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CHINESE ATTITUDE TOWARD
INTERNATIONAL LAW OF HUMAN
RIGHTS IN THE POST-MAO ERA

Hungdah Chiu

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All contributions (in English only) and communications should be sent to
Professor Hungdah Chiu, University of Maryland School of Law,
500 West Baltimore Street, Baltimore, Maryland 21201 USA.

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CHINESE ATTITUDES TOWARD
INTERNATIONAL LAW OF HUMAN RIGHTS IN
THE POST-MAO ERA

by Hungdah Chiu*

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CHINESE ATTITUDE TOWARD INTERNATIONAL LAW OF HUMAN RIGHTS IN THE POST-MAO ERA

Hungdah Chiu

INTRODUCTION

Despite the gross violation of human rights in the People’s Republic of China (PRC) after the Chinese Communist Party (CCP) came into power in late 1949 until the late 1970s, there have been few extensive studies on the human rights situation in China.¹ This is especially true for the period of the so-called “Great Cultural Revolution” (1966-76), when most Western visitors and scholars made favorable reports on the human rights situation.² Ironically, Chinese leaders and people now consider this period ten years of “disaster” and the worst period that has ever occurred in Chinese history.³ In March 1977, for the first time since the CCP established control over China, a letter was sent to the Far Eastern Economic Review in Hong Kong with a request that it be forwarded to President Carter.⁴ In this letter, a self-described Shanghai intellectual characterized China as an “enslaved” society and called upon President Jimmy Carter of the United States to take measures to safeguard the human rights of the Chinese people. In the letter, the writer states:

(1)
In the world today there is a country, enslaved to an even more miserable degree than the feudal states, which enslaves its people even more miserably than the serfs were enslaved in tsarist Russia. The people there have completely lost their human rights. They are the 800 million people of our Chinese mainland.

The thousands and thousands of people who in their bid to survive either attempt to cross the border, escape from small farming villages, or to secure freedom and the enjoyment of human rights, are locked up by the Communists in prisons or labor reform camps, with the result that their lot becomes even more painful. On the mainland there are tens of thousands of prisons and labor reform camps.

If you make one wrong statement, while you won’t be beheaded, you can be locked up for many years. The people on the mainland have lost all their human rights, shivering [with] fear night and day. The more one thinks about it, the more one wants to cry, straining one’s eyes to wish for human rights.5

The last part of the letter is an emotion-charged appeal to U.S. President Carter stating that “on the basis of the founding spirit of the United States and your own career in righteously defending human rights, do not forget the suffering of the 800 million people on the Chinese mainland who have lost their human rights, and support us with the same commitment you [have given] to the Soviet human rights leaders, thus enabling us to hope for the restoration of our human rights one day.”6

Whether by coincidence or prompted by this letter, thereafter Western reporters and scholars began to devote attention to the human rights situation in China. In October 1977, a series of articles on human rights in China, written by Ross H. Munro, which first appeared in the Toronto Globe & Mail and were then reprinted in The Washington Post, vividly described the gross violations of human rights in China.7 In November 1978, Amnesty International, which published many reports criticizing human rights in many non-Communist countries but not China, finally released a
comprehensive study entitled *Political Imprisonment in the People’s Republic of China.* In the same year, a democratic and human rights movement launched by Chinese intellectuals emerged in China which, unfortunately, was soon halted by the Chinese government in the spring of 1979. In 1979, the U.S. State Department’s annual *Country Reports on Human Rights Practices* began to include the PRC.

The domestic and international concern over China’s human rights situation prompted the Chinese government and scholars to pay more attention to the human rights question in international law. This chapter is a modest effort to analyze the Chinese scholars’ views and the practices of the Chinese government. It begins with a concise survey of the Chinese attitude toward the international law of human rights during the Maoist period.

