localities and in restricted areas shall be prohibited.

215. This information was provided to the author by Mr. Jerry Buczacki of the U.S. State Department, China Division, in a telephone interview on June 26, 1981.


217. See e.g., "PRC Will Now Receive Individual Tourists," FBIS-CHI-82-199 (Oct. 14, 1982), at K9; U.S. DEPT. OF STATE, CHINA-BACKGROUND NOTES 18 (June 1981). See also "Formalities Simplified For Foreign Tourists," FBIS-CHI-82-205 (Oct. 22, 1982), at K13. Prior to these articles, visas were usually granted only to groups.
218. Anytime a foreigner wishes to leave from and return to the PRC, he must first apply to the Foreign Ministry, then to the Public Security Bureau, for an exit permit and a reentry permit. See Bernstein, supra note 83, at 94. See id. See also "Dazu Grottoes in Sichuan Opened to Visitors," FBIS-CHI-81-111 (June 10, 1981), at Q2. "Plans Made to Open More Areas to Foreign Tourists," FBIS-CHI-78-114 (June 13, 1978), at E11; "AFP: Rules on Foreign Students' Travel Relaxed," FBIS-CHI-78-020 (Jan. 30, 1978), at E16. Cf., Foreign Scholars and Students in China, Beijing Review, No. 11 (March 17, 1980), at 9. But see "Regulations on Studying Abroad Approved," FBIS-CHI-82-147 (July 30, 1982), at K9; "State Council Announces Decision on Tourism," FBIS-CHI-81-202 (Oct. 21, 1981), at K9; "Fujian Ribao on Abuses in Securing Exit Permits," FBIS-CHI-82-039 (Feb. 26, 1982), at 03 (announcing a Fujian Prohibition on CCP members securing exit permits for their families through guanxi, or "pull"). The types of exit permits concerned were not explained, although they are presumably for internal transit only.

219. This information was supplied to the author by an official at the U.S. State Department in a phone interview on June 25, 1981. The Second Ministry of Machine Building was in charge of nuclear development in the PRC. It is now the Ministry of Nuclear Industry. See "NPC Approves Government Appointments, Restructure," FBIS-CHI-82-086 (May 4, 1982), at K1.

Machine Building Ministries are common Soviet and Chinese euphemisms for high-technology and weapons facilities. For example, Zhang Jun, former Minister of the Seventh Ministry of Machine Building, was made the Minister of Space Industry in the 1982 ministerial reorganization that abolished the Seventh Ministry. Presumably, the former Seventh Ministry was engaged in high-technology work. See "NPC Approves Government Appointments, Restructure," FBIS-CHI-82-086 (May 4, 1982), at K1.


221. Chinese ticket offices frequently maintain that reservations are booked on a particular airline flight or train, when in reality there are vacancies. This is to ensure the availability of seats for important organization or officials who might book last minute reservations. Apparently, these offices would rather risk the loss of ticket revenue than run the risk of unavailability of seats. See Frustration of Expatriate Life in Peking, The Asian Wall St. Journal, Jan. 18, 1982, p.11.

Travel in the PRC is not an uncomplicated process. An inspectorate faces numerous obstacles, in addition to bogus plane reservations cited above: round trip bookings are apparently non-existent (reconfirmation must be made at
each destination) and airline flights are frequently cancelled or disallowed because of weather conditions. Id.

222. See note 4, supra. This Act replaced the August 10, 1954 Provisional Rules Governing Travel of Foreigners (Waiguogiaomin luxing zhanxing banfa), reprinted in Gongan faqui huibian, supra note 5, at 265. The latter rules were considerably more restrictive and specific than the ones that superseded them. Chinese authorities may have sought more sweeping statutory leeway to address the problems and concerns generated by the presence of foreign nationals in the PRC; hence, the revised rules. Translation of relevant provisions were made by the author.

223. A perfect example of legislating by administrative fiat recently occurred in the PRC. On Oct. 22, 1982, the Ministry of Public Security announced that foreign travellers may now travel to any of 29 designated municipalities without a travel certificate or advance notification. The Foreign National's Act has not been amended to reflect these changes. See "Formalities Simplified for Foreign Tourists," FBIS-CHI-82-205 (Oct. 22, 1982), at K13.

224. Such checks are probably limited to document and baggage checks, though the language could be used to justify more intrusive checks.

225. Authorization for deviations in travel plans is required by Article 15. A proper or justifiable reason presumably subsumes reasons of accident or illness. However, just what type of reason would constitute a proper justification for a public security organ, in the absence of specific incidents, would be mere conjecture.

226. To this author, it appears as if the force of the Foreign National's Act on private residents has been virtually eliminated by subsequent PRC pronouncements. In 1979, for example, foreign press services reported that Chinese contacts with foreigners were being closely monitored by work units and public security organs, or, in some instances, were being altogether prohibited. See notes 211 and 212 supra.

In the Soviet Union, it is well-known that prolonged or unauthorized contact with foreigners may result in administrative, political, or criminal sanctions, though whether such punitive actions exist under PRC jurisdiction is not as widely known. These circulated reports, supra notes 211 and 212, however, have indicated that Chinese responses paralleled Soviet ones.

227. See the August 10, 1954 Provisional Rules Governing Travel of Foreigners, supra note 222, Art. 6.

228. Id., Art. 8.
229. Article 17 states:

Local public security organs shall, according to the gravity of the matters involved, give foreign nationals who violate the provisions of this act punishment in the form of warning, find, detention, orders to leave the country within a time limit, expulsion, and so forth or they shall pursue these violations for criminal responsibility "according to law" (genjufalu).

Cases of violation of the provisions of this act involving foreign nationals who enjoy diplomatic immunity shall be handled through diplomatic channels. (emphasis added).


232. See note 168 supra, Art. 7.

233. See note 166 supra, Art. 2(1).

234. Recently, the Chinese eased foreign national travel restrictions. See "Formalities Simplified for Foreign Tourists," FBIS-CHI-82-205 (Oct. 22, 1982), at K13. Within this article, it was also reported that "foreign travellers may use their own cars only on the highway between Beijing and Tianjin." Id., at K14. It is not clear from this article which classes of foreign traveller[s] may have his own car in the PRC, although it is known that certain diplomatic personnel may do so. But cf. "Beijing Circular Bans Misuse of State Vehicles." FBIS-CHI-145 (July 29, 1981), at R1.

235. This information was provided to the author by a cultural attaché of the Chinese Embassy in Washington, D.C., on June
26, 1981. Note that this conflicts with standard international practice regarding diplomatic envoys. The host country will usually issue a domestic license upon presentation of a valid license from the receiving state.

Article 13 of the 1957 Public Security Regulations calls for "detention of less than 10 days, a fine of under 20 yuan, or a warning" to be issued to "anyone" who, inter alia, drives a defective motor vehicle, speeds, violates traffic signs, or drives a motor vehicle without a valid driver's license. See "1957 Public Security Regulations Published," FBIS-CHI-80-039 (Feb. 26, 1980), at L8.

Note that many foreigners, because of the abundance of bicycles and bicycle accidents and the lack of insurance law or defined principles of tort liability, prefer to use PRC-supplied transportation.

236. This information was supplied to the author by a cultural attaché of the Chinese Embassy in Washington D.C., on June 26, 1981.

237. Id. Note that the Chinese have set up a special agency, the People's Insurance Company of China, to help handle insurance arrangements pursuant to, inter alia, joint venture contracts. The establishment of this agency perhaps portends the eventual promulgation of automobile insurance regulations.

238. See note 236, supra.

239. Id.

240. Id.


242. Id., Art. 20.


244. In 1955, the PRC promulgated numerous decrees on regulations governing urban traffic. See TAO-TAI HSIA, GUIDE TO SELECTED LEGAL SOURCES OF MAINLAND CHINA 143-44, 224 (1967).


246. For example, the noise regulations cited id., designate certain areas where horns may not be blown and generally limit the maximum amount of horn noise which may emanate
from a vehicle. Violations are punishable, though punish­ment is usually meted out in the form of a fine. Inspec­torate members are vulnerable to repeated harassment for violations of such restrictions.

247. See Diplomatic Convention, supra note 95, Arts. 29-31; Consular Convention, supra note 108, Arts. 41-43; UN Convention on Privileges, supra note 115, Secs. 4, 13, 19.

248. Diplomatic Convention, supra note 95, Art. 26; Consular Convention, supra note 108, Art. 34.

249. For example, Article 26 of the Diplomatic Convention, supra note 95, stipulates that freedom of movement shall be guaranteed to diplomatic personnel "subject to the laws and regulations [of the receiving state] concerning zones, entry into which is prohibited or regulated for reasons of national security." The Consular Convention, supra note 108, at Article 34 uses identical language.


251. PRC Declaration Regarding Territorial Waters, September 4, 1958 cited in 8 Chung-hua Jen-min Kung-ho-Kuo Fa-kuei Hui-pien [Collection of Laws and Regulations of the PRC], at 112-13. See also GREENFIELD, supra note 250, at 188.

Chinese writer Hsu Tun-chang has remarked:

In view of the present highly developed air traffic, it is impermissible for any country to carry out within its territory or in areas under its ef­fective jurisdiction any activities that encroach on the territorial air of other countries or are detrimental to their aviation or international security. See COHEN AND CHIU, supra note 4, at 593.

252. See COHEN AND CHIU, supra note 4, at 596-97. The PRC re­cently supplemented these regulations with its decision to implement security checks at airports in order to safeguard aircraft and passengers." Airport Security Checks to be Effective 1 April," FBIS-CHI-81-061 (March 31, 1981), at L20. See also "Further Reports on Guangdong Plane Crash: Safety Measures Strengthened (announcing new, but un­published, safety regulations after a crash that killed 104 people. The crash occurred under mysterious circumstances, with rumors that a would-be hijacker blew up the aircraft. The safety regulations, therefore, may have included tighter security checks).
253. The Civil Aviation Administration of China is actually known by the title the General Administration of Civil Aviation [GACA], which answers to the State Council and has functions similar to those of the FAA and CAB in the United States. It also performs special aviation tasks connected with commercial aviation. See Young, The Dragon and the Eagle -- A Study of U.S.-China Relations in Civil Air Transport, OCCASIONAL PAPERS/REPRINTS SERIES IN COTEMP. ASIAN STUD., No. 3-1979(24), at 58 n.141.

After the recent reorganization of the State Council, the GACA did not appear as a separate department under the executive organ and may have been partly subsumed by the Ministry of Aviation Industry, although this is not entirely clear. Cf., American and 20 Others Die in Chinese Air Crash, N. Y. Times, Dec. 26, 1982, at 13 (Around the world).

254. GREENFIELD, supra note 250, at 191. KIM, supra note 95, at 383-84.

255. KIM, supra note 95, at 385. Chinese ratification did not include any reservations. Others authors observed that

With minor exceptions, then, PRC practice does not diverge from Chicago Convention principles. In many ways the PRC duplicates generally accepted international rules in its bilateral agreements. The deviations are not unusual. See King and Rossevelt, Civil Aviation Agreements of the People's Republic of China, 14 HARVARD INTL. L. J. 316, 322 (1973).

256. The Chicago Convention, supra note 250, stipulates, inter alia, that

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in international air services, shall have the right, subject to the observance of the terms of the convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights. (Art. 5)

The strength of this right of non-scheduled flight is energized by subsequent provisions. The Chicago Convention, Article 9, also provides that:

a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit
uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise involved. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation.

b) Each contracting State, reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other states.

c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.

Article 20 requires states to ensure that all aircraft have proper identification markings. Article 29 obliges states to ensure that proper documentation -- including radio and crew licenses passenger and cargo manifests -- be carried on board. Article 16 explicitly grants the receiving state the right to search foreign aircraft upon landing and departure.

257. King and Roosevelt, supra note 255, at 319-22, 322-38. See also COHEN AND CHIU, supra note 4, at 597-603; GREENFIELD, supra note 250, at 190-93.

258. See, e.g., "AFP: PRC Declares Hainan 'Danger Zone' for Planes," FBIS-CHI-79-162 (Aug. 20, 1979), at L13 (PRC notification was communicated to foreign embassies without explanation. Speculation as to the reason for the restriction ranged from Chinese military exercises to satellite recovery); "PRC to Allow Foreign Airlines to Use New Air Route," FBIS-CHI-79-140 (July 19, 1979), at L1 (The PRC opened an air route over Guangzhou, Kunming and Lincang and designated Guangzhou airport as an emergency landing site for foreign airlines); "AFP: PRC Easing Restrictions on the Hong Kong-Bangkok Air Route," FBIS-CHI-80-107 (June 2, 1980), at El. (As of May 15, 1980, the PRC eased an "air-space ban" it had imposed on a Hong Kong-Bangkok air corridor.)
259. King and Roosevelt, supra note 255, at 322. The third, fourth and fifth freedoms are known as "commercial freedoms." They deal with the transportation of passengers and freight. The fifth freedom -- unrestricted carriage of passengers and freight from one foreign country to another -- is particularly offensive to Chinese sovereignty claims. See King and Roosevelt, supra note 255, at 320. The PRC also has not complied with the Chicago Convention on the publication of civil aviation statistics (Art. 67). GREENFIELD, supra note 250, at 193.


262. Articles 100 and 103 (death penalty for heinous counter-revolutionary crimes) were involved in the recent publicized hijacking attempt in Shanghai. See "AFP Reports 11 Oct. Failed Hijack Attempt," FBIS-CHI-82-197 (Oct. 12, 1982), at K8.

263. ZILE, SHARLET AND LOVE, supra note 12, at 158 (discussing previous US-USSR proposals on exchanges of information on civil aviation).


265. For an example of this pervasive theme in Chinese jurisdiction over territorial waters and surrounding land areas, see, e.g., China's Indisputable Sovereignty Over Xisha and Nansha Islands, Beijing Review, No. 6 (Feb. 11, 1980), at 4.

266. See COHEN AND CHIU, supra note 4, at 483-89, 474-78. See also Cheng, The Law of the Sea in LENG AND CHIU, supra note 101 at 79-114; "Xisha Quandao Designated Restricted Military Zone," FBIS-CHI-82-225 (Nov. 22, 1982), at W5.

267. The rules were promulgated by the State Council on June 28, 1964. An English translation is found in COHEN AND CHIU, supra note 4, at 535-38 [hereafter QIONGZHOU STRAIT REGULATIONS] Waiquo quanli fei junyung chuanbo tongguo Qiongzhou haixia guanli quize, reprinted in Gongan faqui huibian, supra note 5, at 290.
268. See PORT REGULATIONS, supra note 204. The recent promulgation by the PRC State Council of regulations governing foreign ships includes, inter alia, chapters on entering and leaving a port, navigation, carriage of dangerous goods and punishment for violations. See "State Council Approves Regulation on Foreign Ships," FBIS-CHI-79-188 (Sept. 26, 1979), at L1. However, specific provisions were not published, nor was any statement made to the effect that previous port regulations were thereby abrogated. It is presumed, therefore, that the Port Regulations are still valid.

269. See RIVER REGULATIONS, supra note 205, at 25.

270. See GREENFIELD, supra note 250, at 25.

271. Among those ports open to foreign vessels are Shanghai, Canton, Chankiang, Tientsin, Tsingtao, Chinguantao and Dairen. Id., at 24. More recently, with the increase in PRC foreign trade relations, the Chinese have opened additional ports to foreign vessels, including ports along the Yangtse and the port of Swatow. See, e.g., "Eight Chiang Jiang Ports Opened to Foreign Trade," FBIS-CHI-80-077 (April 21, 1980), at L2; "Wuhu Port Opens to Foreign Trade," FBIS-CHI-80-091 (May 8, 1980), at A2; "PRC Port of Swatow to be Designated International Zone," FBIS-CHI-79-164 (Aug. 22, 1979), at A5.

272. RIVER REGULATIONS, supra note 205, Art. 4.

273. Id., Art. 5; PORT REGULATIONS, supra note 204, Art. 8. Cf., QIONGZHOU STRAIT REGULATIONS, supra note 267, Art. 4.

274. PORT REGULATIONS, supra note 204, Art. 4, 6.

275. Id., Art. 6. See also VESSEL REGULATIONS, supra note 168.

276. GREENFIELD, supra note 250, at 25 citing the S.S. Zagorsk Incident. See also COHEN AND CHIU, supra note 4, at 571-72.

277. This is the wording of Article 13 of the RIVER REGULATIONS, supra note 205. THE PORT REGULATIONS, supra note 204, however, are somewhat more definitive. "Maritime problems" along the Chinese coast must be reported within 48 hours. "Problems" occurring in port must be immediately reported (Art. 12).

278. QIONGZHOU STRAIT REGULATIONS, supra note 267, Art. 10; PORT REGULATIONS, supra note 204, Art. 7(2); RIVER REGULATIONS, supra note 205, Art. 8(2). Apparently, the PRC also recognized the common international practice of granting "safe harbor" to vessels in distress. See "China Protests Vietnamese Slander of Ship's Encroachment," FBIS-CHI-78-178 (Sept. 13, 1978), at A12 (PRC Embassy protested the forcible confiscation of the possessions of PRC fishing boats which had docked at SRV ports during a typhoon.)
280. QIONGZHOU STRAIT REGULATIONS, supra note 267, Art. 11; PORT REGULATIONS, supra note 204, Art. 10; RIVER REGULATIONS, supra note 205, Art. 11.

281. QIONGZHOU STRAIT REGULATIONS, supra note 267, Art. 12.

282. Id.; PORT REGULATIONS, supra note 204, Art. 13; RIVER REGULATIONS, supra note 205, Art. 14.

283. PORT REGULATIONS, supra note 204, Art. 13(1); RIVER REGULATIONS, supra note 205, Art. 14(1).

284. GREENFIELD, supra note 250, at 25, reported that the 1957 Port Regulations precluded seamen from coming ashore, except where necessary and only with prior permission. The recent US-PRC Agreement on Visas for Crew Members of Aircraft and Vessels, entered into force January 7, 1981, T.I.A.S. No. 9965, indicates the change in the Chinese position. The latter agreement granted, gratis, to crew members of airlines and vessels two-year multiple entry-and-exit visas (on a reciprocal basis).

285. See GREENFIELD, supra note 250, at 26-30; COHEN AND CHIU, supra note 4, at 528-87.

286. Diplomatic Convention, supra note 95, Arts. 24, 27(2); Consular Convention, supra note 108, Arts. 33, 35(2).

287. Article 36(2) reads:

The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 [articles for official or personal use of diplomatic agents or dependents], or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving state.

288. See note 115, supra.

289. Pursuant to Section 13(f), representatives of members are accorded the "same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions. . . . Section 21 is narrower in scope, stating that only

the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
Note also that, pursuant to the Annexes acceded to by the PRC, experts of the various specialized agencies (as opposed to representatives of members or officials) are also accorded similar privileges and immunities. But cf. Section 23 which reads:

Each specialized agency shall cooperate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned in this Article.

290. But see Section 5 of the UN Convention on Privileges, supra note 115, which stipulates that

The property and assets of the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. (emphasis added).