CHINESE ATTITUDE TOWARD THE INTERNATIONAL LAW OF HUMAN RIGHTS IN THE MAOIST ERA

During the Maoist era, not a single article devoted entirely to human rights was published in China. The only extensive coverage of this issue is in Ch’ien Szü’s [Qian Si in Pinyin] article entitled “A Criticism of the Views of Bourgeois International Law on the Question of Population,” published in 1960. He discussed the issue of human rights together with questions concerning individuals as subjects of international law, nationality, and protection of foreigners. Generally speaking, he took a negative view of the Western concept of human rights and asserted that “imperialism frequently uses the pretext of ‘protecting human rights’ to intervene in the internal affairs of socialist countries.” According to him, “under the socialist system, the elimination of private ownership of the means of production has led to the elimination of the economic basis which gives rise to political and legal inequality, and thereby guarantees the genuine realization
of the human rights of the vast laboring people.” Moreover, the socialist countries’ “suppression of counter-revolutionary criminals and rebellious elements supported and dispatched by imperialism in an attempt to sabotage the people’s regime is a necessary measure adopted to protect the interest of the people,” and therefore does not involve any human rights issue.\textsuperscript{13}

The International Commission of Jurists headquartered in Geneva was denounced by Ch’ien Szu as “imperialist-supported.” Its publications entitled \textit{Summary of the Report on the Question of Tibet}\textsuperscript{14} and \textit{The Question of Tibet and the Rule of Law},\textsuperscript{15} which considered the Chinese government’s armed suppression of the Tibetan “rebellion” as depriving “the Tibetan people of their fundamental human rights and freedom” and that the Tibetan people have been subjected to “massacre, imprisonment, banishment, and forced labor,” were denounced as “hypocrisy and shamelessness to the extreme” and as “an excuse to intervene in the internal affairs of China.”\textsuperscript{16} The same author also denounced President Eisenhower’s proposal to organize an “Inter-American Commission on Human Rights” as an attempt by the U.S. to use the Commission “for further control over Latin American countries, since it may, at any time, intervene in the internal affairs of various American countries on the pretext of ‘protecting human rights.’”\textsuperscript{17}

In conclusion, Ch’ien Szu wrote:

In short, the ‘human rights’ referred to by bourgeois international law and the ‘human rights’ it intends to protect are the rights of the bourgeoisie to enslave and to oppress the laboring people, that is to say, the human rights of the bourgeoisie. Internally, they are used to conceal the encroachment upon the rights and freedoms of the laboring people by the bourgeoisie; externally, they provide pretexts for imperialist opposition to socialist and nationalist countries. They are reactionary from head to toe.\textsuperscript{18}

With respect to the question of international protection of human rights and the related question of considering in-
individuals as subjects of international law in order to assert their rights directly under international law, a Chinese writer K'ung Meng [Kong Meng] took a totally negative view. According to him, "the principle concerning fundamental human rights prescribed in the United Nations Charter is that the various member states are obligated to guarantee that individuals under their rule enjoy [such] rights." If an international organization, such as the United Nations, bypasses states and guarantees the human rights of the citizens of these states, it would be intervention in the internal affairs of the states. Therefore, he concludes that all individuals, whether citizens within a state or aliens, are under the sovereignty of the state and are not subjects of international law.\textsuperscript{19}

A similar view is shared by late Professor Zhou Gengsheng. He asserted that "expansionist Anglo-American lawyers placed human rights against state sovereignty, thus paving the way theoretically for an imperialist aggressive policy of intervention." They, Zhou observed, invoked the principle of protecting human rights and fundamental freedoms of the United Nations Charter as the basis for the legitimacy of collective intervention.\textsuperscript{20} Zhou also criticized Sir Hersh Lauterpacht's view that "to the extent to which 'human rights and fundamental freedoms' have become a persistent feature, partaking of the character of a legal obligation, of the Charter they may have ceased to be matter which is essentially within the domestic jurisdiction of states,"\textsuperscript{21} as providing "theoretical bases for imperialist intervention in the internal affairs of other states."\textsuperscript{22}

In a 1958 book of selected reference documents on international law, edited by the Office of Teaching and Research of International Law of the Institute of Diplomacy, the thirteen documents selected under the heading of international protection of human rights were: (1) the United Nations Charter (Excerpt of those parts of the preamble relating to human rights) (June 26, 1945) [T.S. 993]; (2) Final Com-

Despite the Chinese scholars' negative attitude toward the concept of "human rights" in international law, on a few occasions, the Chinese official New China News Agency (Hsinhua She or Xinhua She in Pinyin, NCNA), did accuse another country of violating "human rights." For instance,
during the period of Sino-Indian conflict in 1962, the NCNA claimed that various measures taken by India, including interference with the freedom of movement of Chinese consulate staff and those who want to visit the Chinese consulate, violated "the code of international law and human rights."  