Where the inspectorate is an international organization, it would appear that both the inanimate cargo and the means of transporting it---assuring inspectorate ownership (note the issues arising out of "ownership")---would be immunized.

291. ZILE, SHARLET AND LOVE, supra note 12, at 151.

292. PRC CRIMINAL PROCEDURE CODE, supra note 16, Arts. 79, 84. See also "Airport Security Checks to be Effective 1 April," FBIS-CHI-81-061 (March 31, 1981), at L20 (weapons, explosives, radioactive materials and poisonous chemicals are prohibited on board aircraft and those endangering public safety will be turned over to local public security bureaus); "Guangzhou Issues Notice on Personal Weapons," FBIS-CHI-81-112 (June 11, 1981), at PI (public security organs will seize personal lethal weapons).

293. See notes 177 and 178, supra.

294. Within the conventions cited, inviolability of the pouch extends only to "diplomatic documents or articles intended for official use," which circumscribes its applicability to inspectorate cargo. See Diplomatic Convention, supra note 95, Art. 27(4); Consular Convention, supra note 108, Art. 35(4). The Consular Convention's provision for inviolability is not applicable, however, when there is "serious reason to believe the bag contains something other than the correspondence, documents or articles referred to . . . ." (Art. 35(3)). Cf. Diplomatic Convention, Art. 27(4).

295. See ZILE, SHARLET AND LOVE, supra note 12, at 152.
PART III: LEGAL PROBLEMS DIRECTLY CONFRONTING AN ARMS INSPECTORATE DURING THE COURSE OF VERIFICATION PROCEDURES

Chapter 6. COLLECTION OF INFORMATION

A. Gathering Information in Light of Chinese Secrecy Laws

From a practical standpoint, Chinese secrecy laws and regulations probably cover almost all items in the PRC which may be subject to inspection. Circumvention of these rules will be a formidable task for inspectorate personnel and one on which the effectiveness of verification procedures may rest. Chinese secrecy laws are pervasive; their coverage includes party documents, military information and hardware, and state secrets. Moreover, secrecy laws are generally unavailable in specific detail, making a thorough examination of their effect on the collection of information in the PRC rather difficult. Nevertheless, some regulations provide a reference point for determining the extent to which revision of Chinese secrecy laws is necessary or the scope of privileges and immunities that inspectorate members would require in order to avoid conflict with the relevant laws.

In essence, Chinese secrecy laws are embodied in a single document -- the 1951 Provisional Regulations on Guarding State Secrets [hereafter State Secrets Regulations], which was republished in 1980. The Regulations encompass broad categories of information and are designed to "prevent domestic and foreign spies, counterrevolutionaries and saboteurs from gathering intelligence, stealing and selling state secrets and [to] prevent all kinds of personnel from leaking or losing state secrets" (Art. 1). Article 2 provides a long list of what are referred to as state secrets (guojia jimi), though, in actuality, the listing is an amalgam of military, foreign diplomacy, economic and public security secrets. The listing is not further classified for purposes of handling; that is, there is no official comment on whether secret information falls into different security rankings -- such as "top secret," "classified," "for official use," and the like -- which would presumably be used to characterize the nature of the information as well as to determine the proper sanction to be imposed for disclosing information of different classifications. The Chinese employ the term guojia jimi (state secrets) to denote various forms of classified government information. Classification levels do exist, however, although it appears that they are not publicly acknowledged.

According to Article 2, the following are classified as state secrets:

(1) All national defense and military plans and construction measures;

(2) Secret information on the authorized strength, destination, actual strength, equipment, stationing,
movement and deployment of all armed forces units and on logistics, ordnance, construction and so forth;

(3) Foreign affairs secrets;

(4) Public security secrets;

(5) State financial plan, state budget estimate, budget and final accounts and other financial secrets.

(6) State banking, trade and customs' plans and banking, trade and customs' affairs secrets;

(7) Secret information about railways, transport, postal and telecommunications services;

(8) Secret information on the country's various economic construction plans and undertakings;

(9) Secret information on natural resource surveying, geological prospecting, meteorological observation and reporting, geographical surveying and mapping and so forth;

(10) Scientific inventions and discoveries, cultural, educational, public health and medical secrets;

(11) Secret information on legislative, judicial, procuratorial and control affairs;

(12) Secret information on nationalities and Overseas Chinese affairs;

(13) Internal and personnel secrets;

(14) Files, cipher codes, official seals and all documents, telegrams, letters, data, statistics, figures, charts, books and periodicals concerning state secrets;

(15) All organs, establishments, warehouses, places and so forth that have something to do with state secrets;

(16) All state affairs which have not yet been decided upon or which have been decided upon but have not yet been made public; and

(17) All other state affairs which should be kept secret.

Documents pertaining to "any important meeting" may not be duplicated or kept in personal files without specific approval (Art. 8). Individuals are not permitted to take notes during meetings, nor reveal what happened during them to outsiders, including family members. Moreover, the publicizing of conferences is entrusted to those who have received special training in keeping
secrets, and such reports are to be strictly controlled. Media services may not publicize or broadcast information touching on state secrets (Art. 11).

Though this list is hardly a circumscribed one, it has been augmented by separate military regulations and ad hoc miscellaneous restrictions which may prevent the publication of such items as industrial statistical evidence or prevent access to advanced technological inventions. Foreigners are also effectively denied occasional access to non-classified material published in the PRC. A noteworthy example is the paucity of Chinese legal materials that are systematically mailed abroad for foreign reference.

The PRC also engages in various forms of disinformation: economic statistics are often exaggerated and published reports of criminal cases depict only the successes of public security agencies in apprehending criminals or preventing criminal activity. Undoubtedly, these statistics also serve domestic political needs and ideological purposes.

The secrecy syndrome is pervasive in Chinese society, as shown by the existence of separate contemporaneous regulations governing the preservation and dissemination of Communist Party secrets. However, as some authors have indicated, "because of the peculiar ties between the state and the Party, the two theoretically distinct systems of secrecy may be treated as one [under Party control] for many practical purposes."

There is not much publicized information outside China about the administration of secrecy laws in the PRC, although almost all PRC government employees and many ordinary Chinese know of the existence of operative Chinese Communist Party (CCP) organs which deal with internal security. Apparently, there are two CCP organs: the Confidential Communication Bureau (jiaoyu) and the General Office (bangongting) which cooperate to administer state secrets and their affairs. The former is mainly responsible for the dissemination, control, and retrieval of state secrets materials, while the latter possesses decision-making and administration responsibility.

There are also few data on the nature of any system of security clearance for Chinese with access to classified information, although access to secret information depends, at least in part, on government rank, profession, and loyalty.

Despite the lack of any apparent, authorized power to enforce Chinese secrecy laws, public security organs maintain special operational sections in charge of observation, surveillance and counter-espionage activity.

Actually, an elaborate secret police system in the PRC is superfluous. There are several organizations which most likely participate in intelligence activities, such as military, communications and intelligence departments within the Ministry of Foreign Affairs, the Ministry of Foreign Trade, the Ministry of
Public Security and the Ministry of National Defense. PLA forces actively direct and control border frontier security. Moreover, the Chinese have worked wonders with mass organizations: by virtue of such regulations as the Provisional Regulations Governing the Organization of Public Security Committees17 special mass organizations, such as residents' committees (jumin weiyuanhui) and the militia, have been established to assist public security organs in "preventing traitors, spies, thieves and arsonists and in eliminating counter-revolutionaries in order to safeguard state and public security."18 They are expected to "keep watch on, inform against ... report on ... arrest and turn in"19 counterrevolutionaries and criminals. All such intelligence and quasi-intelligence organizations eventually answer to Party leadership.

Faced with numerous intelligence-gathering groups with overlapping functions, arms inspectorate personnel should probably be prepared for a significant degree of surveillance during the course of their official operations and in their personal lives. The extent to which the various committees, agencies and organizations participate in monitoring inspectorate activities will likely depend on how much sensitive information will be made available to inspectorate personnel and how strong the Chinese commitment to effective arms inspection policy is. The Soviet Union provides an interesting example of potential conflict between foreigners and intelligence organizations. Presumably, official inspectorate functions, like official foreign diplomatic functions in the Soviet Union, are monitored by official Soviet military, communications and KGB representatives, often using sophisticated equipment. Additionally, the KGB engages in more subtle forms of intelligence-gathering operations, including the use of Soviet "plants" who are directed to monitor the more personal social activities of diplomatic agents, often entrapping them into compromising situations which the Soviet eventually use to discredit the agent and possibly the organization or country he represents.20

The potentially analogous response of Chinese intelligence organizations toward inspectorate personnel should not be anticipated. First, Chinese technology may not yet permit the kind of close electronic surveillance of foreign operations usually associated with the KGB and the CIA. Second, PRC intelligence operations do not appear to be vested in a single agency with overall control of security activities. The number of Chinese intelligence agencies involved in inspectorate operations will be based on temporal factors and perceptions of intrusiveness: inspectorate personnel can expect to be monitored more closely during the incipiency of arms inspection verification procedures and at time when the scope of operations extends to the more clandestine features of Chinese military and economic life.

Nevertheless, absent a pervasive paranoia of foreign-intelligence operations in the PRC, it is unlikely that the PRC would mobilize the full array of surveillance mechanisms to monitor inspectorate personnel. Public security committees, for example, are mainly comprised of ordinary Chinese citizens who
would probably not have access to inspectorate installations and inspection sites. The Chinese authorities themselves would probably wish to limit the involvement of domestic security agents in order to permit the expeditious and centralized handling of intelligence information on inspectorate personnel and to avoid overlapping and continual surveillance that could make the entire range of inspectorate operations dysfunctional.

The value of civilian security forces, if any, to the PRC exists in their potential use to frustrate the aims of inspection operations or to hinder verification procedures -- goals the Chinese are unlikely to strive for if they are truly committed to an arms control arrangement.

Chinese secrecy legislation is very much the product of PRC concern for the preservation and protection of its sovereignty. Chinese protectiveness is conveyed in the PRC Criminal Code, which provides for very broadly defined acts of counterrevolution, the category of Chinese criminal activity which subsumes crimes against the state. Pursuant to article 97:

Those committing espionage or supporting the enemy in the following manner will be sentenced to imprisonment of no less than 10 years or life imprisonment; in less serious cases, they will be sentenced to fixed-term imprisonment of not less than 5 and not more than 10 years:

1. Stealing, spying and supplying information to the enemy;
2. Supplying arms or other military materials to the enemy; and
3. Joining a secret service or espionage organization or receiving orders from the enemy.

This antiespionage provision is supplemented by Article 91:

Offenders colluding with foreign countries and conspiring to jeopardize the sovereignty, territorial integrity and security of the motherland will be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years.

Terms such as "espionage" and "colluding with foreign countries" are never adequately defined elsewhere in the PRC Criminal Code. Consequently, they are subject to the unilateral determination of the PRC, a fact hardly advantageous to inspectorate operations. Nevertheless, there are factors which tend to mitigate the severity and applicability of these provisions on inspection activities.

First, Article 91 addresses offenders who collude with foreign countries; this provision would cover an adversary arms inspectorate but may not be applicable to an arms inspectorate
with the status of an international organization. Since the PRC has gone on record as recognizing that "various kinds of international organizations . . . are a form of international cooperation," an international inspectorate organization would not, by definition, be considered to be a foreign country or an affiliate of a foreign country. In fact, Chinese participation in such an international body would arguably preclude any consideration that the inspectorate is even a foreign entity.

The second part of Article 91 may be argued away somewhat more subtly. Conceivably, conspiring to threaten the motherland may be regarded as a crime regardless of the status of the inspectorate. But, reading the second clause in pari materia with the first and according legal force to the conjunctive "and," it would appear that the offender is guilty of a crime against the state only to the extent he both colludes with a foreign country and conspires to jeopardize the PRC. In effect, this confines the applicability of Article 91 to agents of foreign states and renders the provision nugatory when the arms control arrangement calls for the collection of information on behalf of a non-governmental international inspectorate.

The provisions of Article 97 are also somewhat narrowly formulated, for they are addressed to the transfer of certain types of information to the enemy (diren). By signing an arms control agreement, the Chinese do not necessarily relinquish their right to perceive other parties to the agreement as enemies in the ideological sense of the word, but it is hardly likely that the PRC would perceive the official acts of inspectors -- pursuant to an agreement voluntarily executed by the Chinese government -- to be clandestine covers for parasitic deeds of espionage, designed to transfer damaging information to enemy forces.

Article 97 also creates criminal responsibility for "stealing" and "spying." However, information collected and transferred by inspectorate agents as part of their official operations would be disclosed by the PRC pursuant to self-executing domestic legislation. As such, it would be ludicrous to associate official inspectorate acts with the more reprehensible notions of "stealing" and "spying." "An inspector doing what is permitted (and in fact required) under one portion of [Chinese] law could hardly be convicted for spying under another portion of the same law."23

Of course, the provisions of article 91 and 97 would be applicable to the collection and transfer of information outside the scope of the agreement. For this reason, inspectors would be well-advised to keep abreast, where possible, of operative Chinese domestic legislation regarding secret information. If, for example, one assumes that later domestic legislation would overrule prior treaty law, then the potential for a scenario in which inspectors are accused of collecting and transferring information previously declassified but subsequently classified by a Chinese legislative act increases dramatically.
In order to suggest a sound approach to handling the collection and transfer of information by an inspectorate in light of Chinese secrecy and espionage laws, the more practical aspects of Chinese protectiveness must be considered. It is unlikely that the PRC could be compelled to amend presently existing secrecy laws and regulations to exclude official inspectorate acts and it is unrealistic to assume that the PRC would refuse to introduce subsequent domestic legislation taking certain types of information out of the reach of inspectors. Rather, the best approach is to address the problem in light of existing circumstances.

Because it is essential to grant inspectorate personnel sufficient protection from Chinese criminal jurisdiction in the collection and transfer of information, the most appropriate vehicle for accomplishing this would be to grant to an inspectorate a “privilege to gather in specified ways particular kinds of information (traditionally, security information) essential to the inspection mission . . . coupled with a full immunity from arrest and criminal process.” This approach avoids the potential problems of a mere grant of full immunity from criminal process which insulates an inspector from liability for criminal conduct but does not provide him with a privilege to engage in any course of marginally criminal conduct. Though this last statement may ostensibly appear to be a semantic splitting of hairs, its significance is not lost in the course of delicate negotiations with the PRC on sensitive topics such as sovereignty and espionage. Essentially, a grant of immunity from liability for criminal conduct would protect an inspector in the event he violated criminal rules; it is in no way intended to grant him license routinely to engage in a course of conduct in direct contravention of applicable criminal statutes. In this manner, the grant of immunity would not preclude the PRC from taking preventive measures to impede, if not to halt, inspectorate operations concerned with the collection of sensitive information where they are considered to skirt the border of counterrevolutionary activity. However, the grant of a privilege to engage in limited acts of information collection is an admission by the PRC that certain activities fall outside the scope of criminal statutes and are thereby permissible.

Naturally, the Chinese would be expected to maintain as much control over the collection of information as possible and to prevent inspectorate intrusions into areas of more sensitive, classified materials. Therefore, the PRC can be expected to spell out the requisite privileges and immunities in careful detail and to narrowly define permissible inspection procedures in order to keep the collection and transfer of information limited to appropriate declassified material and to prevent verification techniques from falling within the ambit of culpable counterrevolutionary (espionage) activity.
B) Observation by Direct Access, Photography and Sampling Restrictions

Certain areas and facilities in the PRC are off limits to foreigners. Access to other installations is often restricted and requires the direct permission of Chinese governmental organs and a complement of official Chinese escorts before foreigners will be permitted to visit these locations. There do not exist in the PRC any general regulations covering access to restricted areas. Rather, general guidelines are conveyed directly to foreign states through diplomatic channels, indirectly through press releases of policy directives, or peripherally through provisions governing the entrance, exit and domestic travel restrictions of foreigners.

In their study of the Soviet Union, Zile, Sharlet and Love published the more significant rules concerning frontier security areas and the effect on inspectorate operations of, inter alia, Soviet KGB background investigations of foreign visitors prior to entry into these restricted areas. An examination of analogous regulations in the PRC yields less definitive conclusions on the handling of foreign access to and through frontier security areas. First, although border belts exist in the PRC, Chinese officials have acknowledged that there are inconsistencies in width among those belts, some of which are the result of ongoing disagreements with India (in southwestern China) and with the Soviet Union (in northeast China). There is currently no uniform specified width for restricted border belt areas, although inspectorate personnel are advised that they do exist and that traffic into and out of these areas is strictly regulated. Available Chinese codified regulations do not indicate the existence of any restricted frontier areas which are absolutely inaccessible to foreigners, but they do exist, particularly in the heavily industrialized northeast region bordering the Soviet Union, which is likely to have many restricted installations.

Essentially, foreign access through frontier security areas is regulated by the 1965 Act on the Frontier Defense Inspection, which, in its most general terms, requires personnel to pass through frontier defense inspection stations, many of which are manned by PLA troops. The administration of this Act is based largely on the Chinese passport/visa system, which permits travel in and out of the PRC only with valid, stamped passports. However, there is no indication in the Act whether different sectors may adopt different security measures, nor is there any reference to specific penalties for violations of frontier restrictions beyond a general provision calling for handling violators "according to law" in light of the "actual circumstances of the matters involved." There is no provision which would, in effect, prevent Chinese frontier inspection agents from engaging in the type of time-consuming, disruptive security checks on individual foreigners entering or leaving the PRC. For this reason alone, a specific grant of immunity from this form of administrative jurisdiction for inspectors is essential.
in order to expedite inspection operations and prevent the possibility of splitting the inspectorate team at the border areas.

Once inside the PRC, access to specific installations and facilities becomes an entirely different matter. There are no specific published rules in the PRC which directly address this issue. Chinese practice, however, provides some indication of what procedures are presently implemented. The question of access to a particular Chinese facility may be a secondary issue. The first priority may be for inspectors to obtain the proper documents to visit the general locus of the installation. That is, certain cities, towns, and other areas are restricted; foreigners wishing to visit them are required to obtain the permission of appropriate (provincial) public security organs pursuant to the Foreign National's Act discussed earlier. Access to installations within these areas would be handled separately and, in many instances, by other departments.

Direct access into otherwise classified security facilities may be obtained only with the permission of the Chinese government. According to State Department sources, the most likely installations requiring special permission are defense facilities, factories, economic installations, scientific and research institutes, government department and educational institutions. The procedure for obtaining special permission is initiated through the Ministry of Foreign Affairs. However, permission is often not received unless the visit has also been approved by other ministries and agencies. The number of departments involved and the problems of securing permission vary depending on the nature of the visit. An inspection of a classified industrial facility, for example, would require the permission of -- at the very least -- the Ministry of Foreign Affairs, the Ministry of National Defense and the machine building ministry directly in charge of the installation.

Effective inspection operations require a more streamlined procedure. From the standpoint of the PRC, the present procedure of hierarchical approval would invariably preclude surprise inspection operations, though this is mitigated somewhat by the likelihood that large-scale Chinese facilities "could not be hidden, nor could their activities be transformed on short notice." The first step in securing an alternative procedure requires cooperation among inspectorate personnel, Chinese governmental organs, and those directly in charge of the installations in question. A reasonable suggestion might begin with a careful examination of the facilities to be inspected and the most feasible domestic routes to travel in order to reach them. Prior arrangements can be made between the Ministry of Foreign Affairs and any other appropriate ministries and agencies and local public security organs to expedite travel to the facility. Permission to enter the facility might issue from the State Council, which, as the organ responsible for supervising PRC ministries, would thereby circumvent the present process of multiple approval. In order to protect Chinese interests in classified security areas, permission to enter could perhaps "provide for
conditional access to 'reasonable times' or with 'prior notification'... The key to a workable arrangement with respect to inspectorate access to restricted PRC installations is to forestall procedures which appear to the Chinese to be overly disruptive, for at such times the Chinese can be expected to muster a full array of legally justifiable bureaucratic impediments to interfere with or prevent proper inspection procedures.

Chinese restrictions regarding photography are somewhat less severe than those of the Soviet Union, but, at least in principle, they extend to both aerial and ground photography. With respect to aerial photography, the PRC Flight Rules Governing Foreign Civil Aircraft do not directly address the issue of overflight photography at all. However, the rules do stipulate that passengers and crews must abide by Chinese laws, decrees and regulations. Though there are apparently no specific legal prohibitions against aerial photography, the PRC Ministry of Foreign Affairs does communicate photography restrictions to foreign governments. However, enforcement apparently varies, depending on the nature of the flight and the air corridor used. For example, Chinese officials at the PRC Embassy in Washington, D.C. asserted that panoramic photographs of industrial cities are prohibited. Yet, a State Department official reported that he had photographed Chinese territory from an airplane in flight over Beijing (Peking). For national security reasons, it may be assumed that overflight photographs of military installations, fuel storage facilities, harbors, railroad and highway bridges, large industrial enterprises, electric power stations, radio stations and telephone exchange complexes are forbidden. However, it is unlikely that inspectorate personnel would be faced with many of the practices engaged in by the Soviet Union to inhibit observation, such as seating foreigners in windowless sections of airplanes, rerouting the airplane or conducting rough landings and takeoffs.

Though the PRC has decried superpower contention in outer space, the Chinese have heretofore refrained from significant participation in treaties and resolutions governing the law of outer space. This is not to say that the PRC has not proffered a position on the rules concerning activities in outer space. In fact, Chinese writer Liu Tse-yung has stated:

Although cosmic space does not belong to the sovereignty of any State, international law does not allow the breach of international peace, the infringement of the sovereignty of other States or the threatening of the security of other States from any direction (including space of any altitude). Cosmic space can only be used for peaceful and scientific purposes; otherwise regardless of whether or not a State has prescribed the altitude of its airspace, it has the right to take all necessary measures for self defense against any threat...
The PRC has recently participated in discussions of the UN Outer Space Committee and has expressed its commitment to the utilization of outer space for peaceful purposes, but it has not actively supported the principles of Resolution 1962 or the Outer Space Treaty. Moreover, despite rabid Chinese denunciations of the Soviet handling of the Cosmos 954 crash in Canada, the PRC has also repudiated any obligations under the 1972 Convention on International Liability for Damage Caused by Space Objects.

At the heart of the Chinese position on the use of outer space is the issue of whether the PRC considers the activities of intelligence-gathering satellites to be legally justifiable.

The Chinese do have a number of their own satellites in orbit and others on the way, but their launchings and purposes are enveloped in secrecy. The PRC has neither denounced nor supported the use of satellites for the collection of intelligence information over the territory of foreign nations, though it would be advisable that an inspectorate not accept Chinese silence as the equivalent of acquiescence in such a principle. Presumably, the most recent official Chinese statement, calling for cooperation in the "peaceful utilization" of outer space, would preclude PRC approval of the intelligence-gathering operations of the satellites of individual nations. The PRC is likely to perceive such operations as unilateral efforts to obtain military advantages. However, whether the Chinese would support the collection of intelligence by inspectorate satellites -- particularly if the inspectorate was established as an international organization -- or whether the PRC would sanction satellites use for the collection of intelligence data by an adversary inspectorate -- when the purpose was to promote peace through compliance with an arms control agreement -- is simply a matter of speculation. An inspectorate, therefore, is well-advised to formulate narrow inspection procedures and to require strict non-interference by Chinese authorities in aerial photography for inspection purposes.

Ground photography in the PRC is a somewhat different matter though photographic restrictions are often erratically enforced. Ostensibly, ground photography restrictions are embodied in provisions of statutes controlling the movement of foreigners in the PRC. The Qiongzhou Strait Regulations, the Port Regulations and the River Regulations all contain provisions prohibiting photographing or sketching while in restricted areas. It might be contended that the severity of these provisions has been emasculated by time and by changes in Chinese attitudes toward foreigners. The recently reissued 1957 Public Security Regulations, however, seem to breathe new life into domestic photography restrictions. Article 7 of the Regulations calls for detention of less than 3 days, a fine of under 6 yuan, or a warning to be meted out to anyone "taking pictures, surveying and drawing maps in areas where picture-taking, surveying and map-drawing are prohibited. . . ." Presumably, negatives or sketches of restricted areas or installations will be confiscated, though there are no explicit provisions to this effect.

- 233 -
the PRC has recently denied foreigners the freedom to use 16mm-camera without special permission from the Ministry of Foreign Affairs, or, if for commercial purposes, from the China Film Corporation.60

Since inspectorate photographic operations will predominantly cover military installations and equipment, and since military installations and equipment are likely to be among the items prohibited from being photographed, it would be advisable for an inspectorate to obtain a special privilege granting it the right to take ground photographs of structures and articles within the scope of official inspection functions. It may also be feasible that the photographic privilege extend only to certain relevant inanimate objects. The latter suggestion provides the Chinese with two advantages. First, it promotes justifiable Chinese protective of the identity of key military, scientific and technical personnel. Second, by eliminating any peripheral landscape photography, the PRC is able to preserve the concealed locations of its more secret installations (such as those hidden in the mountainous regions of the northeast).

In addition to photographic restrictions, an inspectorate should be aware of the potential for problems surrounding the procurement of samples of natural resources or raw materials. The issue is essentially a legal one, since in effect, acquisition of samples would constitute a taking cognizable under property law principles. The issue is made a good deal simpler in the PRC where most relevant property, including military, nuclear and research facilities, is state-owned.

There are precedents for state "takings" in Chinese law. Under the 1982 PRC Constitution,61 the state can, when in the public interest, "take over land for its use in accordance with the law" (Art. 10). Other statutes embellish on state authorized "takings." For example, the PRC Environmental Protection Law62 implicitly provides for the taking and sampling of food products to ensure that sanitary standards are met. The 1979 Standardization Regulations63 provide, inter alia, for the "checking and accepting of raw and other materials and items produced by cooperating units [and] examination of semifinished and finished products" (Art. 20) and for "quality supervision" through "scheduled or unscheduled product quality inspections" (Art. 27). Moreover, the PRC has recently publicized the existence of a draft food hygiene law64 and quarantine regulations,65 the provisions of which would presumably permit authorized government inspectors to examine and/or withdraw inferior or infected products.

Thus, it is simply a question of coupling a state-granted privilege of access to such areas with a right to obtain samples of property under state control. This latter privilege should probably be combined with an immunity from administrative, economic, or even criminal liability that may result pursuant to provisions of the 1979 PRC Environmental Protection Law66 and the 1979 Forestry Act.67 The Environmental Protection Law encompasses, inter alia, the air, water, land, mineral resources,
forests, grasslands, wild plants and animals, aquatic life, and scenic spots (Art. 3). Each of these resources is to be protected from damage and rationally utilized (Art. 2; Arts. 10-15).

Relatively minor violations of these provisions may result in administrative penalties as well as an obligation to compensate the state for losses (Art. 32, para. 1). Serious violations, including pollution or ecological damage, which cause personal injury, death or heavy resources loss, may result in administrative, economic or even criminal culpability (Art. 32, para. 2). Moreover, Article 9 stipulates that the Environmental Protection Law, as well as other environmental regulations, apply to "all foreign nationals and foreign aircraft, vessels, vehicles, materials and living beings entering or transiting the territorial land, waters and airspaces of China. . . ."

The Forestry Act is, in effect, a more circumscribed environmental protection law, intended, inter alia, to protect "damage to forest trees, roads, rivers or engineering facilities which serve forestry. . . ." (Art. 21(a)). Restitution for losses or fines (Art. 39) are among the penalties for such violations as "entering forest areas without authorization to procure lumber. . . ." (Art. 39(5)) or "illegally taking lumber or falling trees. . . ." (Art. 39(6)). Serious violations may create criminal responsibility (Art. 40). Unquestionably, failure to obtain an immunity from such provisions would permit administrative or possibly physical interference with inspectorate personnel and operations. In negotiating for such an immunity, the parties to an arms control agreement must consider the historical protectiveness of the PRC over its natural resources. It is unlikely that the Chinese will part easily with a full grant of immunity, particularly where major environmental consequences may result. However, since sampling and testing procedures should not greatly interfere with the ecological balance or environmental resources, perhaps the only requirement would be recognition of, and sensitivity to, Chinese concern for natural resource protection. In light of this, a sensible approach may be to offer the PRC a quid pro quo. In return for such immunity, the arms control agreement may formally stipulate procedures for, and amounts of, compensation for ecological damage caused by sampling or testing or it may even provide for restitution simply on the basis of the "taking" principle without regard for any possible damage to the environment.

Chapter 7. THE INTERROGATION OF OFFICIAL AND PRIVATE CHINESE CITIZENS AND THE PROCUREMENT OF EVIDENCE

A) The Interrogation of Chinese Officials

There do not appear to be any authoritative regulations restricting contacts between Chinese officials and foreign citizens, though, from a practical standpoint, such contacts are inevitably linked to official functions and are usually initiated and executed only through circumscribed and carefully
supervised channels. In effect, these channels operate at almost every level of Chinese life. By virtue of pervasive state control, everything from social enterprises to high-level governmental organs are considered to be "official" state institutions. The effect of this is twofold. First, it creates a large number of "official" personnel, whose dealings with foreigners will thus be conducted through formal channels. Second, the omnipresence of official positions at every level of Chinese life reduces the potential for personal, unsupervised contact. Although this construction of officialdom is no doubt advantageous to the protection of PRC interests, the obstacles thereby created for foreign interrogation procedures are considerable.

The need to interrogate Chinese officials to collect relevant data for inspection operations depends on the comprehensiveness of the arms control agreement. It is likely, however, that any inspection operation will generate the requirement of collecting information from oral statements and evidence provided by Chinese authorities. In this respect, inspectorate agents can encounter two interrelated sets of problems. The first involves the issue of what may be termed "authoritative voice." Certain officials either refuse to speak on behalf of the Chinese government or are not empowered to do so. In fact, the bureaucratic chain of command in the PRC is itself an obstructive force to inspectorate operations. Bureaucratism in the PRC, in fact, causes shocking amounts of waste. National politics and national security are, of course, sensitive and serious matters, and it is a recognized principle in both domestic and international relations that only certain persons speak with a sufficiently authoritative voice to communicate official government positions on various issues. Nevertheless, inspectorate personnel should realize that this principle applies strongly to the PRC. As such, formal interrogations of many PRC officials would be time-consuming and potentially futile since the Chinese government would not itself be bound by their statements and since these officials may not in fact be competent to answer such inquiries.

The second problem is more formidable. Simply stated, Chinese secrecy laws are so broad and so pervasive that they constitute the single most obstructive legal hindrance to effective inspection operations. In effect, they bar Chinese officials from divulging many types of information, violations of which are usually punishable as counterrevolutionary crimes—crimes similar to treasonable activities in other countries. The secrecy laws do not convey the full array of disciplinary and criminal penalties available to enforce those laws. However equivocal these provisions are by their textual ambiguities, they unmistakably punish improper conduct by state officials with respect to state secrets. The magnitude of this issue cannot be ignored. The 1982 PRC Constitution, for example, refers to the obligation to protect state secrets no less than four times. Article 186 of the PRC Criminal Code declares that

In grave cases, any state functionary who developed important state secrets in violation of state security regulations

- 236 -
will be sentenced to detention or imprisonment for not more than 7 years or subjected to deprivation of political rights.

In contrast with such provisions directly applicable to those who divulge state secrets, there are also more oblique clauses -- oblique in the sense that they do not directly punish the communication of secrets. Rather, they are designed to deter verbal cooperation with those not privy to the same information. For example, Article 131 of the PRC Criminal Code protects "the citizen's personal and democratic rights and other rights against unlawful infringement." Article 146 punishes a state functionary who "abuses his power." Article 145 punishes anyone who "seriously insults another person by force or other means." Somewhat more peripherally, Article 138 states that "[i]t is strictly forbidden to bring false charges against the cadres and masses by any means whatsoever."75

In addition to criminal provisions, the military76 and Party regulations77 enforce a system of disciplinary penalties ranging from demotion and dismissal to criminal punishment for serious violations in communicating national secrets.

The purpose of these laws and regulations is not only to promote Chinese protectiveness of its sovereignty and national security but also to foster a sense of individual circumspection in communicating official information in personal encounters with foreign personages. Although this will not make renegotiating for broad inspectorate interrogatory powers any simpler, it at least indicates the nature and historical roots of Chinese attitudes toward secrecy. Foreign negotiators may thereby gain greater sensitivity to Chinese thought and action. Such sensitivity, in turn, may stretch a long way in securing PRC concessions.

In their chapter on the interrogation of Soviet officials by an arms inspectorate, Harold Berman and Peter Maggs78 examined the scope of the questions that Soviet officials were permitted to answer. Their analysis extended to the Soviet procedure for letters rogatory, a recognized international practice which calls for specific answers to questions posed by other countries.79 Soviet procedure included the right not to respond to questions that might "infringe upon the 'safety or security' of the USSR."80 Similar limitations were found in the Soviet Civil Procedure Code, which stipulated that Soviet courts should execute commissions of foreign judicial agencies except, inter alia, where they threatened the security or contradicted the sovereignty of the Soviet Union.81

Significantly, there are no explicit equivalent Chinese procedures or provisions. In fact, the only available recent information on the impact of foreign judicial decisions on Chinese entities is found in Chinese commercial trade practices. It has been reported that, although the PRC is not a member of international conventions for the enforcement of foreign arbitral awards, Chinese corporations will observe foreign arbitral awards
"so long as they are fair and not in violation of Chinese laws and policies." 

As Zile, Sharlet and Love had indicated with respect to the Soviet Union, domestic organs enjoy broad interrogatory powers, within the limits of their competence, designed to facilitate internal interests. A number of Chinese agencies are accorded such interrogatory powers. For instance, under the 1982 PRC Constitution, special committees of inquiry appointed by the National People's Congress (NPC) and its Standing Committee -- committees likely to be established to address extraordinary inspectorate issues -- have the power to secure the information necessary for their investigations from "all organs of state, public organizations and citizens." Under the PRC Criminal Procedure Code, "each and every unit and individual has the duty to surrender as required by a people's procuratorate or public security organ, material and documentary evidence which may prove the accused to be guilty or not guilty" (Art. 80). Article 86 of the same Code requires a witness to "produce evidence and give testimony."

In fact, a basic tenet of the Chinese criminal justice system -- leniency toward confessors and severity to those who resist -- presupposes the right of procuratorial organs to secure information tending to prove the guilt of an accused.

These broad powers have been extended to cover various forms of interrogation of foreign entities by Chinese departments. Under the Joint Venture Income Tax Law, for example, tax authorities "have the right to investigate the financial affairs, account books and tax situations of any joint venture. The joint venture must make reports according to the facts and provide all relevant information and shall not conceal the facts or refuse to cooperate" (Art. 12). Implicitly, such interrogatory powers are granted to the PRC's Labor Management Department which, pursuant to the Joint Venture regulations on Labor Management, has the power to "supervise and inspect" the implementation of labor protection and safety regulations in joint venture operations (Art. 13).

To protect and preserve the objectives for which an inspection arrangement is implemented, an arms inspectorate would undoubtedly require Chinese officials to reveal needed information. To circumvent PRC secrecy laws and potential criminal liability for cooperative Chinese officials, an inspection arrangement ought to stipulate for 1) declassification of certain types of information or of all documents contained in a given zone, or 2) adequate personal immunity from disciplinary and criminal penalties for Chinese officials divulging information for inspection purposes. Though either alternative would be effective, it would be less probable that the PRC would relinquish its control over its own government agents through a grant of immunity, since, despite the loyalty of its personnel, this choice may be perceived as a license to engage in counterrevolutionary activity. The declassification alternative, on the other hand, permits
greater Chinese control over the type of information that may be divulged and who may divulge it.

B) The Interrogation of Chinese Civilians

Traditional orientation in the PRC has emphasized and encouraged official, organized contacts between PRC representatives and foreigners. Chinese authorities, until very recently, have mistrusted thoroughly foreign influences on the rudiments of Chinese society. The pages of the Chinese press have been the forum for articles calling on the Chinese to preserve their "national dignity and prestige", to avoid "worshipping foreign things" and to distinguish between "flagrant [sic] followers and poisonous weeds."92 Complete freedom in dealing with foreigners is simply not an aspect of private life in the PRC, and it appears that, despite increased contacts with foreign countries, Chinese authorities do not seek actively to expunge the pervasive suspicion of foreigners or to erase the sense of secrecy which they have so carefully instilled in the Chinese people.

In light of this, it is hardly unusual that so great a segment of the PRC population is precluded from substantial contact with foreign individuals and so much international communication is conducted through formal channels. In the absence of any compelling reason for particular extraordinary instances of interrogation of private individuals, it is unlikely that an arms inspectorate need request specific procedures for collecting information from private Chinese citizens. As Zile, Sharlet and Love have so succinctly stated with respect to the Soviet Union, which, by virtue of similar forms of state control, is equally applicable to the PRC:

The power to interrogate private individuals should not be necessary..., nor should it be requested. It should not be necessary because, in the absence of relevant private enterprise, the role of the private individual as a source of firsthand information is negligible. It should not be sought because it implies a mistrust between the individual... citizen and his class state and would, therefore, be intolerable in the [Chinese] system.93

Private citizens communicating information to foreigners flirt with criminal liability under the articles pertaining to counterrevolutionary activity in the PRC Criminal Code. Though there is no statistical evidence on how often this aspect of law is applied to private individuals, one recent celebrated case indicates the severity with which private acts of counterrevolution are treated. In 1979, political dissident Wei Jingsheng was sentenced to fifteen years imprisonment and deprived of his political rights for an additional three years for having "betrayed the country by supplying a foreigner with military intelligence,"94 including the names of commanders of the Chinese units engaged in the action [in the Chinese self-defense counterattack against Vietnam in 1979], the number of troops, the developments of the
battle and the number of casualties. Both the sentence imposed on Wei and the publicity surrounding the trial may well have been deliberately designed to deter similar future activities.