Moreover, while Chinese writers had opposed any interference, whether conducted by a state or by the United Nations, in the internal affairs of the socialist states, a Chinese writer Kuo Ch’un [Guo Qun in Pinyin] observed that the "acts of suppressing national liberation movements basically are not a question of a state’s internal affairs [because] such acts violate the fundamental United Nations Charter principles of national self-determination and respect for human rights and also threaten the peace and security of the world." Kuo Ch’un therefore concluded that in such cases "both the General Assembly and the Security Council [of the United Nations] have the duty and authority to handle this matter."  

Since the study of international law was virtually suspended together with the study of domestic law during the last stage of Maoist rule, the 1966-1976 Cultural Revolution, there is no way to identify the views of Chinese scholars on the international law of human rights during this decade.

**REASONS FOR POST-MAO CHINA’S INTEREST IN THE INTERNATIONAL LAW OF HUMAN RIGHTS**

As stated in the introduction of this paper, since 1977 there have been more demands for human rights in China, and therefore it has been necessary for the PRC and its scholars to respond to the issue in order to attack the theoretical basis of those intellectuals who advocate the improvement of the human rights situation in China, to make the concept of human rights less harmful or to accommodate it to the Chinese situation. In May 1979, the CCP theoretical journal *Hongqi* (Red Flag) published an article written by Xiao
Weiyun, Lo Haocai, and Wu Xieyin severely criticizing the concept of "human rights" as of bourgeois origin and always used as a "slogan" by the bourgeoisie. It charges that the advocates of "human rights" do not want socialism, dictatorship of the proletariat, Communist party leadership and the guidance of Marxism, Leninism, and Mao Zedong Thought. The article concludes by saying that it is, therefore, necessary to strengthen the thought and political work of those persons who have been influenced by the "human rights" idea of the bourgeoisie.

Other Chinese scholars do not necessarily share such a totally negative attitude toward the concept of "human rights." In 1979 a law journal published an article written by Wu Daying and Liu Han; while acknowledging the bourgeois origin of the concept of "human rights," they nevertheless pointed out that a thought weapon originally created or used by the bourgeoisie may be used by the proletarian and the revolutionary people by reforming the weapon or giving it new content and significance. The proletarian may use human rights as a weapon to struggle against feudalism or the bourgeoisie. They also pointed out the importance of the human rights question in international intercourse. The reason the majority of the people feel concern over human rights questions is due to their indignation toward the "feudal-Fascist crimes" committed by Lin Biao and the "Gang of Four" and they concluded that most of these demands are proper and reasonable.

The official Chinese position appears quite negative toward the question of "human rights," though it is recognized that a problem exists that must be dealt with. An October 26, 1979 article entitled "Notes on the Human Rights Question," written by "commentator," the pseudonym for a senior Communist official, appeared in Guangming Ribao (Enlightenment Daily), the major Chinese newspaper for intellectuals. It states:
‘Human rights’ is...a slogan with which imperialism and the bourgeoisie attack our proletarian dictatorship and socialist system. Looking at socialist democracy, which combines centralism with democracy and discipline with freedom, from the viewpoint of bourgeois individualist freedom, they attack socialist countries as granting no human rights to their people. They slander measures under the dictatorship of the proletariat (such as the suppression of counterrevolutionaries) as violations of human rights. We must resolutely refute all these attacks and slanders.34

But the article also notes that “the proletariat can use the [human rights] slogan as a weapon against the bourgeoisie,” therefore, “the proletariat does not negate it in general.”35 Moreover, it also observes that “a very few individuals...make use of ‘human rights’ to oppose the four fundamental principles, namely, the upholding of the socialist road, the dictatorship of the proletariat, the leadership of the Communist party, and Marxism-Leninism-Mao Zedong Thought...it is necessary to firmly expose and criticize such people.”36

Except for the reasons stated above, post-Mao China’s interest in the “human rights” question is also prompted by the end of its self-imposed “isolation” policy and adoption of the so-called “open door” policy of actively engaging in international intercourse and exchange. To do so, it is necessary to renew its interest in international law in which the law of human rights is a growing area. Moreover, because human rights is frequently invoked or mentioned in international relations, it is a question which the PRC cannot avoid in its foreign relations. Chinese scholar Li Zerei gave three reasons why it is necessary to study the law of human rights:

(1) Respect for human rights is one of the purposes of the United Nations...and our country as a permanent member of the United Nations has the obligation to correctly maintain and execute the “Charter of the United Nations” and related documents on
human rights in order to truly "promote the respect for human rights."