In addition to counterrevolutionary provisions, Chinese citizens are also subject to more oblique laws which reduce contacts with foreigners, such as those punishing violations of monetary and foreign exchange regulations. In the context of these provisions and Chinese practice, it seems unreasonable to assume that private individuals would be willing to cooperate, or that they would be permitted to freely associate, with inspectorate personnel. In view of Chinese procedures for handling foreign communications through official channels, however, private contacts would be of marginal utility to inspectors.

C) Legal Procedure Surrounding Interrogation

Since the decision to interrogate Chinese officials or private citizens, no matter how minimal such interrogation is, would profoundly affect the system of secrecy in the PRC and the notion of the exclusiveness of Chinese legal procedure, an arms control arrangement must adequately describe the place and manner of interrogating Chinese respondents.

Interrogation procedures can be either informal or formal. The former is probably more desirable, both from the standpoint of minimal offensiveness to the autonomy of the Chinese judiciary and in reducing the number of present legal obstacles to the formation of a separate and distinct inspectorate interrogatory body. However, informal interrogation has two distinct disadvantages. First, informality breeds indifference. For inspectorate operations, which will often be of limited duration in any particular country, dispatch in the collection of information is crucial. The lack of coercive legal tactics -- such as contempt proceedings -- creates a risk that Chinese non-cooperation will not result in serious consequences and may reduce interrogation to a painstakingly futile and dilatory exercise. Second, effective informal interrogation procedures would require the complete cooperation of Chinese respondents, an assumption which, in light of secrecy laws and counterrevolutionary provisions of the PRC Criminal Code, is probably unrealistic, if not, in fact, incorrect.

Formal interrogation procedures face equally formidable obstacles. First, there is a question of the status of the inspectorate entity and its concomitant interrogatory powers. The PRC's latest disarmament proposal supports some form of international body that would monitor verification. Some authors contend that an international inspectorate with interrogatory powers would be less objectionable than an adversary one. Though this may be quite logical and somewhat self-evident, the larger question is whether the Chinese would support any abdication of sovereign power in favor of an autonomous interrogatory body. From a practical standpoint, the question is almost rhetorical. The most salient feature of the Chinese international position is the concept of sovereignty and equality. Almost any activity
of an inspectorate may impinge upon this sacred principle, and undoubtedly any delegation of basic governmental powers (e.g., judicial or quasi-judicial powers) would add to the offensiveness. 102

Although the 1982 PRC Constitution authorizes the establishment of special committees of inquiry at the behest of the National People's Congress and its Standing Committee, there are numerous legal impediments to the establishment of a separate inspectorate interrogatory body with judicial or quasi-judicial powers, though they are ostensibly not as extensive as those in the Soviet Union. 103 By virtue of Article 104 of the 1982 PRC Constitution, the Supreme People's Court, local people's courts, military courts and other special people's courts exercise judicial authority, though the provision is couched in terms less direct than those of the 1978 Constitution. 104

Pursuant to Article 2 of the Organic law of the People's Courts 105 [hereafter Organic Court Law] special courts include: military courts, railway transport courts, water transport courts, forestry courts and other special courts" (emphasis added). In essence, therefore, assuming the non-objectionable nature of a separate inspectorate judicial body, the legal framework for establishing ex parte inspectorate courts already exists. Thus, the need for either amendments to present Chinese law or the addition of lex specialis is eliminated. 106

A number of laws would conflict with the establishment of a properly-structured special inspectorate court and would thereby require amendment or abrogation. First, Article 3 of the Organic Court Law provides that the functions of people's courts are, inter alia, "to safeguard proletarian dictatorship, the socialist legal system and socialist order . . . to guarantee the smooth progress of the socialist revolution and socialist construction . . . and to devote all their activities to educating the citizens in loyalty to their socialist motherland. . . ." 107 A special inspectorate court would not properly execute its obligations if it was to serve only the socialist interests of the PRC; the provision must therefore be amended or made non-applicable to inspectorate operations. Article 33 of the same law limits those eligible to be judges to "citizens," a rule which is obviously inconsistent with the establishment of a separate, independent and special non-Chinese inspectorate court.

The 1982 PRC Constitution also provides that "[a]ll cases handled by the people's courts, except for those involving special circumstances as specified by law, shall be heard in public (Art. 125). Article 7 of the Organic Court Law elaborates on this constitutional provision: "All cases in the people's courts are to be heard in public except those involving state secrets, personal shameful secrets and juvenile delinquents." 108

Technically, inspectorate interrogation procedures may operate outside these provisions. The Chinese term for "case" (e.g., criminal case) as it is used in the Organic Court Law and the 1982 PRC Constitution is anli, a term with a rather precise
circumscribed definition; to wit, "a legal case [or] a crime." Whether the term would apply to the quasi-legal interrogatory procedure of an inspectorate, initiated for the purpose of soliciting information and not necessarily for determining the circumstances surrounding a crime, is unclear.

Moreover, even where the "public trial" guarantee would seem to be applicable, the PRC government has administered it somewhat erratically under its criminal law. This may indicate that the guarantee is not yet so entrenched in the Chinese legal system that it is consistently employed, even where state or personal, shameful secrets are not involved. In light of its erratic application under the PRC Criminal Code and the use of the more sweeping term "special circumstances" under the 1982 PRC Constitution -- which could easily encompass inspectorate procedure -- the "public trial" language would probably not even need to be amended in order to permit closed sessions for all inspectorate interrogation hearings.

There is also a potential obstacles posed by Article 6 of the Organic Court Law which states:

Citizens of all nationalities have the right to use their own spoken and written languages in court proceedings. The people's courts should provide interpreter services to the parties concerned who do not understand the local spoken and written languages. In places where people of a national minority reside or people of many nationalities live together, the people's courts should issue written judgments, public announcements and other documents in local written languages.

In one sense, the potential problems posited by this provision can be argued away rather easily. First, its application is strictly reserved for people's courts; a special arms inspectorate court would not possess the same status. In addition, the likelihood that the Chinese government would assign to inspection operations local officials who are fluent only in obscure indigenous dialects would be negligible unless the PRC was seeking to display its displeasure with, or disapproval of, inspectorate activities. As such, the necessity for providing interpreters would seem to be diminished.

In another sense, the provision is sufficiently broad so as to create potential practical problems for the collection of inspectorate information. The time, effort and security precautions involved in providing for and using interpreters and guaranteeing accurate instantaneous translation would seem prohibitive. With this in mind, a statutory amendment to Article 6, exempting from its ambit all inspection proceedings, would be required.
The Chinese legal system operates mainly as a collegiate system. Restated, judicial process in the PRC involves the participation, "in initial trials, [of] a collegiate bench of judges and assessors who are representatives of the masses . . ." A collegiate court is usually composed of one judge and two assessors. From the standpoint of confidentiality and security, the participation of local citizens or numerus quasi-judicial personnel in a judicial panel is obviously undesirable. Though the suggestion to eliminate assessors is probably appropriate, the proper mechanism for doing so, in light of the ambiguity of PRC law, is uncertain.

The language of the PRC Criminal Procedure Code calls for the application of the collegiate system in "[t]rials at basic-level and intermediate people's courts of first instance, except for cases of private prosecution and other minor criminal cases which may be handled by a single judge. . . ." (Art. 105). To extend further the ambiguities, the PRC Organic Court Law calls for the use of the collegiate system "except in simple civil cases, minor criminal cases and cases otherwise specified by law" (Art. 16). If either the Criminal Procedure Code or Organic Court Law was used, the most feasible suggestion would be to seek a statutory amendment to exclude assessors from inspectorate proceedings. However, it is possible that any change in the use of the collegiate system may require a more cumbersome and significant procedure: a statutory amendment. To further confound the issue, though, the recent Gang of Four trial was conducted without assessors. Chinese jurist Zhang Youyu justified this deviation on the grounds that the establishment of a special court permitted the use of special procedures. If such justification is cited by negotiators for an arms control agreement and validated by Chinese authorities, then the mechanism for excluding assessors from an inspectorate judiciary already exists and no domestic legal procedure would be required to sanction it.

As in the relevant Soviet codes and U.S. Constitution, Chinese legal provisions guarantee the right to counsel to "an accused." The 1982 PRC Constitution asserts, "The accused has the right to defense" (Art. 125). Article 8 of the Organic Court Law stipulates:

The accused has the right to defense. Besides defending himself, the accused has the right to delegate a lawyer to defend him. He can also be defended by a citizen recommended by a people's organization or the unit where the accused works, with the approval of the people's court. He can also be defended by a close relative or guardian. If necessary, the people's court can appoint a defender for the accused.

There are a number of issues posed by these provisions. First, the right to counsel applies only to "the accused"; in the case of interrogatory hearings a witness is not necessarily an
"accused." All parties concerned would likely desire legal representation. A statutory amendment granting witnesses the right to counsel is suggested. Moreover, the parties may wish to address at this time the issue of legal representation in the PRC, which, pursuant to the Provisional Regulations on Lawyers, may presently be reserved exclusively to Chinese counsel.

Second, both the Organic Court Law (Art. 8) and the PRC Criminal Procedure Code (Art. 26) permit persons outside the practicing legal profession, such as guardians, relatives and colleagues, to represent an accused in the PRC.

Lawyers in the PRC are expected to safeguard the legitimate rights and interests of a client, pursuant to the equivalent of a code of professional responsibility. Though there is no language that explicitly creates an attorney-client privilege in the Provisional Regulations on Lawyers, the protection of the legitimate rights of a client may be presumed to imply one. The real problem, however, lies outside such an inference. Whether or not an attorney-client privilege may be read into the lawyer's enumerated obligations, non-legal representation is definitely not governed by any code of professional conduct. As some authors have already stated:

... the presence of a lay representative might unfavorably affect the confidential nature of the proceedings before the arms control court (should confidential handling be desired).

Since the right to defense is constitutionally guaranteed, a wholesale elimination of legal representation before an arms inspectorate court would appear to be a more difficult concession to extract from the Chinese than a statutory amendment limiting representation to legal, and not lay, counsel in inspectorate proceedings.

The actual course of interrogation proceedings under Chinese law presents its own set of problems. Though Chinese law prohibits the acts of torture, threat, or other illegal means to procure information, the PRC Criminal Procedure Code stipulates that "[a]ll those who have knowledge of a case shall have the obligation to be witnesses" (Art. 37). This obligation of compulsory appearance seems to be ignored in some instances. Recent Chinese press reports have decried the practice of refusing to "come and give evidence" at the Gang of Four trials, asserting that it was the "duty of everyone ... to show a responsible attitude towards the country and give evidence.

There are also a number of other provisions in Chinese criminal law which imply the right of appropriate legal organs to summon persons to be interrogated or to provide evidence as witnesses. For example, the PRC Criminal Procedure Code divides evidence into six categories, one of which is designated "witness testimony" (Art. 31(2)). Furthermore, under Article 32, "Judges, procurators and investigators shall, in accordance with the legal
process, collect various kinds of evidence to furnish proof as to whether or not the accused is guilty. . . ." There is even a separate section in the PRC Criminal Procedure Code devoted to the inquiry of witnesses, one provision of which states: "When an inquiry of a witness is conducted, he shall be notified that he must produce evidence and give testimony strictly according to the facts and that he shall be legally responsible if he commits perjury or withholds criminal evidence" (Art. 68).

Neither constitutional nor statutory provisions explicitly recognizes any privileged situations with respect to the production of evidence or oral testimony, with the exception of those who are mentally or physically impaired.

Chinese law does not recognize the privilege against self-incrimination. According to Article 64 of the PRC Criminal Procedure Code,

When an inquiry of the accused is conducted by an investigator, the investigator shall first ask the accused whether or not he is guilty of a crime, allow him to state the circumstances of his crime or to plead not guilty, and then ask him other questions. The accused shall answer the investigator's questions strictly according to the facts, but he has the right to refuse to answer questions irrelevant to the case (emphasis added).

The value of the right to refuse to answer irrelevant questions is dubious: one wonders who has the final determination during interrogation as to what questions are relevant and as to when an accused is exercising his prerogative of silence or simply refusing to cooperate. In any event, it is not the equivalent of a privilege against self-incrimination.

The recent Gang of Four trial offered further evidence that the privilege is foreign to Chinese law. According to a published Renmin ribao report, the PRC "law of criminal procedure does not mention the defendant's right to remain silent." Yet, in one specific instance -- that of Zhang Chunquao during the Gang of Four trial -- the lack of insistence by the Special Court that the defendant answer questions was deemed "right and proper. A defendant's silence, on the one hand, indicates that he gives up his right to defense. On the other hand, it shows that he refused to admit the charges brought against him." The Renmin ribao report then noted that the defendant's silence, in light of the plethora of damning evidence, "did not interfere with the regular progress of the trial."

In the unlikely instance that PRC prosecutors need to secure oral evidence from a Chinese defendant during trial in order to obtain a conviction, the report leaves unanswered the question of what consequences would flow from the defendant's silence.
The PRC Criminal Procedure Code may also be read to sanction the use of polygraph tests and truth serums. According to Article 78,

An investigative test, when necessary and with the approval of the public security bureau director, may be conducted in order to find out the truth of a case. In conducting an investigative test it is forbidden to take any action which may cause danger, subject anyone's personality to humiliation or harm public morals.

However, there have been no reported cases of the administration of such tests and no Chinese authorities contacted by the author would confirm their use.

The absence of a civil code leaves uncertain the existence, or extent of civil contempt powers in the PRC, but there are three criminal provisions punishing false testimony and the concealment of evidence. Article 148 of the PRC Criminal Code states:

Any witness, appraiser, recorder or interpreter who intentionally makes false identification, appraisal, recording or interpretation on major links of a case in the course of investigation and trial to frame another person or conceal evidence will be sentenced to detention or imprisonment for not more than 12 years. In grave cases, the offender will be sentenced to imprisonment for not less than 2 years and not more than 7.

Article 162 provides, inter alia, that

Anyone who gives shelter to or gives false testimony to harbor counterrevolutionaries will be sentenced to imprisonment for not more than 3 years, detention or surveillance. In grave cases, the offender will be sentenced to imprisonment for not less than 3 years and not more than 10.

Anyone who gives shelter to or gives false testimony to harbor other criminals will be sentenced to imprisonment for not more than 2 years, detention or surveillance. In grave cases, the offender will be sentenced to imprisonment for not less than 2 years and not more than 7.

Article 115 of the PRC Criminal Procedure Code stipulates, inter alia:
When questioning a witness, the judicial personnel and the public prosecutor should instruct the witness to give truthful testimony and explain that if he intentionally gives false evidence or withholds evidence he is legally liable. . . .132

Together, these three provisions provide an effective mechanism for a Chinese court's ability to obtain truthful statements from those who testify at trial. Unfortunately, their effectiveness is only as good as their relevance. A slight variation of the justification that Zhang Youyu made with respect to the absence of assessors at the Gang of Four trial; to wit, a special court may adopt special procedures133--could be used by the Chinese to deny the use of criminal sanctions by a special inspectorate court against interrogated Chinese officials. Moreover, an inspectorate court set up outside the purview of Chinese laws may be, absent special provisions to the contrary, equally helpless to apply Chinese criminal sanctions for false testimony. Finally, even in the event that an inspectorate court were granted the power to pronounce appropriate sanctions for false testimony, one must also consider the proper enforcement organ. Without the creation of a separate inspectorate procuracy--and here one must once again consider conflict with PRC constitutional provisions134--enforcement would be entrusted to Chinese procuratorial organs. Independent inspectorate authority would thereby be denied. In essence, the effectiveness of the interrogatory and enforcement organs, absent absolute independence, will depend on the degree of Chinese willingness to cooperate with inspectorate personnel.

The protection of cooperative Chinese citizens in the form of a grant of immunity from prosecution would seem to be offensive to the Chinese system. Coercive apparatus in the PRC is so pervasive--extending from the informal administrative sanctions meted out by people's mediation committees to the formal criminal sanctions imposed by public security and procuratorate organs--that the entire concept of immunity as it is known in Western domestic criminal systems is alien to the Chinese. Demotions, dismissals, labor reduction, imprisonment and execution, as well as the more voluntary forms of social control, including self-criticism and denunciation, extend the influence of rule enforcement in the PRC to cover all forms of deviant behavior. As such, the equivalent of a full exemption from liability in return for information would likely be unacceptable to the Chinese. Moreover, one must keep in mind that most of the Chinese citizens who have contact with an inspectorate will have connection to the CCP apparatus. Therefore, the promise of immunity from criminal sanctions, for example, would not preclude the imposition of separately enforced Party sanctions. The possibility of securing a sufficiently broad grant of immunity for cooperative Chinese which would cover legal and extralegal punitive or deterrent measures would appear close to impossible without a fundamental change in Chinese philosophy.
A second, perhaps less offensive, form of protection for cooperative Chinese, is to permit informers to emigrate from their country. The Chinese position on emigration, however, reflects a reluctance to freely extend such privileges to Chinese nationals. As Chinese authorities explained to the author, the PRC is fairly receptive to extending visa permits for temporary travel privileges to Chinese nationals with relatives in foreign countries. Applications for exit are filed with local public security organs. The waiting period for approval or rejection of the application for passports and visas -- the necessary documents for exit from the PRC -- may range up to one year. In addition, visitation rights are restricted in time.

Permanent emigration, however, seemingly has not met with wide approval in the PRC. In fact, if one accepts as fact the above rules applicable to the visitation of foreign relatives, it would appear that emigration per se is not routinely recognized, a policy that may be responsible for a number of recent sensitive and publicized defections of Chinese personages to the West. Chinese press reports occasionally publish articles on illegal emigration, which may imply the possibility of legal emigration procedures, but provincial regulations on the subject of illegal emigration are so significantly harsh as to raise the spectre of Chinese governmental disapproval of the entire notion. Though the author could not obtain hard evidence as to Chinese permissiveness in extending travel privileges to governmental personnel with access to sensitive or classified information, it is reasonable to assume that such privileges would be granted only under extraordinary circumstances and would undoubtedly require a promise to return. In fact, it is quite conceivable that a refusal to return to the PRC would constitute an act of counter-revolution within the ambit of the PRC Criminal Code. Article 94 provides, inter alia, that "[t]hose defecting and turning traitor will be sentenced to fixed-term imprisonment of not less than 3 and not more than 10 years." Though this provision does not necessarily equate a deliberate refusal to return to the PRC with "defecting and turning traitor," the latter phrase is nonetheless susceptible of subjective interpretation. Moreover, it at least implies a reluctance on the part of the PRC to permit freedom of travel abroad. Since no right to travel abroad exists and since Chinese practice frowns on permanent emigration, the chances of securing a permit for an informer to leave the PRC are probably minimal.

In summation, the establishment and existence of a separate interrogating arm of an inspectorate is encumbered with numerous legal obstacles. In light of these obstacles, complete autonomy seems unlikely. Rather, the parties to an arms control arrangement should be prepared for a number of compromises. First, the most significant legal impediments to independence apply to the establishment by PRC judicial authorities of a special inspectorate court. Therefore, the creation of this form of an inspectorate interrogating body should receive low priority, and the parties may wish to negotiate some form of informal judicial organ which operates flexibly within the framework of Chinese law.
Second, a separate, independently structured interrogation organ established outside Chinese law will probably be considered too offensive to Chinese concepts of sovereignty to be permitted. As such, the parties may utilize Chinese interrogation organs, but ought to obtain broad interrogatory powers and possible privileges for interrogating personnel in order to ensure effective cooperation for inspection operations.

The most realistic alternative envisions limited inspectorate autonomy and the significant cooperation of Chinese authorities. The creation of some form of hybrid interrogating organ should incorporate a number of principles such as the elimination of assessors and the rejection of legal representation exclusively by Chinese counsel, which tend to deny strict Chinese control over interrogation procedure. At the same time, the arrangement will undoubtedly fail without active Chinese participation, particularly with respect to judicial decision-making and procuratorial enforcement of sanctions. The most likely approach, therefore, will be to require the promulgation of new laws and the amendment of existing ones.

D) Production and Procurement of Documents and Property

The most rational suggestion is this area of arms inspectorate functions is probably to permit inspectors to order documents and real evidence to be turned over to the inspectorate interrogating organ in connection with interrogation procedures, particularly in the case of the appearance of witnesses. This method appears to be the least offensive to the PRC. It lacks a number of problems which might arise through the use of other means of securing documents or evidence, such as personal body searches or the direction examination of files and materials pursuant to inspection of physical premises.

Zile, Sharlet and Love suggested that, under Soviet law, inspectors could conduct a bodily search of individuals for evidence on their persons, though such searches would probably be unnecessary. Chinese law also admits this possibility. Although the 1982 PRC Constitution guarantees unequivocal inviolability of the "freedom of person" of Chinese citizens (Art. 27), the PRC Criminal Code prohibits only unlawful searches of a person (Art. 144). Lawful searches are, at least in part, defined in the PRC Criminal Procedure Code:

Investigators may search the person of an accused and the body, belongings and residence of a person who may be hiding a criminal or criminal evidence as well as other relevant locations, in order to collect criminal evidence and track down the criminal (Art. 79).

The powers enumerated by this provision are too limited to be readily transferred to inspectors. First, it is applicable only to "an accused" or a person who hides a criminal or criminal
evidence. Information collected for routine inspection operations will rarely be furnished by "an accused," nor is such information likely to fall within the ambit of criminal evidence. Second, by virtue of a subsequent PRC Criminal Procedure Code provision, the right of personal search is accorded only to "investigators" from Chinese legal organs (Art. 62).

Article 10 of the 1979 Arrest and Detention Regulations is at least as explicit as the search provision of the Criminal Procedure Code. Under Article 10,

At the time of arrest or detention, in looking for criminal evidence, the public security organ may carry out a search of the criminal's body, his property, his residence or other places concerned. If it suspects any other person of hiding the criminal or concealing criminal evidence, it may also carry out a search of his body, property, residence or other places concerned. Except for in emergencies, the public security organ should present a search warrant in case of such a search.

In case of a search, a neighbor or any other witness and the person to be searched or members of his family should be present. After the search, a record should be made of the results of the search and of any criminal evidence seized.

Again, it is apparent that the search is to be conducted only by the appropriate PRC public security organ and only of a "criminal."

When these provisions are read in conjunction with the provisions of the 1982 PRC Constitution stipulating that the citizens' "freedom of person" (Art. 37) and sanctity of the home (Art. 39) are inviolable, it would seem that the PRC has refused, at least on paper, to recognize carte blanche search powers. Body searches in the PRC would appear to be confined to narrowly-defined instances involving criminal activity and are relegated only to Chinese legal organs. In practice, of course, the letter of the law has often been ignored by Chinese authorities; nevertheless, a request for personal search powers for inspectors is likely to be perceived as overly intrusive and hence unacceptable. In fact, Chinese authorities would be likely to invoke Article 3 of the PRC Criminal Procedure Code, which reads:

The public security organ is in charge of investigation, provisional apprehension and inquiry in cases involving criminal
offenses. The people's procuratorate approves arrests and procuratorial proceedings (including investigation) and institutes prosecution. The people's court is responsible for trying cases. No other government organ, institution, organization or person has the right to exercise such powers (emphasis added). 148

A third alternative -- direct examination of files and other materials during the inspection of physical premises under broad rights of access 149 -- is so thoroughly reprehensible to Chinese secrecy laws as to be totally unacceptable.

Ordering the production of evidence in connection with interrogation procedures and the examination of witnesses lacks the more nefarious qualities of personal body searches and avoids the potential infringement of secrecy laws. It is a right which would be granted in connection with a set of interrogatory powers that, assuming Chinese participation in the interrogating organ, are shared by PRC personnel. Moreover, and perhaps most importantly, there are pervasive precedents in the present Chinese legal system for demanding the production of relevant documents to facilitate investigation. Many of these precedents have already been discussed in connection with the existing interrogatory powers of various Chinese legal organs. For example, under the PRC Criminal Procedure Code, "[e]ach and every unit and individual has the duty to surrender . . . material and documentary evidence which may prove the accused to be guilty or not guilty" (Art. 80). Although such material is not sent directly to the court, it is surrendered to a people's procuratorate or public security organ which, in turn, submits it to a judicial body. Criminal subpoena powers are broad, extending to objects, documents, mails and telegrams relevant to a particular case. 150 They have also extended to other areas of Chinese law, such as tax regulations 151 and quality standard rules. These ample subpoena powers of Chinese governmental agencies concerned with the administration of law may serve as an excellent model on which to pattern inspectorate interrogatory powers.
FOOTNOTES

1. See Provisional Regulations on Keeping State Secrets (Baoshou guojia jimi zhanxing tiaoli), in Gongan fagui hui­plan 1950-79 ([Collection of Public Security Laws] [Depart­ment of Public Security, Beijing, 1980]), at 472-76, passed June 1, 1951 by the Standing Committee of the National Peo­ple's Congress at its 87th meeting and promulgated on June 8, 1951 [hereafter State Secrets Regulations]. For an En­glish translation of the text, see “Xinhua Publishes Reg­ulations on Guarding State Secrets,” Foreign Broadcast In­formation Service on China [hereafter FBIS-CHI] No. 073­1980 [hereafter cited by year and number, e.g., 80-073) April 14, 1980, at L7. Many laws promulgated in the early 1950s have subsequently been revalidated. See Gongan fagui huibian at 447-48 citing the NPC Standing Committee Deci­sion on the question of the validity of laws and decrees enacted since the founding of the PRC, passed on Nov. 29, 1979.

2. For an explanation of the dual level classification system as it applies to the Soviet Union, see Z. ZILE, R. SHARLET AND J. LOVE, THE SOVIET LEGAL SYSTEM AND ARMS INSPECTION: A CASE STUDY IN POLICY IMPLEMENTATION 221-22 (1972) [hereafter ZILE, SHARLET AND LOVE]. For an explanation of the document classification scheme in the PRC, see K. LIEBERTHAL, CENTRAL DOCUMENTS AND POLITBURO POLITICS IN CHINA (1978).

3. It is possible that the PRC intended to avoid mention of any classification scheme in order not to create a public impression that the consequences of some secrets were not nearly as severe as those of others. This would have had the effect of promoting generally consistent public appre­hension of Chinese-enforced legal sanctions at a time when PRC state and Party officials sought to offset some­what the mass fascination with foreign goods and the influx of foreign visitors.

See also "State Council Revises Invention Reward Reg­ulations," FBIS-CHI-79-013 (Jan. 18, 1979), at E15. The Regulations called for State Scientific Commission approval of "classified inventions" before the particulars are sup­plied to foreigners. However, no distinct security clas­ifications were posited.

On the other hand, Fox Butterfield discovered that CCP Central Committee documents are numbered and labeled with one of 3 security level classifications: secret, institu­tional secret, or absolutely secret. See F. BUTTERFIELD, CHINA: ALIVE IN THE BITTER SEA 382 (1982).

4. See State Secrets Regulations, supra note 1, Art. 8. See also China News Analysis, No. 1182 (Jun 6, 1980), at 2. Li
Guangyi, a correspondent for Zhongguo Caifang Bao (China Finance and Trade News) was recently convicted of divulging to foreigners the time, place and agenda of the Sixth Plenary session of the 11th Party Central Committee, in violation of the 1951 State Secrets Regulations and the PRC Criminal Code, Art. 186. See Crime of Betraying State Secrets, Beijing Review, No. 20 (May 17, 1982) at 3; "Li Guangyi Loses Appeal in 'State Secrets' Leak," FBIS-CHI-82-060 (March 29, 1982), at K1.


6. See, e.g., "Provisional Regulations on Military Offenses," FBIS-CHI-81-113 (June 12, 1981), at K1, esp. Art. 4; "Explanation of Regulations," id., at K4; "Anhui Military Court on New Military Law," FBIS-CHI-81-133 (July 13, 1981), at 01; "Military Commission Issues Documents on Security," FBIS-CHI-78-099 (May 22, 1978), at E1. (This was a report of some of the rules contained in the Regulation on PL A Safeguarding of State and Military Secrets, published by the Military Commission of the CCP Central Committee. The Military Regulations included a long list of vague and nebulous rules, such as "Never ask questions about secrets you shouldn't know," which are enough to instill fear into PLA soldiers and thereby limit foreign access to military information.) See also "Army Paper Stresses Vigilance Against Espionage," FBIS-CHI-82-141 (July 22, 1982), at K1.

7. See generally "Text of New PRC Constitution Published," FBIS-CHI-82-235 (Dec. 7, 1982), at K1, esp. Art. 53 ("Citizens of the [PRC] must ... keep state secrets") and Art. 54 (citizens must "safeguard the security ... of the motherland" [note the significance of incorporating two similar articles in the Constitution]; "Regulations on Studying Abroad Approved," FBIS-CHI-82-147 (July 30, 1982), at R9; "State Council Publishes Personnel Regulations," FBIS-CHI-82-132 (July 9, 1982), at K1, esp. para. 10 (State Council personnel must "strictly guard state secrets ... ")


10. Fox Butterfield discovered four layers of internal bulletins, designated neibu, which have restricted circulation in the PRC: 1) Reference News, which reprints articles from foreign press agents on international and domestic events; 2) Reference Material, which is a more detailed account of foreign news articles and is available to Party members and cadres through their danwei, or work unit; 3) neican or "internal reference" reports, which are circulated only to officials above grade 12 on the 24-grade Party-rank scale; and 4) Cable News, which is a bulletin of major PRC and international events for the eyes of CCP Central Committee personages and military commanders only. See BUTTERFIELD, supra note 3, at 389-92. According to Philip Short, at the very highest level there are secret bulletins of domestic political intelligence, published by an elite department of the People's Daily (Renmin ribao) for Politburo members only. See P. SHORT, THE DRAGON AND THE BEAR 139 (1982).

11. The exhaustive examination done by this author of Chinese press reports on domestic law enforcement activity did not reveal a single instance in which the media reported on the failure of public security agencies or judicial bureaus to prosecute criminal perpetrators. But cf. "Nei Monggol Cracks Armed Criminal Case," FBIS-CHI-82-103 (May 27, 1982), at R1 (one of three gang leaders in crime spree still at large).


Chinese press reports have stated that the abolition of the "Sida" (Four Bigs of the 1978 PRC Constitution) was due, inter alia, to their tendency to permit communication of Party and state secrets. See Important Resolutions of N.P.C. Standing Committee, Beijing Review, No. 17 (April 28, 1980), at 3.

13. ZILE, SHARLET AND LOVE, supra note 2, at 229.

The application of Chinese secrecy legislation is often as capricious as its provisions are ambiguous, the
result of the interplay of concepts of sovereignty and the political current of the time. See note 73 infra. A few examples will illustrate.

In 1980, a Soviet national was imprisoned for 7 years for violating the PRC 1951 State Secrets Regulations - this at a time when PRC-USSR relations were almost non-existent. See "Soviet Spy 'Imprisoned,' Chinese National Sentenced to Death," FBIS-CHI-80-141 (July 21, 1980), at Cl. Moreover, Chinese nationals have been punished for colluding with the Soviets. See, e.g., "PRC Vice Foreign Minister's Daughter Said Arrested," FBIS-CHI-82-087 (May 5, 1982), at VI (Taiwan report of the arrest of the daughter of Vice Foreign Minister Ho Ying, for spying for the KGB).

As US-PRC relations deteriorated in late 1981 and early 1982 over the issue of the U.S. arms sales to Taiwan - before the August 1982 US-PRC communique was issued - the Chinese used the 1951 State Secrets Regulations to expel an American teacher for obtaining agricultural secrets and to detain a Hong Kong newspaper editor suspected of "selling information to the Americans." See "American Expelled for 'Stealing China's Secrets',' FBIS-CHI-82-107 (June 3, 1982), at B1; "Hsin Wan Pao Editor 'Detained' in Beijing," FBIS-CHI-82-147 (July 30, 1982), at W2; "Cheng Ming on PRC Detention of Hong Kong Editor," FBIS-CHI-82-194 (Oct. 6, 1982), at W5; "Detention of Hong Kong Citizen by PRC Confirmed," FBIS-CHI-82-217 (Nov. 9, 1982), at W2 (the editor, Pai Zhen, was eventually sentenced to twelve years imprisonment for leaking secrets. See Woodruff, China Deals Harshly with Unauthorized News Leaks, Balto. Sun, Jan. 7, 1983, at A1.


Vigilance against secrecy leaks are occasionally used as grounds for the detention of Chinese citizens who maintain frequent or close contact with foreigners. See, e.g., "Police Arrest Chinese Fiance of Italian Lecturer," FBIS-CHI-81-229 (Nov. 30, 1981), at G2; "AFP: Chinese Girl 'Forced' from Diplomat's Car," FBIS-CHI-82-201 (Oct. 18, 1982), at K13.

14. The information on these CCP organs, as well as their existence, was imparted to the author by a former, high-level PRC government employee in December 1982, whose wish to remain anonymous will be respected.
15. Rank in Party or government organs is the most important factor in access to classified information. It also symbolizes those cadres' positions in a privileged society. All secret materials are clearly identified to the extent to which they can be disseminated (e.g., level of county and regiment, prefecture and division, province and army, and so forth).

In terms of profession, access to classified information is usually limited to professionals whose work relates to it.

Access to highly sensitive information (e.g., intelligence and counter-intelligence) requires special background investigations to ensure loyalty to the CCP and to the state. Clearance will depend on numerous factors, including an appropriate personal and behavioral record, a good family history, and satisfactory marital and social relationships.


16. The CCP's Central Investigation Department, under the Party Central Committee, is supposedly in charge of covert foreign-intelligence operations. The Public Security Ministry, allegedly divided into 13 bureaus, is the agency in charge of domestic traffic cops, plainclothes officers, and agents monitoring foreign activities in the PRC. See Butterfield, supra note 3, at 334-35. The Ministry also maintains a crack PLA contingent, which serves as a "secret service" force to guard PRC leaders. In this respect (as a secret service force), it replaces the old 8341 unit, earlier considered to be the military detachment in charge of protecting Chinese leaders. See generally, R. Deacon, THE CHINESE SECRET SERVICE (1974).

Public security organs have been known to employ lium-mang, or toughs, to exercise surveillance of the general populace and enforce limited physical sanctions when necessary. See J. Fraser, THE CHINESE: PORTRAIT OF A PEOPLE 318-33 (1980). Most of these incidents, though, were conducted by so-called rebel factions (zaofanpai) during the Cultural Revolution. These incidents are rare today and such conduct is not an offshoot of official government policy. See note 14 supra.

17. Adopted by the PRC Government Administration Council on June 27, 1952 and reintroduced by the NPC in 1980 as part of a set of four regulations repromulgated in order to establish a pre-Cultural Revolution surveillance network. The regulations also include the reintroduction of People's

18. See the "Temporary Organic Regulations of the Social Order and Security Committee" in id., Art. I.

19. Id., Art. VI. See also Zhonggong yan zhuofang sudian jianu ming bubai zhiyuan (Communists claim "hotel incident"; Canadian woman declares her innocence.) World Journal, Sept. 10, 1982, p. 1. In this case, public security officials detained a female Canadian citizen of Chinese extraction who was a guest of an American news correspondent in his hotel room. For not following PRC regulations by not reporting her visit, he was fined 140 renminbi (=90 at that time).

These committees operate on the fringes of the law and, technically, need not respect provisions of PRC laws regarding search and seizure, surveillance, and conceivably, detention. The committees are considered representatives of the masses and not the police. Surveillance may be so comprehensive that street committees, the lowest level governmental subdivision, may monitor the menstrual cycles of young women to ensure compliance with population control directives of the PRC. For an account of certain street committee activities, see BUTTERFIELD, supra note 3, at 325-28.


21. This was a statement made by PRC writer K'ung Meng in 1960 in an article criticizing bourgeois concepts of international law, cited in Chiu, The United Nations, reprinted in LAW IN CHINESE FOREIGN POLICY: COMMMUNIST CHINA AND SELECTED PROBLEMS OF INTERNATIONAL LAW 198 (Leng and Chiu, ed., 1972) [hereafter LENG AND CHIU]. Query the argument that international organizations, though not indigenous to one nation, are still alien or foreign organizations to the PRC?

22. Under a strictly literal interpretation of international law and in accord with international practice, an international organization should not be regarded as a foreign entity in the country in which it operates, especially where that country is a member of that organization.
In the PRC, however, the Chinese have long considered all outside personnel and outside interests not under direct PRC control to be foreign entities. This is the result of the long-term unbridgeable chasm between the PRC and the outside world, as perceived under the ideology of the isolated Chinese totalitarian system. The PRC continues to conduct its political relationships pursuant to the phrase nei wai you bie (literally: "the inside and the outside are different.")

23. Notice the obvious distinction between Article 91 in its present form and an Article 91 which might be amended to read, "Offenders colluding with foreign countries or otherwise . . . ." (emphasis added).

24. This argument may misgauge the force behind PRC concern for preventing intrusions of foreign agents and protecting Chinese mainland sovereignty. For example, Taiwan -- the object of PRC efforts at reunification but certainly not an enemy of the mainland in the literal sense -- is occasionally rebuked for its acts of espionage against the PRC. See, e.g., "Xinhua Scores Activities of Taiwan Secret Service," FBIS-CHI-82-094 (May 14, 1982), at "Kuomintang Secret Agents Arrested in Changsha," FBIS-CHI-81-047 (March 11, 1981), at K2; "KMT 'Special Agent' Arrested in Guangzhou," FBIS-CHI-81-115 (June 16, 1981), at U1; "Yunnan Court Sentences Three 'KMT Spies,'" FBIS-CHI-81-163 (Aug. 24, 1981), at U2; "Xinhua Scores Activities of Taiwan Secret Service," FBIS-CHI-82-094 (May 14, 1982), at U1.