(2) It is only after World War II that [the question of] respect for human rights has become a matter of international concern, so there are many new legal problems relating to the law of human rights waiting to be studied.

(3) Each foreign scholar has his or her own view on human rights, while we should take a Marxist position, viewpoint, and method to study this subject. We consider that only through this process can we give the question of human rights law a scientific interpretation. 37

In another article published in the CCP theoretical journal Red Flag, the importance of studying the human rights question in the international political arena is emphasized:

One aspect of the activities of the United Nations is discussing and reviewing the question of human rights. Countries of different social systems, political interests, and levels of economic development, groups and individuals of different political inclination, all submit their own views on human rights; thus, the question of human rights becomes unprecedentedly wide-ranging and complex. We must seriously analyze and study the complicated struggle around the question of human rights in the current international arena and make an effort to insist on our stand and principles in order to maintain world peace and safeguard the right to self-determination and the fundamental human rights of the people of various countries. 38

CHINESE SCHOLARS' VIEWS ON THE INTERNATIONAL LAW OF HUMAN RIGHTS Historical Development of the Concept of Human Rights

Almost all Chinese scholars point to the bourgeois origin of the concept of human rights and its ideological basis in the theory of "natural rights of man." 39 They acknowledge the positive aspect of this concept in the bourgeois revolution against the autocracy of the feudal monarchs. The two major documents they frequently referred to are the 1776 American Declaration of Independence and the
1789 French Declaration of the Rights of Man; both advocated freedom, the right of property, and equality among others as natural rights. However, they also criticized that human rights advocated by the bourgeoisie can only be enjoyed by the latter, who own the means of production and thus enslave and exploit the proletarians. Therefore, they have argued that only when the masses of laboring people control the state, and abolish private ownership of the means of production, can they fully enjoy democratic rights, which is broader than the concept of human rights advocated by the bourgeoisie. The concept of human rights is a part of the municipal law of the bourgeoisie, but with the external expansion of the bourgeoisie, the human rights question gradually entered the international arena, observed some Chinese scholars. A Chinese scholar summarized this development as follows:

In the 1820s, a revolt broke out in Greece to oppose the rule of the Ottoman Empire. When the latter tried to suppress it, Great Britain, France, and other countries raised the flag of ‘humanitarianism’ to conduct armed intervention. In 1860-1861, France occupied Syria on the ground of protecting the freedom of religion of Maronite Roman Catholics and preventing them from being persecuted. Human rights in fact became an instrument of intervention and aggression of big powers against weak countries. At the same time, there emerged the viewpoint of so-called legitimate intervention on the ground of ‘humanitarianism’ and others in the theory of international law of the bourgeoisie. Individual scholars even proposed that one of the important purposes of international law is to protect human rights. After World War I, attention focused on [protecting] human rights in the international arena, such as the measures taken by the League of Nations on protecting minorities, the 1926 Slavery Convention [60 LNTS 253] and the 1930 Convention on the Prohibition of Forced Labor [Manley O. Hudson, International Legislation, Vol. V, pp. 609-626]. Despite these developments, the concept of human rights was not recognized by international law with corresponding protection. It was not until World War II when the atrocities
of Germany, Italy, and Japan aroused the indignation of the people of various countries, that a demand for general protection of human rights was proposed. After the establishment of the United Nations in 1945...respect for human rights was stipulated as a principle of international law.... On December 10, 1948, the General Assembly of the United Nations adopted the “Universal Declaration of Human Rights”.... In 1966 it adopted the “International Covenant on Economic, Social, and Cultural Rights” [993 UNTS 3] and the “International Covenant on Civil and Political Rights” [999 UNTS 171] in order to...transform the “Universal Declaration of Human rights” into treaties possessing legally binding force. Both Covenants entered into force in 1976.

Based on the above explanation, [it is clear] that the incorporation of the question of human rights into the scope of international law and thus the emergence of human rights as a principle of international law is a victory of the forces of international peace, democracy, and justice. However, the proposition of incorporating the question of human rights into the scope of international law, internationalizing the question of human rights, and giving international protection to human rights is also an ideal and policy long held by imperialism and thus also accommodates the needs of imperialism...The theories relating to human rights in international law and international protection of human rights basically are a reflection of the traditional ideas of the bourgeoisie and thus possess class bias and limitation.