25. ZILE, SHARLET AND LOVE, supra note 2, at 235.

26. Id., at 237.

27. See, e.g., "Xisha Quandao Designated Restricted Military Zone," FBIS-CHI-82-225 (Nov. 22, 1982), at W5 (noting that no civilian access was permitted to Paracel Islands and their 12-mile territorial waters); "USSR-PRC Rift Said to Hold Apart Two Mongolias," FBIS-CHI-82-212 (Nov. 2, 1982), at C2 (noting that a 100-mile border area between Inner and Outer Mongolia is a restricted military zone).


29. See ZILE, SHARLET AND LOVE, supra note 2, at 241-44.

31. See note 27 supra.


34. See the 1965 Act on the Frontier Defense Inspection, supra note 32, Art. 11.

35. In fact, these security checks may be implicitly warranted by Article 10 of the 1965 Act on the Frontier Defense Inspection, supra note 32, which requires that all those in charge of "means of communication" such as "vessels, airplanes, trains [and] automobiles" which pass into or out of the PRC "carrying persons seeking to cross the national boundary secretly or goods endangering the security of China" to report immediately to frontier inspection stations and "await disposition."


37. This information was provided to the author by anonymous sources at the U.S. State Department, June 25, 1981.

38. This information was provided to the author by Mr. Jeffrey Buczacki, China Division, Department of State, Washington, D.C. in an interview on June 26, 1981.

39. ZILE, SHARLET AND LOVE, supra note 2, at 253.

40. Id.

41. The Rules are reprinted in English Translation in COHEN AND CHIU, supra note 32, at 596-7.

42. This information was provided to the author by a military attache of the Chinese Embassy in Washington, D.C., June 25, 1981.

43. This information was provided to the author by a cultural attache of the Chinese Embassy in Washington, D.C., July 28, 1981.

44. This information was provided to the author by a U.S. State Department official, July 28, 1981.
45. See ZILE, SHARLET AND LOVE, supra note 2, at 249-50.


49. See id.


55. These regulations were promulgated on June 28, 1964 [hereafter Chiungehow Strait Regulations]. See COHEN AND CHIU, supra note 32, at 535-38. See also Gongan fagui huibian, supra note 1, at 290 for the Chinese text.
56. The full title of the regulations is the Measures Governing Foreign Vessels Entering and Leaving Port, promulgated on March 14, 1957 [hereafter Port Regulations], reprinted in COHEN AND CHIU, supra note 32, at 559-61. See also Gongan fa gui huibian, supra note 1, at 287 for the Chinese text.

57. The full title of the regulations is the Measures Governing Foreign Vessels on Bordering Rivers, promulgated on April 19, 1966 [hereafter River Regulations], reprinted in COHEN AND CHIU, supra note 32, at 567-70. See also Gongan fa gui huibian, supra note 1, at 293 for the Chinese text.

58. Article 11 of the Qiongzhou Strait Regulations, supra note 55, reads:

When passing through the Qiongzhou Strait, foreign nonmilitary vessels are not allowed to take pictures, to make surveys, or to engage in conduct that violates the laws and decrees of the PRC.

Article 10 of the Port Regulations, supra note 56, reads:

Passengers and crew of a foreign vessel shall not be allowed to engage in photographing or sketching in port.

Article 11 of the River Regulations, supra note 57, reads, inter alia:

A foreign vessel entering port on a bordering river or a river reaching a foreign country, together with its crew and passengers on board, is forbidden to do the following:

1. Photographing and sketching . . .


60. Officials at both the U.S. State Department and the Chinese Embassy in Washington, D.C., confirmed this restriction. It apparently stemmed from the recent use by a foreigner of 16 mm. photography to film an unflattering movie of the PRC.

61. For the text of the 1982 PRC CONSTITUTION, see "Text of New PRC Constitution Published," FBIS-CHI-82-235 (Dec. 7, 1982), at K1-28. The Constitution was promulgated on Dec. 4, 1982. See also 1982 PRC CONSTITUTION, id., Art. 10; "Discipline Commission on Illegal Housebuilding," FBIS-CHI-81-193 (Oct. 6, 1981), at K6 (calling for halt to illegal building of private homes by cadres) "Guangxi Notice Prohibits Unlawful Acquisition of Land," FBIS-CHI-80-060 (March 26, 1980), at P1 (calling for "serious treatment" of those who violate state policy on land acquisition and purchase land for unauthorized use, such as the construction of private residences); "Hainan Daily Cites Case of Corrupt
Truck Drivers," FBIS-CHI-78-098 (May 19, 1978), at H7 (publicizing acts which cause serious damage to property in the PRC). But see Article 82 of the PRC CRIMINAL CODE, infra note 68, which recognizes certain legitimate forms of private property such as income, savings and other means of livelihood as well as private plots, livestock and trees near the house. Accord 1982 PRC CONSTITUTION, supra note 61, Art. 13.

In addition, the PRC has recently been much more liberal in permitting private operation (i.e., sanziyibao) of agricultural activities. See Prybyla, Readjustment and Reform in the Chinese Economy, OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMP. ASIAN STUD., No. 2-1981(39), at 25-27. See also "Renmin Ribao Commentator on Expanding Private Plots," FBIS-CHI-81-122 (June 25, 1981), at K1; "Private Run Industry Seen as Indispensable," FBIS-CHI-82-186 (Sept. 24, 1982), at K3.

62. See "Text of Law on Environmental Protection," FBIS-CHI-79-182 (Sept. 18, 1979), at Ll. Article 25 states: "Pollution of foods in the course of production, processing, packing, transporting, storing and selling should be strictly prevented. Examination should be strengthened and those foods that do not meet the sanitary standards of the state should be strictly prohibited from being sold, exported and imported."


65. See "Export-Import Quarantine Regulations Issued," FBIS-CHI-82-122 (June 24, 1982), at K5.


68. The PRC CRIMINAL CODE was passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and entered into force on January 1, 1980. See Gongan fagui huibian, supra note 1, at 4-33. For the English text of the Code, see "Seven PRC Laws Adopted at Fifth NPC Second Session," FBIS-CHI-79-146 (July 27, 1979) PART I: Supp. No. 019 (hereafter Supp. No. 019), at 33-62. Article 129 of the PRC CRIMINAL CODE provides in pertinent part that "[t]hose guilty of the serious violation of the resources protection law ... will be sentenced to fixed term imprisonment of not more than 2 years, detention or fines." Article 129 of the PRC CRIMINAL CODE connects a number of violations (i.e., violation of the resources protection law; violation of the aquatic product law; and, using forbidden tools to catch aquatic products) with the conjunctive "and." It is not clear whether the accused must therefore violate all the elements of the provision or whether violation of a single element (i.e., the resources protection law) is sufficient for criminal responsibility. Cf., Articles 5, 8, 15 of the 1957 Public Security Regulations, supra note 59, punishing, inter alia "soiling scenic sports (sic) [or] historical sites ... or wilfully damaging flowers, grass and trees in parks and along streets." See also "State Council Decision on Environmental Protection," FBIS-CHI-81-049 (March 13, 1981), at L2; 1982 PRC CONSTITUTION, supra note 61, Arts. 9, 12, and 26.

69. Article 128 of the PRC CRIMINAL CODE, id., provides in pertinent part that "[t]hose guilty of the serious violation of the forest protection law ... will be sentenced to fixed term imprisonment of not more than 3 years or detention and can concurrently or exclusively be sentenced [sic] fines." Cf. Articles 5, 8, 15 of the 1957 Public Security Regulations, note 59, supra.


71. PRC recognition of a sovereign right to compensation for damages was explicitly stated in 1982 in a Chinese demand for compensation for cargo lost when a U.S. submarine sank a Japanese freighter in the East China Sea in April 1981.

Prior to this, Chinese recognition of a sovereign right to compensation for damages was implied in a Xinhua commentary on the Soviet MIG which landed in Japan. See "Hsinhua Correspondent: Who Should Pay Compensation?" SCMP no. 6333 (May 5, 1977), at 219.

Compensation is also required under the PRC CRIMINAL CODE, supra note 68. Article 31 states: "Apart from sanctions according to law, an offender guilty of an offense resulting in financial losses to a victim should also be sentenced to make reparations [peichang] in the light of the condition." See also Art. 41 of the 1982 PRC CONSTITUTION, supra note 61, which asserts that "[c]itizens who have suffered losses through infringement of their civic rights by any state organ or functionary have the right to compensation. . . ."

72. There are, however, publicized directives admonishing Chinese citizens to appropriately conduct themselves in their relations with foreigners. One recent government/CCP campaign stressed the slogan "five stresses and four beauties," requiring Chinese to "be warm and friendly . . . civilized and courteous and be neither supercilious nor obsequious." See, e.g., "Ban Yue Tan on Dealings with Foreigners," FBIS-CHI-81-Z38 (Dec. 11, 1981), at K9. See also "Yangcheng Wanbao Discusses Foreign Influences," FBIS-CHI-82-037 (Feb. 23, 1982), at K5. See also note 92, infra.

73. Article 13 of the 1951 State Secrets Regulations, supra note 1, provides:

Any person who behaves in one of the following ways shall be found guilty of being a counterrevolutionary and shall be punished according [to] the regulations for the punishment of counterrevolutionaries: 1) Any person who sells state secrets to enemies at home and abroad; 2) any person who deliberately divulges state secrets to enemies at home and abroad; and, 3) any person who sells state secrets to domestic and foreign profiteers.

A good example of the capriciousness of state secrecy laws in the PRC was provided by a secret directive issued by the CCP, making it a criminal offense to trace Mao Zedong's writings back to their original versions. As such Mao's writings could be revised, without mass knowledge of the changes, to reflect "each new twist of the political line." See SHORT, supra note 10, at 149.

74. See Articles 28, 53, 54, and 76. Note also that the 1982 PRC CONSTITUTION, supra note 61, included provisions insulating deputies of the National People's Congress (NPC)
from legal accountability for comments made at NPC meetings. See Arts. 74 and 75. Though this might appear ostensibly as a form of immunity from prosecution for acts performed reasonably within the scope of official functions, no NPC deputy or other state functionary is authorized to reveal any form of classified information. Under all circumstances divulging unpublicized information, even where the act appears to conform with NPC legislative enactments, would be tantamount to violating state secrecy laws and punishable as ultra vires activity. Cf. "Renmin Ribao on Whether Speeches Can Be Crimes," FBIS-CHI-82-140 (July 21, 1982), at R2; note 7, supra.

75. For an example of PRC treatment of those who levy false charges, see, e.g., Self-Correction by the Party, Beijing Review, No. 16 (April 21, 1980), at 5; "Kansu Prefecture Announces Arrest of 'Archcriminal'," FBIS-CHI-78-176 (Sept. 11, 1978), at M2. A recent article noted that those who falsely accuse others of being enemy agents are liable to life imprisonment. See "Legislator Comments on Penalties in Gang Trial," FBIS-CHI-81-013 (Jan. 21, 1981), at L3.

76. See note 6 supra.

77. See note 12 supra. See also Guiding Principles for Inner Party Political Life, Beijing Review, No. 13 (March 31, 1980), at J. Note also that Chinese press reports stated that the abolition of the "Sida" (Four Bigs of the 1978 PRC Constitution) was due, inter alia, to their tendency to permit communication of Party and state secrets. See Important Resolutions of N.P.C. Standing Committee, Beijing Review, No. 17 (April 28, 1980), at J.

78. H. Berman and P. Maggs, Disarmament Inspection under Soviet Law 35-7 (1967) [hereafter Berman and Maggs].

79. Id., at 36.

80. Id.

81. Id.


83. Zile, Sharlet and Love, supra note 2, at 288.

84. Actually, the language is written in the converse, stating that "all organs of state, public organizations and citizens concerned are obliged to supply the necessary information to those committees of inquiry when they conduct investigations." See 1982 PRC CONSTITUTION, supra note 61, Art. 71. See also Art. 73.

86. For an overview of PRC laws applicable for noncooperation, see "Article Discusses Concealing Criminal Behavior," FBIS-CHI-82-054 (March 19, 1982), at K8.

Cf. Article 73 of the 1982 PRC CONSTITUTION, supra note 61, which requires officials of the State Council and its subordinate organs to "answer the questions [of NPC and NPC Standing Committee deputies] in a responsible manner."


90. Supervision and inspection would also appear to apply to the implementation of the PRC Quarantine Regulations, supra note 65, and the PRC Food Hygiene Law, supra note 64, the drafts of which are currently being revised for formal enactment.

91. See BERNAN AND MAGGS, supra note 78, at 36; ZILE, SHARLET AND LOVE, supra note 2, at 285.

at L1 (noting that, according to a State Council decision, no Chinese are allowed to accept gifts in dealing with foreign nationals and organizations without the approval of appropriate authorities).

93. ZILE, SHARLET AND LOVE, supra note 2, at 289.

94. See "Political Dissident Sentenced to 15 Years Imprisonment," FBIS-C1H-79-201 (Oct. 16, 1979), at L1. See also note 13, supra.

95. "Remnin Ribao Report on Beijing Trial of Wei Jingsheng," FBIS-C1H-79-207 (Oct. 24, 1979), at L1. Wei was actually convicted of a number of crimes. In addition to supplying information to a foreigner, Wei was convicted of carrying out revolutionary propaganda and agitation and damaging the vital interests of the state and the people. Id. Though they were all counterrevolutionary crimes, there was no indication given by the Beijing Municipal People's Court as to what punishment was meted out for each crime, or whether the crimes were even separately considered. Since Wei's crimes were committed prior to the promulgation of the 1979 PRC CRIMINAL CODE, he was convicted under the 1951 Act for the Punishment of Counterrevolutionaries of the PRC. Cf., Chiu, China's New Legal System, 79 CURRENT HISTORY 29 (No. 458, Sept. 1980).


98. Article 117 of the PRC CRIMINAL CODE, supra note 68, provides for up to three years imprisonment, fines and confiscation of property for violating "financial, foreign exchange, gold and silver and commercial control laws" and for practicing "speculation and manipulation." See also "Regulations on Foreign Exchange Control Issued," FBIS-C1H-82-005 (Jan. 8, 1982), at K7; "Regulations Ban Domestic Sale of Export Goods," FBIS-C1H-82-183 (Sept. 21, 1982), at K18; "Shanghai Reader Calls for Stop to Illegal Transactions," FBIS-C1H-79-231 (Nov. 29, 1979), at 04; "Guangzhou Cracks Down on Illegal Foreign Currency Exchanges," FBIS-C1H-79-232 (Nov. 30, 1979), at Pl; "Hsin Wan Pao on

According ZILE, SHARLET AND LOVE, supra note 2, at 291 observing the same conditions for private individuals in the Soviet Union.


100. See ZILE, SHARLET AND LOVE, supra note 2, at 293.


102. See ZILE, SHARLET AND LOVE, supra note 2, at 293.

103. See id., at 293-96.

104. The 1978 PRC CONSTITUTION provided that the "Supreme People's Court, local people's courts at various levels and special people's courts exercise judicial authority" (Art. 41). See "Text of Newly Adopted Constitution," FBIS-CHI-78-045 (March 7, 1978), at D39.

The 1982 PRC CONSTITUTION, supra note 61, states in Article 123 that "people's courts . . . are the judicial organs of the state." Article 124 notes that the PRC establishes the Supreme People's Court, the local people's courts, and special courts, including military courts. Nowhere does the language of the Constitution confer independent and exclusive judicial authority on the courts, although this does not necessarily lead to an inference of deliberate modification.

105. The PRC ORGANIC LAW FOR PEOPLE'S COURTS was passed on July 1, 1979 at the Second Session of the Fifth National People's Congress and entered into force on Jan. 1, 1980 [hereafter PRC ORGANIC COURT LAW]. See Gongan faqui huibian, supra note 1, at 449-57. The English text of the PRC ORGANIC COURT LAW may be found in Supp. no. 019, supra note 68, at 20-27.

106. Compare ZILE, SHALET AND LOVE, supra note 2, at 293.

107. See also "Further Coverage of Fifth Session of Fifth NPC: 'Resolution on Supreme Court'," FBIS-CHI-82-239 (Dec. 13, 1982), at K8 (calling on courts and procuratorates of the PRC to "protect the rights and interests of the state . . . and safeguard the successful development of socialist modernization."

108. See also PRC CRIMINAL PROCEDURE CODE, supra note 85, Arts. 8, 11.
See A NEW PRACTICAL CHINESE-ENGLISH DICTIONARY (Far East Book Co., Ltd., Hong Kong, 1974).

See, e.g., Chiu, China's New Legal System, 79 CURRENT HISTORY 29, 32 (No. 458, Sept. 1980). Chiu noted that Wei Jingsheng's trial had initially been designated as open to the public although none of Wei's family or relatives was permitted to enter. Moreover, at least one of those Chinese who did attend received a ticket at work and had been instructed to be present. See also Butterfield, Leading Chinese Dissident Gets 15-Year Prison Term, N.Y. Times, Oct. 17, 1979, at A3.

The only remaining obligation would appear to be called for under Article 11 of the PRC CRIMINAL PROCEDURE CODE, supra note 85, which states that "[t]he reason for not hearing a case in public should be announced by the court." This provision can be easily complied with by the PRC without compromising the confidential nature of the interrogation.

See also the 1982 PRC CONSTITUTION, supra note 61, Art. 134.

This problem may be somewhat mitigated by the PRC CRIMINAL CODE, supra note 68. Intentional mistranslation in order to frame another person or conceal evidence is punishable by up to 7 years under Article 148 of the CODE.

People's assessors are unlike jurors as we know them in the United States. But cf. "Shanghai Districts Elect, Train People's Court Jurors," FBIS-CHI-80-154 (Aug. 7, 1980), at 03. (This article was probably mistranslated, incorrectly substituting "juries" for "assessors." There are no juries in the PRC.) First, the assessors are usually intimately familiar with the facts of the defendant's case before trial. Most often, they are chosen from the defendant's danwei or workplace, and have an unfavorable predisposition toward the defendant's action. This is in keeping with the Chinese principles of isolation and confrontation; singling out the accused, confronting him with his acts, and securing his confessions and repentance, usually in the form of self-criticism. Assessors serve only in the court of first instance. At the appellate level, there are 3 judges and no assessors.

Second, there are no legal devices such as voir dire with its attendant rights of dismissal for cause or peremptory challenges as Western legal systems know them. But cf. Yanling, China's Law of Civil Procedure, Beijing Review, No. 33 (Aug. 16, 1982), at 20 (hereafter Yanling) (noting that the law of civil procedure - implemented in the PRC on a trial basis in October 1982 - requires a judge
to disqualify himself in instances where he is the liti-
gant, has some close relationship to him, or is personally
interested in the case. This is the first such instance of
self-disqualification in current PRC law.)

Assessors, once appointed (ostensibly, they are to be
elected by the people, although they are often selected by
local officials) are expected to serve; no lawyer will
challenge their presence, neither with cause nor without.
See, e.g., "Hunan's Use of People's Assessor Proves Effec-
tive," FBIS-CII-80-205 (Oct. 21, 1980), at L7 (noting that
Hunan assessors were "chosen" for 3-year terms and may be
removed at any time for incompetence or negligence). Cf.
"Jiefangjun Bao on System of Assessors for Military

115. PRC CRIMINAL PROCEDURE CODE, supra note 85, Art. 105.

116. Judging from the dispatch with which the Four Bigs (Sida)
were abolished from the 1978 PRC CONSTITUTION, Art. 45, in
1980, it is quite possible that the difficulty of procuring
a statutory amendment is minimal. See, e.g., "Further
Reportage on NPC Closing Session: Constitution Revision
Committee Resolution," FBIS-CII-80-178 (Sept. 11, 1980), at
L4.