Since 1961 [the Third World countries have expanded the concept of] human rights by combining the safeguarding of human rights with anti-imperialism and hegemonism...including the concept of national self-determination...and economic sovereignty [in the concept of human rights]....

The Scope of the International Law of Human Rights

According to Chinese scholar Li Zerei, the traditional Western concept of human rights only refers to individuals’ civil and political rights. However, the adoption of the “Universal Declaration of Human Rights” by the General Assembly of the United Nations has expanded this concept of individuals’ human rights to include economic, social, and cultural rights. This is what Li referred to as the first
generation concept of human rights. The second generation concept of human rights expands to include the right of the colonial people to self-determination which is confirmed in Article 1 of the Charter of the United Nations and put into concrete implementation in the 1960 Declaration on the Granting of Independence to Colonial Countries and People. The principle of self-determination was later incorporated into Article 1 of the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The third generation development of the human rights concept is the right to development in order to eliminate the poverty and under-development of the newly independent countries caused by colonial rule. At present, according to Chinese scholars, the concept of human rights is not only related to the rights of individuals, but also includes the concept of "collective rights," such as the right of self-determination and the right to development.

The International Protection of Human Rights

According to the textbook edited by Wang Tiyua and Wei Min, "the so-called international protection of human rights refers to certain aspects of the cooperation and guarantee by states, in accordance with international law and through treaties, with respect to the realization of fundamental human rights and the prevention and punishment of those acts infringing upon these rights." This means, "like other problems in international law, the international protection of human rights is the result of sovereign states' undertaking the obligations of international treaties or acting in accordance with the generally recognized principles of international law [and] if there are no recognized principles or regulations of generally recognized [principles] of international law or no obligations prescribed by treaties, then the protection of human rights is a municipal law question."
With respect to the contents of the international protection of human rights, Wang and Wei's textbook divides them into the following categories:

**The Fundamental Human Rights**

The basic documents in this category are the 1966 International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights. Both treaties were enacted to implement the relevant provisions on human rights of the United Nations Charter and to enable the 1948 Universal Declaration of Human Rights to have legally binding force. They also provide in Article 1 for the right of self-determination by all people and their right to freely dispose of their natural wealth and resources.\(^4^8\) Wei's textbook also shares this view, but pointed out that the right of self-determination is only applicable to oppressed people under foreign slavery and colonial rule. If a nation within a state demands independence or self-government, this is still a matter of domestic jurisdiction of that state and the principle of national self-determination is not applicable to such a case.\(^4^9\)

**The Prevention of Discrimination**

The prevention of discrimination question is primarily directed against racial discrimination. There are three important documents in this area, i.e., the Declaration on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly of the United Nations on November 20, 1963; the International Convention on the Elimination of All Forms of Racial Discrimination of March 7, 1966 [660 UNTS 195], and the International Convention on the Suppression and Punishment of the Crime of Apartheid of November 30, 1973 [1015 UNTS 244]. In addition to documents relating to racial discrimination, there are several documents dealing with other forms of discrimination, such as the 1967 Declaration on the Elimination of

*The Prevention and Punishment of the Offense of Genocide*

On December 1, 1946, the General Assembly of the United Nations unanimously confirmed that genocide, i.e., large scale killing of members of a group, is an offense which should be condemned by international law. On December 9, 1948, the General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide [78 UNTS 277], which entered into force on January 12, 1951.  

*The Prohibition Against Slavery and Similar Systems and Customs*

On September 25, 1926, the Slavery Convention was concluded at Geneva which entered into force on March 9, 1927. In 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery [266 UNTS 3] was concluded at Geneva which entered into force on April 30, 1957.  

*The Prevention and Punishment of Terrorism*

Most Western scholars do not include the prevention and punishment of terrorism within the context of international protection of human rights, but the textbook edited by Professors Wang Tieya and Wei Min does. In the textbook, they refer to the Organization of American States Convention to Prevent and Punish the Acts of Terrorism Taking the Forms of Crimes Against Persons and Related Extortion that are of

Others

The textbook edited by Professors Wang and Wei points out that questions relating to the status of refugees, migrant workers, political rights of women, rights of children, freedom of the press and association are also within the scope of international protection of human rights. One area which the textbook does not include in the area of international protection of human rights is the law of development. This is because, as Chinese scholar Li Zerei pointed out, the contents of this right are primarily expressed in resolutions, declarations, or guidelines adopted by those international organizations which have no legislative power, in other words, they are in the nature of what Western scholars have referred to as "soft law." Since the legal contents of the right to development are still in the process of becoming substantive rules of international law, it seems appropriate for Professors Wang and Wei to exclude them at this time from their enumeration of the international protection of human rights.

The International Protection of Human Rights and the Question of Non-intervention in the Internal Affairs of a State

One of the crucial issues regarding the international protection of human rights is whether a state or an international organization can intervene in a state to ensure compliance with international human rights standards. All Chinese scholars oppose this approach to protect human rights in a state. In the textbook edited by Professors Wang and Wei,
this view is considered as “theoretically wrong and practically not feasible.” This is because, this book states, “the so-called international character of human rights advocated by Western scholars is based on their theory of considering individuals as subjects of international law and thus setting the principle of state sovereignty against the principle of human rights.” However, the book asserts that “the principle of human rights must be subordinate to the principle of state sovereignty and cannot be superior to the principle of state sovereignty,” and “only based on the principle of state sovereignty, can the implementation of human rights be realistically guaranteed.” However, with respect to those acts which seriously infringe upon human rights, such as taking legislative, administrative, or other measures to implement racial segregation or racial discrimination, engaging in genocide, selling slaves, taking extremely inhuman means to create, expel, and persecute refugees in a large scale way, using violence to take persons as hostages, and engaging in international terrorist activities, the book states that such acts “constitute international crimes” and “necessary measures taken by all states and international organizations to suppress these behaviors are consistent with generally recognized principles of international law and should not be considered as intervening in the internal affairs of a state.”

A similar view is expressed in the self-study textbook edited by Wei Min where it is stated that “if any state can arbitrarily use its own standards to judge ‘the human rights situation’ of another state and then conducts so-called ‘humanitarian intervention’ on the pretext of ‘violation of fundamental human rights,’ then there will be no guarantee for the sovereignty of various states.”

A Chinese scholar, Liu Fengmin, considers that one of the most serious current problems of international implementation of human rights is the use of the slogan “human rights” as an instrument by a super-power or a big power
in a region to intervene in the internal affairs of another state. He also criticizes the U.S. government's use of the "question of human rights" as a bargaining chip in negotiating the solution of certain concrete problems.59

Finally, a more sophisticated and articulate analysis of this question is presented by Li Zerei, who observed that international human rights law is composed of three parts, each having a different nature, and that therefore one should not say with certainty that all questions of human rights are or are not within the domestic jurisdiction of a state and should be respectively analyzed and dealt with. According to him, there are two criteria to decide the question of whether a matter of human rights is or is not within the domestic jurisdiction of a state. The first one is whether an act is encroaching on the right of self-determination, right to development, or individuals' human rights as the result of the expansion, aggression, or rule of old and neo-colonialism, hegemonism, or the residual rule of colonialism. If so, then that act is within the sphere of international law and does not belong to the domestic jurisdiction of a state. Under such circumstances, any interferences by international organizations or foreign states on such matters should not be considered as intervention in internal affairs. The second one is whether the criminal acts are done by the remnants of German Nazism, Italian Fascism, or Japanese Militarism or the newly formed Nazi, Fascist, or Militarist states. If so, such criminal acts are not within the domestic jurisdiction of a state.60

Consistent with their view on rejecting direct international protection of individuals' human rights in a state, Chinese scholars unanimously deny individuals as subjects of international law.61

**CHINA'S PARTICIPATION IN INTERNATIONAL CONVENTIONS ON HUMAN RIGHTS**

The PRC's acceptance of existing multilateral human

On May 30, 1984, the State Council of the PRC declared its recognition of the following International Labor Conventions ratified by the Republic of China government between 1930 and 1947:68 Convention Nos. 7 (Minimum Age (Sea), 1920), 11 (Right of Association (Agriculture), 1921), 14 (Weekly Rest (Industry), 1921), 15 (Minimum Age (Trimmers and Stokers), 1921), 16 (Medical Examination of Young Persons (Sea), 1921), 19 (Equality of Treatment (Accident Compensation), 1925), 22 (Seamen’s Articles of Agreement, 1926), 23 (Repatriation of Seamen, 1926), 26 (Minimum Wage-fixing Machinery, 1928), 27 (Marking of Weight (Package Transported by Vessels), 1929), 32 (Protection Against Accidents (Dockers), 1932), 45 (Underground Work (Women), 1935), 60 (Minimum Age (Non-industrial Employment), 1937), and 80 (Final Article Revision, 1946).69
On December 12, 1986, the PRC signed the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (done on December 10, 1984 at New York and entered into force on June 26, 1987). However, as of June 1988, the PRC has not yet ratified this Convention.