117. See "Reportage on Gang of Four Trial Continues: Xinhua
See also Chiu, Certain Legal Aspects of the Recent Peking
Trials of the "Gang of Four" and Others, OCCASIONAL PAPERS/
REPRINTS IN CONTEMPORARY ASIAN STUDIES, No. 3-1981 (40),

118. See ZILE, SHARLET AND LOVE, supra note 2, at 295; U.S.
CONST. amend. VI.

119. See also PRC CRIMINAL PROCEDURE CODE, supra note 85, Arts.
8, 26.

120. See Article 8 of the Provisional Regulations, cited in
"Text of Provisional Regulations on Lawyers," FBIS-CII-80-
169 (Aug. 28, 1980), at L6. See also Peking Restricts For-
"eign Legal Firms, Dealing Setback to Some U.S. Lawyers,
Asian Wall St. Journal, Jan. 1, 1980, p. 6; "Xinhua Dis-
cusses Role of Lawyers in Beijing," FBIS-CII-82-077 (April
21, 1982), at R1. See generally Ellis and Shea, Foreign
Commercial Dispute Settlement in the People's Republic of

121. See "Text of Provisional Regulations on Lawyers," id.,
Arts. 5, 6. See also "Renmin Ribao Discusses Regulations
for Lawyers," FBIS-CII-82-011 (Jan. 18, 1982), at R16;
"Xinhua Discusses Role of Lawyers in Beijing," FBIS-CII-82-
077 (April 21, 1982), at R1.

122. ZILE, SHARLET AND LOVE, supra note 2, at 295.
123. The author makes a major assumption with regard to this particular alternative: the practical utility of counsel in PRC legal proceedings. An examination of the Gang of Four trial, for example, revealed that the defendants' attorneys were not advocates, per se; for the most part, their services were limited to pleading for leniency for their clients. This aspect of practical Chinese law attenuates the role of defense counsel in legal proceedings and raises the question of whether legal representation -- particularly where limited to Chinese attorneys -- would not be a worthless and time-consuming exercise.


Pre-1979 practices were considerably different. See Chiu, Socialist Legalism: Reform and Continuity of Post-Mao Communist China, 17 ISSUES & STUD. 45, 56-7 (No. 11, No. 1981); SHORT, supra note 10, 154-66.

125. See, e.g., "Guangming Ribao Hints at Refusals to Give Evidence," FBIS-CHI-80-247 (Dec. 22, 1980), at L11. See also "Heilongjiang: Obstacles in Criminal Cases Viewed," FBIS-CHI-82-103 (May 27, 1982), at S1 (calling on legal and public security organs to remove "obstacles," such as giving "false evidence," in cracking down on crime); 1982 PRC CONSTITUTION, supra note 61, Art. 38 (guaranteeing the personal dignity of Chinese citizens and protecting them from "false charge or frame-up").

126. See Part 2, Section 2 of the PRC CRIMINAL PROCEDURE CODE, supra note 85, Arts. 67-70.

127. Article 15 of the PRC CRIMINAL CODE, supra note 68, exempts from punishment "mental patients who cannot understand or control their actions." However, Article 15 may charge the family members of such patients with legal accountability for the latter's acts where the former do not keep "close watch over them." Article 16 provides lighter or mitigated penalties or even exemption from punishment for "a deaf-mute or blind person." Cf., 1957 Public Security Regulations, supra note 59, Art. 37.

These statutory provisions admit a form of unconditional insanity defense." A recent article on a Shanghai trial of an accomplice of the "Jiang Qing counterrevolutionary clique" indicated that criminal proceedings might be
suspended where "temporary" mental illness prevents an accused -- in this case Ma Tianshui, who was suffering from "psychosis," as diagnosed by a judicial medical examiner at the time of trial -- from defending himself. In truth, this appears similar to the American legal concept of "incompetency to stand trial," rather than "insanity," which would preclude a finding of guilt. See "Shanghai Courts Sentence Jiang Qing Followers," FBIS-CHI-82-168 (Aug. 30, 1982), at 04.


129. Id., at L11.

130. Id.

131. Id.

132. See also note 125 supra.

133. See note 117 supra and accompanying text.

134. Article 133 of the 1982 PRC CONSTITUTION, supra note 61, requires all procuratorial organs to answer strictly to the organs of state power at the corresponding levels which created them (presumably, people's congresses), an obviously intolerable condition vis-a-vis inspectorate operations.

135. For an excellent discussion of Chinese rule enforcement and coercive apparatus, see J. TOWNSEND, POLITICS IN CHINA 320-27 (1980). See also notes 1-20 supra and accompanying text.

136. See BERN AND MAGGS, supra note 78, at 43; ZILE, SHARLET AND LOVE, supra note 2, at 302-06.

137. Interview conducted by the author with a cultural attache of the PRC Embassy in Washington, D.C. on August 14, 1981.

138. The PRC attache cited id. would not explicitly enumerate formal application procedures and the author is uncertain of what steps are taken by Chinese governmental organs to ensure the authenticity of familial ties between Chinese nationals and relatives abroad. Cf. "Fujian Ribao on Abuses in Securing Exit Permits," FBIS-CHI-82-039 (Feb. 26, 1982), at 03. (This article reported on a Fujian Communist Party Committee prohibition on party (CCP) cadres securing "exit permits" for their families, relatives, and friends through "connections" or guanxi. These exit permits are not specifically discussed and it is more likely that they are internal permits allowing inter-province travel in the PRC, rather than emigration permits.)


141. See, e.g., "Guangdong Adopts Regulations on Illegal Emigration," FBIS-CHI-79-237 (Dec. 7, 1979), at Pl. The Regulations call for, inter alia, criminal sanctions against those who forge papers for entry into border areas, those who provide illegal emigrants with means of transport and those who illegally board vehicles in an attempt to flee the PRC. See also "Guangdong Promulgates Regulations on Illegal Emigration," FBIS-CHI-80-008 (Jan. 11, 1980), at Pl.

142. See ZILE, SHARLET AND LOVE, supra note 2, at 299.

143. Id., at 299-300.

144. See also Article 75 of the PRC CRIMINAL PROCEDURE CODE, supra note 85, which states:

An inspection may be conducted of the person of the injured party or the accused in order to ascertain his features, injury or physiological condition.

If the accused refused to be inspected, investigators may subject him to a compulsory inspection when deemed necessary.

An inspection of the person of a woman shall be conducted by female personnel or a medical doctor.
Cf. note 84, supra. Note also that under the recently implemented provisional civil procedure code, courts must base their findings in civil cases on facts and are required to "collect and investigate the evidence in an all-around and objective way." See Yanling, supra note 114, at 21.


146. See also Article 131 of the PRC CRIMINAL CODE, supra note 68, which provides, inter alia, that "the law protects the citizens' personal and democratic rights and other rights against unlawful infringement by any person or organization."

147. The Chinese press has occasionally publicized egregious violations of search laws and has stressed the respect that ought to be exhibited toward personal premises. See e.g., "Hubei Investigates Violations of Personal Rights," FBIS-CHI-80-161 (Aug. 18, 1980), at P2; "Zhejiang Illegal House Search," FBIS-CHI-80-184 (Sept. 19, 1980), at 05.

148. See also Articles 126 and 131 of the 1982 PRC CONSTITUTION, supra note 61.

149. See ZILE, SHARLET AND LOVE, supra note 2, at 299.

150. See PRC CRIMINAL PROCEDURE CODE, supra note 85, Arts.79-87.

Chinese perceptions of international law issues, including the recognition of international organizations and individuals, have varied with broadly-defined domestic goals. The PRC's previous hard-line position on refusing to recognize international organizations as juridical personalities has yielded to a more flexible posture, most recently illustrated by Chinese accession to the UN Convention on the Privileges and Immunities of the Specialized Agencies, participation in the UN Disarmament Committee, ratification of the UN Convention on Certain Conventional Weapons with a statement noting among the Convention's inadequacies the absence of adequate verification measures, and recommendation of nuclear disarmament verifiable by an international inspectorate body. Nevertheless, these PRC acts cannot be wantonly paraded before the international community as a weathervane of future PRC commitment to the operation of any ACD agency on PRC territory.

Chinese positions are palpably inconsistent, frequently ambiguous, and legally duplicitous. The PRC, for example, may have ratified the UN Specialized Agency Convention, but it has not ratified the Convention on the Privileges and Immunities of the United Nations, which grants juridical status to the United Nations and would appear to be the logical precursor to recognition of UN agencies. The Chinese have also refused to accept the compulsory jurisdiction of the International Court of Justice. Despite its participation in the UN Disarmament Committee and its recent ratification of the UN Convention on Certain Conventional Weapons, the PRC has not exhibited any tangible interest in cooperating in multilateral disarmament talks; rather, its position is noticeably noncommittal pending primary disarmament measures first implemented by the superpowers. Moreover, the suggestion that disarmament on a multilateral scale is a function of bilateral initiation gives the Chinese the justification they require to increase their military expenditures and develop newer and more sophisticated weapons systems in the interim. It has also served as the rationale for PRC recalcitrance in refusing to ratify existing ACD treaties such as the 1963 Nuclear Test Ban Treaty and the 1968 Non-Proliferation Treaty. Even the PRC's laudable 1982 disarmament proposal, including provisions for verification by an international inspectorate under UN authority, is sufficiently nebulous to permit the Chinese the luxury of opposing verification measures unilaterally deemed overly intrusive or otherwise found unsatisfactory.

In short, PRC perceptions of international law, international organizations and individuals, and ACD verification measures have always been formed and followed within the context of the Chinese commitment to the inviolable nature of state sovereignty. Arguably, the idea of arms control and arms inspection runs counter to such a concept. Chinese reluctance might
reasonably be manifested at the negotiating table, PRC representatives claiming that the constraints of arms control and intrusiveness of arms inspection constitute an undue interference into the sovereign affairs of the PRC. Undoubtedly, Chinese receptiveness to an arms control agreement and concomitant inspection provisions will remain a function of PRC perceptions of the international law principles of sovereignty and noninterference in the internal affairs of a state, and, perhaps, the degree to which other parties to the agreement reconcile arms control arrangements with their own views of such principles.

International law principles aside, there are fundamental Chinese domestic concerns which would influence the execution of arms control provisions within the PRC or determine the willingness of other nuclear powers to secure Chinese cooperation in their implementation. Systematic reproductions of legislative and judicial pronouncements are few. To some extent, this is the result of the relative infancy of operation of Chinese legal codes: to a larger degree, the lack of information is part and parcel to the Chinese tradition of mistrust of foreign elements and the tendency to envelop the operational aspect of formal Chinese government in secrecy. Chinese xenophobia is an extremely sensitive concern, particularly where potential verification procedures envision the creation of a non-Chinese inspectorate body. The PRC has been extremely assiduous in insulating Chinese society from foreign influence. Despite apparent attempts to reconcile its mistrust of foreigners with its constitutionally-expressed goal of achieving the four modernisations by the onset of the twenty-first century, the PRC has set in motion formally-sanctioned procedures for foreign contact, some of which inhibit, rather than promote, bilateral association. The relative euphoria enveloping the exposure of Chinese and American society to each other following normalization of relations in 1979 has been tempered by the rather loose interpretation of Chinese secrecy laws to activities engaged in between Chinese nationals and Americans. Party, military, state and seemingly innocuous forms of information are subject to PRC secrecy laws, and the Chinese have simply broadened or narrowed their application to reflect shifts in political relations. Thus an arms inspectorate might be faced with significant obstructive PRC practices that result from the vagaries and caprices of what constitutes secret information. Undoubtedly, effective inspection operations would require either drastic revisions in the drafting of, or exemptions from, existing secrecy laws in the PRC.

Secrecy laws are not, of course, the only legal impediments to effective inspectorate operations in the PRC. Relevant provisions of the PRC Constitution, Criminal Code, Criminal Procedure Code, Arrest and Detention Regulations, Entry, Exit and Transit regulations, and local decrees and regulations are worded sufficiently ambiguously as to create uncertainty as to their application at any given time. The result is an unequivocal conclusion that an inspectorate can operate in the PRC only insofar as revisions in, or exemptions from, numerous Chinese laws are extensive.
The decision to accept and implement verification procedures rests mainly with the Chinese Communist Party. The CCP has such pervasive influence over each and every aspect of Chinese life that it remains unquestionably the single, most dominant force in creating an environment which facilitates or inhibits arms inspection. Where arms inspection procedures were considered tolerable within the PRC system, Party support as policy-maker and policy-executor would likely ensure full compliance with an arms inspection policy. The governmental system, despite its ostensible role in the policy-making and policy-execution processes as laid down in the recent legal codes, appears to exert only a marginal influence. Party control of governmental units and basic-level societal units (through public supervisory organizations such as people's mediation committees) would seem to preclude the possibility of official opposition to a CCP-supported arms inspection policy, though the exact strength and independent function of intra-Party factions cannot be gauged with sufficient certainty to determine their role in inspection operations.

Despite the CCP's dissemination of the 1979-80 legal codes to the Chinese masses and the Party's emphasis on socialist legality, the entire legislative and administrative machinery remains subordinate to the CCP at every level. The Party's monopoly on the policy-making and policy-execution processes permits CCP-initiated directives to be immediately implemented by governmental authorities. Moreover, such enactments are likely to be binding on all cadres and individuals, regardless of their consent. Though such a centralized process can readily facilitate the operation of an inspectorate in the PRC, Party control can cut both ways. It can be used just as readily as an obstructive factor in inspection operations, the more so because the CCP leadership has at its disposal all the necessary means to influence civic attitudes towards the inspection process. By publicizing or propagandizing an arms inspection policy through the communications media, mass organizations and mass campaigns, the Party has the power to highlight incidents of intrusiveness and to otherwise create an atmosphere of significant adverse publicity for inspection operations.

Despite the apparent power of legal and quasi-legal organs in the PRC, the CCP can expect no serious threat to its control. First, the procuracy and the judiciary are composed of CCP cadres, whose task is, first and foremost, to strengthen Party leadership over the masses. Second, the judiciary in the PRC does not exercise the power of judicial review as it is known in the West. Any challenge to the validity of implementing legislation is expected to issue from the procuracy, though there has yet to appear an instance in which the procuracy has challenged any Party-initiated decrees on constitutional or other legal grounds. CCP-initiated implementing legislation in support of an arms inspection policy is therefore unlikely to be opposed by PRC legal organs, in spite of constant calls in the media for the exercise of independent legal authority.
Undoubtedly, there is the opportunity for a more positive association among the Party, Chinese legal organs and an inspectorate. Where the CCP supports an arms inspection policy, a full array of legal and quasi-legal organizations can help to facilitate compliance. The procuracy might utilize its extensive investigatory powers to expedite the procurement of inspectorate information and to ensure cooperation from local authorities. The more informal dispute resolution procedures, such as mediation and arbitration, might serve to create an environment conducive to effective, expeditious and harmonious dispute resolution. The courts -- in the event it became necessary to resort to them -- could be used as a forum for the construction of broad legal principles that facilitate inspection operations. In most instances, however, an inspectorate should recognize the PRC aversion to formal judicial procedure and the likelihood that resort to the judiciary may itself indicate Chinese unhappiness with inspection activities.

Quasi-public and mass organizations can be used to indoctrinate the Chinese masses with positive attitudes toward inspection functions. Moreover, the Party can facilitate the molding of such attitudes by tailoring Chinese Communist ideological constructs to meet the goals of effective inspection operations.

Assuming the conclusion of an arms control agreement, there are numerous legal and administrative safeguards that an inspectorate would require in order to carry out its operations in the PRC. First, verification procedures must be made operative within PRC territory. Though the Chinese appear to be particularly attentive to their treaty obligations because of their belief that treaties are the most unequivocal expression of state consent, verification arrangements would probably require specific incorporation into Chinese municipal law. To this end, the most effective means of facilitating inspection operations would probably be to incorporate the carefully-outlined powers of an inspectorate in a statute promulgated by the NPC and its Standing Committee. Since lower-level legislatures exercise mostly subordinate, rather than concurrent, powers, the enactment of a statute at the NPC level would bind provincial and lower-level law-making bodies and facilitate inspection operations.

Obviously, PRC enabling legislation is, by itself, insufficient for effective verification operations. The Chinese must be required to provide an inspectorate with a continuous flow of information on national and local laws. Moreover, an inspectorate is well-advised to engage in political monitoring -- through the examination of media pronouncements -- in order to observe potential changes in the internal functioning of CCP leadership that may impact on inspectorate legislation and operations.

Most importantly, effective, unimpeded inspection operations will require a relatively broad grant of privileges and immunities from Chinese substantive and procedural jurisdiction. Privileges and immunities would be required regardless of whether the form of the inspectorate were adversarial or international in character. Arguably, the Chinese appear most willing to part
with sovereign jurisdiction where the inspectorate is international in character. An adversary inspectorate would, inter alia, require the Chinese to undertake a significant resocialization process, particularly with respect to the Soviet Union, which has been accused consistently of using diplomatic privileges as a cover for covert activities. The participation of Chinese nationals on the inspectorate team, despite the obvious advantages it offers the PRC in keeping inspection operations supervision to some extent "in-house," suffers from the potentially more severe repercussions which might accompany the ultra vires conduct of Chinese personnel, including the possible conflict between a grant of privileges and immunities and the imposition of severe criminal penalties for counterrevolutionary activity.

In many instances, an international inspectorate -- particularly in the event its members were from Third World nations -- would not suffer from the same infirmities. First, the PRC considers itself ideologically, socially, and economically compatible with many Third World countries. Second, Chinese authorities rarely ascribe to Third World nations the more obnoxious features of the superpowers, such as blatant acts of espionage or competitive escalation of the arms race. There would simply be less distrust of Third World members' intentions than those of, say, the Soviet Union. Finally, the PRC is already on record as supporting an international body to "carry out effective verification", a choice of words that, despite their potential, offer nothing more than support for the collection of data by an international body. Nevertheless, despite its dissimilarity to support for on-site verification by an international inspectorate, the PRC's proposal is still a step in the direction of mutual, observable compliance with ACD measures.

An inspectorate, in addition to a grant of broad privileges and immunities, would also require certain exemptions from Chinese restrictions, particularly as they apply to the freedom of movement of personnel, equipment and supplies in the PRC. Obviously, the novelty and untested procedures of inspectorate operations will create a significant degree of suspicion, and it seems almost tautological to assert that the more specific and narrowly-focused the requisite privileges, immunities and exemptions, the greater the likelihood of their acceptance by the Chinese. Inspectorate operations should be limited to the collection of relevant data and the examination of appropriate facilities and should result in only marginal contact with the everyday aspects of Chinese life, thus reducing any latent fear of the effects of any perceived, pernicious, outside influence on Chinese society.