The PRC has not yet even signed the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966. However, in the 1984 Sino-British Joint Declaration on the Question of Hong Kong, Annex 1, Article 13, paragraph 4, it is provided that "the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights as applied to Hong Kong [by the British Government now] should remain in force" for a period of 50 years after 1997, the year when the PRC would assume control of Hong Kong. This arrangement would create a strange situation because only part of China (Hong Kong) would be subject to both covenants. In view of this contradiction, there were indications that the PRC intended to participate in the covenants after the Hong Kong agreement.

During the general debate (September 22-October 10, 1986) of the 41st Session of the General Assembly of the United Nations, PRC Foreign Minister Wu Xueqian said in his speech that 1986 "marks the 20th anniversary of the adoption by the United Nations of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights" and that "these two instruments are of positive significance to the realization of the purpose and principle of the United Nations Charter concerning the respect of human rights." On November 24, 1986, the Agence France-Press (AFP) reported from Beijing that the PRC was likely to sign both covenants soon. On December 15, 1986, the Chinese Legal
System Paper published two articles commenting favorably on the two covenants. However, at the time of this writing in June 1988, the PRC has not signed both covenants. While one can only speculate why the PRC declined to do so, it seems reasonable to say that the PRC appears concerned about the educational and promotional consequences of both covenants in the PRC. This concern may be strengthened by the outbreak of student demonstrations, demanding more freedoms and democracy, in various Chinese cities in December 1986-January 1987 and the anti-Chinese Communist riots in Tibet in September 1987. Moreover, as will be explained in the next section, many Chinese domestic laws, regulations, and practices are not consistent with the standards provided in the 1948 Universal Declaration of Human Rights and the two covenants to implement and to expand the rights provided in the Declaration.

**MAJOR CHINESE LEGISLATION, REGULATIONS, PRACTICES, AND INTERNATIONAL HUMAN RIGHTS STANDARDS**

One problem for the PRC's participation in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights is that some of its legislation, regulations, and practices are clearly inconsistent with certain human rights standards prescribed in both covenants.

According to the Decision of the State Council Relating to Problems of Reeducation Through Labor (August 3, 1957) and Supplementary Regulations Issued by the State Council on Reeducation Through Law (November 29, 1979), a person may be sent to a labor camp by a public security organ (police) for up to four years without judicial review. This rule is contrary to Article 9, paragraph 4 of the International Covenant on Civil and Political Rights, which provides that "[a]nyone who is deprived of his liberty by
arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

The 1982 Chinese Constitution does not recognize the right to choose a residence. Rural residents need special permission to move to a city. The government may cancel a city resident’s right to live there and send him/her to reside in a rural area. This practice is contrary to Article 12, paragraph 1 of the Civil and Political Rights Covenant which provides that “[e]veryone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

The most serious inconsistency between the Civil and Political Rights Covenant and the Chinese law is in the area of criminal justice. The 1979 Chinese Criminal Procedure Law does not recognize the principle of presumption of innocence in criminal trials. This principle is provided in Article 14, paragraph 2 of the Covenant which states that “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.” The 1979 Chinese Criminal Law does not recognize the principle of *nullum crimen, nulla poena sine lege* (no punishment without preexisting law making the act a crime). This is contrary to Article 15, paragraph 1, of the Covenant which states that “[n]o one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed.”

According to PRC election laws, city residents can elect one delegate to the National People’s Congress for every 130,000 persons, while rural residents can elect one delegate for every 1,040,000 persons. Since 80 percent of the Chinese live in rural areas, the election law discriminates against the majority of the Chinese people. This discriminatory election law is inconsistent with Article 25, paragraph 2, of the Civil
and Political Rights Covenant which guarantees every citizen "the right and the opportunity...to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage."

The 1982 Chinese Constitution does not recognize the right to strike which is ensured by Article 8, paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights.