For the most part, the insulation of Chinese society from inspectorate operations should make it desirable for the inspectorate to operate its own means of communication and transportation and to secure separate accommodations and personal services. Not only would this limit any foreign influence on the masses and more readily permit Chinese monitoring of inspection activities, but it would also protect the inspectorate from the potential
harassment of mass organizations, street committees and the like and facilitate operations, since all inspectorate functions would proceed through special channels.

Because of the Chinese penchant for secrecy and control, the consolidation of the supervision of inspectorate operations in the PRC in a newly-created special Chinese agency (or agencies) or commission would seem to be a realistic and plausible consideration. The establishment of such entities within the PRC should pose no legal obstacles to the Chinese, assuming, of course, Chinese Communist Party approval for its creation. The PRC has, for example, set up a Legislative Affairs Commission under the NPC Standing Committee to draft and revise legislation and a Discipline Inspection Committee under the Chinese Communist Party to investigate and discipline CCP cadres for legal and ethical violations. A commission combining these types of functions (i.e., legislative, investigative and prosecutorial) would be an excellent prototype for an ACD supervisory body. A special PRC organ to oversee inspectorate operations and handle inspectorate requests would, as is perhaps true of most totalitarian regimes, reduce bureaucratic red tape, provide a single forum from which and through which to channel complaints, ensure insulation of the masses from inspectorate activities, guarantee compliance with PRC national security, minimize the number of personnel involved in verification, and legitimize inspectorate operations by introducing government involvement in the entire process. To these ends, the CCP could simply create a new ministry or agency to oversee inspectorate operations and report directly to the Party's Central Committee or it could put a high-level Party official directly in charge of the ministry or agency. In either case, the CCP would be likely to assume more or less direct control of inspectorate operations.

At the heart of the entire process of on-site inspection in the PRC is not only Chinese willingness to participate in ACD measures but perceptions within the international community that PRC participation is relevant. Evidence of the former continues to accumulate. Despite apparent ambiguities and inconsistencies, there are promising indications offered by the mere fact that the Chinese have taken affirmative steps to provide their own ACD proposals. In both 1979 and 1982, PRC formal pronouncements on disarmament have indicated growing Chinese concern for stemming the arms race, and its 1982 proposal calling for effective verification by an international body is as progressive a disarmament measure as has been offered in any international forum by any nuclear power. Chinese participation in the UN Disarmament Commission, the resurgence of international law study in the PRC, Chinese military potency, weapons modernization programs, and the recent promulgation of numerous major legal codes are cumulative evidence of the Chinese calculus of cooperation and interdependence underlying effective implementation of ACD measures.

The reaction of the international community to these PRC actions has, however, been mixed. The current absence of sophisticated nuclear weapons delivery systems, the general language of PRC disarmament proposals, and the tendency of the Chinese to go
long on rhetoric and short on hard-nosed negotiation have thus far resulted in an essentially bilateral US-USSR quality to ACD negotiations. Nevertheless, the growing nuclear weapons freeze movement, the initiation of bilateral USSR-PRC normalization talks,6 US-PRC normalization, and US-PRC negotiations on a nuclear accord suggest formally unacknowledged but nevertheless systematic attempts to incorporate Chinese behavior as a significant variable in foreign policy strategies in general and in ACD proposals in particular.8 There may be many controversial and yet unanswerable questions concerning PRC involvement in ACD issues, but its importance and relevance to those ought not be among them.

The degree to which the PRC would be willing to fulfill its obligations under the requirements of ACD verification procedures will depend greatly on the careful preparation of the agreement, the reciprocal obligations of its provisions, and the negotiation of all terms by highly qualified and tactful personnel who can demonstrate the significant competence and serious intentions of all parties.

In the final analysis, arms control, disarmament, and verification are issues that are important not merely in theory and not only to the United States and the Soviet Union. Because of the messianic urge of each to deliver the earth from the threat of nuclear war posed by the other, American and Soviet negotiators lose sight of the whole. And the danger of ignoring the more general implications is not that ACD and verification will become insignificant, but that they will thereby become irrelevant.
Footnotes

1. For ratification, see "Further on NPC Standing Committee Session: Weapons Convention Resolution," FBIS-CHI-82-046 (March 9, 1982), at K8. For the PRC's statement, see 6 UN DISARMAMENT Y.B. 404 (1981): "the Convention fails to provide for supervision or verification of any violation of its clauses, thus weakening its binding force."

2. See The UN: China's Disarmament Proposal, Beijing Review, No. 28 (July 12, 1982), at 11.

3. Recently, the PRC has made a concerted effort to publicize much of its new legislation, which was recently estimated at 700 laws, decrees, regulations and legal decisions. "Laws Concerning State Structure to be Revised," FBIS-CHI-82-220 (Nov. 15, 1982), at K4. See "PRC Mass Media to Publicize New Laws Adopted at NPC," FBIS-CHI-79-129 (July 3, 1979), at L20.

4. See "Former Beijing Mayor Peng Zhen Heads New Legal Commission," FBIS-CHI-79-039 (Feb. 26, 1979), at E1. Peng Zhen recently resigned from this post and was replaced by Xi Zhongxun. See "Decision on Replacing Peng Zhen," FBIS-CHI-81-112 (June 11, 1981), at K5. Similar commissions appear to have been set up under lower-level standing committees as well. See, e.g., "Xizang People's Congress Standing Committee Session," FBIS-CHI-80-121 (June 20, 1980), at Q1 (noting the establishment of a new "legal group" under the Xizang Autonomous Regional People's Congress Standing Committee).

5. For the work of the commission, see e.g., "Discipline Commission on Illegal Housebuilding," FBIS-CHI-81-193 (Oct. 6, 1981), at K6.


8. Revealingly, though perhaps somewhat collateral to actual PRC relevance to ACD negotiations, Foreign Minister Andrei A. Gromyko of the Soviet Union recently responded to a Reagan administration disarmament proposal by noting, among other things, that British and French nuclear missiles be included as part of the Western nuclear arsenal in US-USSR disarmament negotiations. As Gromyko perhaps auspiciously suggested: "It is impossible to close our eyes to them, to believe they are nonexistent and only to seek agreement on the American systems." See Excerpts From Gromyko's Statement on Missiles, N.Y. Times, April 3, 1983, p. 10.
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anli 案例 case (i.e., criminal case)
bachuan 霸权 hegemony
bangongting 办公厅 General Office
Baoshou guojia jimi 保守国家机密
zhaxing tiaoli 暂行条例
beiwanglu 备忘录
chaoguojifa 超国际法
chujing 出境
dabianlun 大辩论
daming dafang 大鸣大放
dazibao 大字报
danwei 单位

diren 敌人
falu jiben zhishi jianghua 法律基本知识讲话
falu zhishi wenda 法律知识问答
fakue yanjiu 法学研究
fangemingzui 反革命罪
Gongan fagui huibian 公安法规汇编
genju falu 根据法律
gonganju 公安局

gongtung banfa 共同办法
gongwu huzhao 公务护照
gongyue/zhuanyue 公约/条约

guanxi 关系

guoji fa 国际法

memorandum transnational law
exit big debates
free airing of views big-character posters
work unit enemy

Talks on basic knowledge of law
Questions and answers on law
legal studies
counterrvolutionary act
Collection of public security laws
according to law
public security bureau
joint measures
official passport
convention
relations; "connections"
international law
guoji zuzhi 国际组织

international organization

guojia jimi 国家机密

state secrets

Guojing heliu waiguoji chuanbo guanli banfa 国境河流外国籍船舶管理办法

Measures Governing Foreign Vessels on Bordering Rivers

hxixiang piping 互相批评

mutual criticism

huzhao 护照

passport

huanwen 语文

exchange of notes

jiyaoju 机要局

Confidential Communications Bureau

Jinchukou chuanbo chuanyuan luke xinglijiancha zhanxing tongze 进出口船舶、船员、旅客、行李检查暂行通则

Provisional Regulations Concerning Inspection of Incoming and Outgoing Vessels, Passengers, Crew and Baggage

Jinchukou feiji jiyuan luke xinglijiancha zhanxing tongze 进出口飞机、机员、旅客、行李检查暂行通则

Provisional Regulations Concerning Inspection of Incoming and Outgoing Aircraft, Passengers, Crew and Baggage

Jinchukou lieche cheyuan luke xinglijiancha zhanxing tongze 进出口列车、车员、旅客、行李检查暂行通则

Provisional Regulations Concerning Inspection of Incoming and Outgoing Trains, Passengers, Crew and Baggage

jingyan shi jianyan zhenli de weiyi biaozhun 理经验是检验真理的唯一标准

experience is the only criterion for examining truth

jumin weiyuanhui 居民委员会

residents' committees

leisi 类似

analogy

lianhe gongbao 联合公报

joint communiqué

mianchu 免除

immunity

neibu 内部

internal

neican 内参

internal reference

nei wai you bie 内外有别

"the inside and the outside are different"

peichang 赔偿

reparations

piping 批评

criticism
repel the tiger at the front gate and the wolf sneaks in the back door"

visa

entry

more plots for private use, more free markets, more enterprises with sole responsibility for their own profit or loss, and fixing output quotas on a household basis.

"the wind sweeping through the tower heralds a rainstorm"

socialist system of international law

decided to be null and void

world law

"deciding a case by the secretary"

"all under heaven"

treaty

treaty collection

Provisional Rules Governing Travel of Foreigners

Rules Regulating the Passage of Foreign Non-Military Vessels Through the Qiongzhou Strait

Act Regulating the Entry, Exit, Transit, Residence, and Travel of Foreign Nationals

"flowers fall off; one is helpless"

unauthorized

five principles (of peaceful coexistence)

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China

zhuyao 主要
major

ziwoping 自我批评
self-criticism
Index

access to facilities in the PRC, 231-232
Act on Frontier Defense Inspection, 160
Act Regulating Entry, Exit, Transit, Residence and Travel of Foreign Nationals, 23, 142, 159-160, 171-172, 276
Aircraft Regulations, 160
analogy (leisi), 150
anti-Soviet propaganda, 49, 50, 51, 52, 55-56
Arms control (distinguished from disarmament), 1, 48
Arrest and Detention Regulations, 46-47, 145, 250, 276
ASEAN, 155
Biological Warfare Convention, 51
border belts, 230
Chicago Convention on International Civil Aviation, 174-175
China Film Corporation, 234
China Travel Service, 169-171
Chinese Communist ideology, 34-36
Chinese Communist Party (CCP), 25-34, 38-39, 227, (Advisory Commission), 29; (Central Committee), 29; (Central Investigation Department), 32; (Control of quasi-legal organizations), 29-34; (policy-execution), 29; (policy-making), 27-29; (Politburo), 29; (secrecy regulations), 237
Chinese news media, 40-41
Chinese political principles, 35, 49
Chinese political system, (generally), 25-47
Chinese press, 33-34
Chinese transportation, 172-173
CIA, 226
Civil Aircraft Regulations, 175, 232
Civil Aviation Administration, 173
Collection of information in the PRC, 223-235
Communications, 164-168, 279
Comprehensive Programme of Disarmament, 2, 51, 53-54
Confidential Communication Bureau, 225
Consular privileges and immunities, 154-156
Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 19, 155
Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 157
Convention on Road Traffic, 174
Cosmos crash, 233
Counterrevolutionary activity, 143, 149-151, 227-229, 236
Custom (as a source of international law), 12
Customs regulations, 160-162
diplomatic privileges and immunities (generally), 152-153, 279; (PRC reactions to), 156-158
Disarmament, (generally), 2, 47-58; (and sovereignty), 54; (and verification), 3, 55, 57, 240
Disarmament proposal of 1982 (PRC), 54-55, 279
Discipline Inspection Committee (of the CCP), 280
EEC, 9
Egyptian-Soviet Peace and Friendship Treaty, 9
Emigration from the PRC, 248
ENMOD, 51
Entry and exit (PRC), 159-160
Environmental Protection Law of the PRC, 234-235
Ex injuria jus non oritur, 14
Five Principles of Peaceful Coexistence, 10, 54
food hygiene regulations, 234
foreign nationals (status of), 142-152
Forestry Act (of the PRC), 234, 235
Four Bigs, 32
Frontier Defense Inspection Act, 230
Gang of Four trial, 45-46, 145, 146, 245, 247
General Office, 225
Geneva Committee on Disarmament, 2, 52-53
Geneva Protocol on Chemical Weapons, 51
governmental system of the PRC, 36-47
ground photography, 233-234
Hijacking Conventions, 175
Housing, accommodation and services, 162-164
immunity from criminal process, 229, 247
Individuals (as subjects of international law), 13
informal social control of inspectorates, 151-152, 278
inspectorate composition, 147-148, 156-158, 278-279, 280
inspectorate transportation, 173-177
International Atomic Energy Agency (IAEA), 1
International Court of Justice, 12, 155, 157 (statute of), 14
International law; (PRC perceptions of), 9-47, 275 (relationship with municipal law), 18-19; (sources of), 13-18
International Law Commission, 12
International organizations, (PRC attitudes toward), 11-13
International Telecommunications Convention, 166
interrogation of Chinese Civilians, 239-240
interrogation of Chinese officials, 235-239
interrogation procedures, 240-249

- 310 -
interrogatory powers, 238-239
Iranian hostage situation, 18
Joint Venture Income Tax Law, 238
joint venture organizations (in the PRC), 164
K&B, 226, 230
Labor Management regulations, 238
law schools and legal research in the PRC, 147
legal codes (generally), 40-41
Legislative Affairs Commission, 280
legislative process and arms inspection, 38-
Lex ferenda, 17
Lex posterior derogat priori, 24
local legislation, 23-24 (organic laws), 39-40, 276
local people's congresses, 23
local people's courts, 241
Maoist thought, 34-36; (criticism of), 57
Marxism-Leninism (on law), 14-15; (Marxism-Leninism-Maoism), 34-36
Mediation committees (provisional regulations), 44
Military courts, 241
Military secrecy regulations, 237
Ministry of Communications, 165
Ministry of Electronics Industry, 165
Ministry of Foreign Affairs, 160, 161, 170, 225, 231
Ministry of Foreign Trade, 170, 225
Ministry of Justice, 42
Ministry of National Defense, 226, 231
Ministry of Post and Telecommunications, 165
Ministry of Public Security, 226
Ministry of Radio and Television, 165
Movement of personnel, equipment and supplies in the PRC, 168-179
National People's Congress (NPC), 21, 26, 37, 142, 144, 167, 238, 278 (NPC Standing Committee), 21-22, 37-38, 39, 145, 230, 278
no-first-use principle, 49, 53, 55
Nuclear Nonproliferation Treaty, 17, 50, 275
Nuclear Test Ban Treaty (1963), 17, 49, 50, 275
nuclear testing, 51
nullum crimen sine lege, 150
Observation by direct access, 230-235
On-site inspection (generally), 1-3
Organic Court Law, 43-45, 241-242, 243, 244
Organic Procuratorate Law, 42-43
organs of state power of the PRC, 36-38
Outer Space Committee, 233
Outer Space law, 232-233
Outer Space Treaty, 51, 233
overflight photography, 232
Pacta sunt sevanda, 16, 23, 24
Par in paren non habet imperium, 11
Paris Agreements, 9
People's assessors, 146, 243
People's Liberation Army (PLA), 30-21, 151, 230 (air defenses), 175
persona non grata procedures, 156-158
Photography restrictions, 230-235
PRC Constitution (1978), 26, 30


PRC Civil Code, 142-143, 146

PRC Civil Procedure Code, 18, 146

PRC Criminal Law Code, 23; (application to foreign nationals), 143-144, 148-151, 153, 167, 174, 175, 227-229, 236, 241-242, 246, 248, 249-250, 276

PRC Criminal Procedure Code (application to foreign nationals), 144-146, 153, 167, 178, 238, 243, 244-245, 246, 247, 250-251, 276

PRC-USSR Normalization Talks, 2

People's courts, 43-

polygraph tests in the PRC, 246

Port Regulations, 166-167, 176-177, 233

President (of the PRC), 21-22

privileges and immunities, (generally) 152-158, 279 (of third party organizations and entities), 155

Procuracy, 42-43

Production of real evidence 'in the PRC, 249-251

Provisional Regulations on Guarding State Secrets, 143, 149, 153, 168, 223

Provisional Regulations on Lawyers, 146, 244

Public security committees, 226

Public security organs, 46-47, 170, 173, 225

Public Security Regulations, 173-174, 233

quarantine regulations, 234

quasi-public mass organizations, 33-34, 151, 278

Qiongzhou Strait Regulations, 176-177, 233

Radio transmissions (from PRC), 166

- 313 -
Railway Regulations, 160
Resolution 1962, 233
River Regulations, 166-167, 176, 177, 233
Sampling restrictions in the PRC, 230-235
Seabed Treaty, 51
Secrecy law, 233-229, 276
Secret legislation, 41
Security: General Office of the Central Committee, 31; 8341 Unit, 31
Self-defense and disarmament, 47-48, 49, 51
severability, 40
Sino-Indonesian Dual Nationality Treaty, 23
SALT, 50
Sovereignty, (PRC concept of), 9-11, 240-241
Soviet procedure for letters rogatory, 237
Special people's courts, 45, 241
Standardization Regulations, 234
State Council (of the PRC), 21, 22, 38, 163
START, 1
Supreme People's Court, 44-45, 241.
Taiwan issue, 53
tax regulations (in the PRC), 251
telephone service (in PRC), 165
territory of PRC (definition of), 144, 176
Three Worlds Theory, 9-10
Tlatelolco Treaty, 52
traffic regulations (of PRC), 173
transportation of inanimate cargo, 178-179, 279
Travel arrangements of foreigners, 170-171
Treaties (as a source of international law), 15-16; (pacta sunt
servanda), 16, 23, 24; (scope of), 19-21; (unequal), 16-17
Treaty law and municipal law, 21-25
Trilateral foreign policy, 281
UN Commission on International Trade Law, 12
UN Convention on Certain Conventional Weapons, 51, 275
UN Convention on Privileges and Immunities of the UN and UN
Personnel, 11, 155, 275
UN Convention on Privileges and Immunities of UN Specialized
Agencies, 11, 19, 154, 155, 178, 275
UN Disarmament Committee, 2, 52-54, 275
UNGA Resolution on Principles of International Law Recognized by
the Charter of the Nuremberg Tribunal, 14
UNGA Resolution on Progressive Development of International Law,
14
UNGA Sixth Committee, 12
UNGA Tenth Special Session on Disarmament (1978), 52
US-PRC intelligence gathering, 3, 50
Unequal treaties, 16-17
Universal Postal Union Constitution, 166
Verification, 1-2, 55, 57, 240, 275-281
Vessel Regulations, 160, 177
Vienna Convention on Consular Relations, 19, 154-156, 163, 178
Vienna Convention on Diplomatic Regulations, 19, 152-153, 161-
162, 163, 165, 174, 178, 179
Vienna Convention on Law of Treaties, 20, 23
Wei Jingsheng, 239-240
Westphalia concept of international order, 10
zones of peace, 53-54
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