If the PRC is going to participate in both covenants, the above stated discrepancies between the covenants and the Chinese legislation, regulations, or practices need to be eliminated, at least on paper. A Chinese scholar, Xu Hong, apparently recognizing these discrepancies, commented generally that "the fundamental spirits of the two covenants are consistent with the principles of law and fundamental policy of our country," without arguing that the Chinese legal system is not consistent with the provisions of both covenants. At present, it does not appear that the Chinese government is preparing to remove these discrepancies. Moreover, while China also adopts certain international standards in its criminal procedure law, its implementation is far from satisfactory. For instance, the 1979 Criminal Procedure Law provides in Article 32 that "the use of torture to coerce statements and the gathering of evidence by threat, enticement, deceit, or other unlawful methods are strictly prohibited." Despite this official prohibition, torture and ill-treatment of prisoners are a persistent and widespread problem in China. A recent study by Amnesty International, which was based primarily on published Chinese sources, has found that "most torture victims are criminal suspects who are tortured to force them to confess" and "their torturers are usually police officers, or Communist party officials and members of the many informal security units who illegally detain individuals they suspect of committing crimes." For these reasons, it seems unlikely
that the PRC will become a contracting party to both covenants in the near future.

CONCLUSIONS

The concept of human rights, according to Marxist theory, is of bourgeois origin but has served a useful purpose, enabling the proletariat to demand certain rights from the bourgeoisie. With the establishment of a Communist state, the people become the masters of themselves; therefore, there should be no human rights problem in a Communist state. During the Maoist period, Chinese scholars and the PRC government generally adhered to this dogmatic view and disregarded the development of the law of human rights in the international arena. With the death of Mao and the emergence of the "Four Modernizations" program and "open door" policy, the PRC can no longer afford to ignore the "human rights" issue at home and abroad. Domestically, there has been more demand for respect for human rights. Moreover, to carry out the PRC's ambitious modernization program, it is necessary to provide a secure environment for the people. Internationally, the PRC is a permanent member of the United Nations Security Council with big power status, and it cannot simply evade the human rights issue. Under such circumstances, it is only natural for the PRC to take a more positive attitude toward the international law of human rights.

In response to this changing attitude toward the human rights issue, Chinese scholars have produced more writings in this area. While generally taking a positive attitude toward the international law of human rights, especially the expanded collective concept of human rights, such as the right of national self-determination and the right to development (bearing in mind the poor human rights situation in China, though greatly improved compared with the Maoist period), it is almost unanimously held in the Chinese writings that the question of individuals' human
Chinese Attitude Toward Human Rights

Rights is within the domestic jurisdiction of a state and the theory of considering individuals as subjects of international law, advocated by many Western international lawyers, is rejected.

Realizing that the assertion of domestic jurisdiction to reject Western criticism of human rights violations in China is hardly a convincing argument, Chinese spokesmen have repeatedly asserted that “Chinese citizens enjoy greater freedom now than at any time in the past.”91 Recently, a more sophisticated response to this issue has been made by Chinese scholar Guo Shan:

In some countries human rights and basic freedoms have not been fully realized due to historical and economic reasons. China supports the international community in showing its concern about large-scale human rights violations in an appropriate manner in order to help improve and promote human rights situations in these countries. But China also believes that in the field of human rights, as with other things, the way one country handles its human rights issue should not be held up as a model for all other countries to follow, neither should it be the sole criterion for judging other countries’ human rights situations. China opposes external interference in a country’s internal affairs on the pretext of safeguarding human rights.92

Until recently, the PRC government took a negative attitude toward international and nongovernmental investigations of alleged violations of human rights in China. However, it now appears to take a more conciliatory attitude. In October 1986, Chinese officials did provide information in answer to a U.S. Embassy inquiry regarding a number of imprisoned priests and others thought to be “political prisoners.” They also have been more willing to meet with U.S. government officials and members of professional groups to discuss birth control policies, have provided increased amounts of statistical data, and have facilitated visits to localities. Since 1985 the PRC has participated in the work of the United Nations Commission on Human Rights.93 Oc-
casionally, Chinese scholars have responded to the inquiry of Amnesty International on the human rights situation in China, though the response is, as expected, to deny any violation of human rights in China.94

There are no known organizations within China which monitor or comment on human rights conditions. Outside China, a dissident group, Chinese Alliance for Democracy, keeps an eye on the human rights situations in China and periodically issues reports in its monthly publication Zhongguo Zhichun (China Spring).95

While the PRC has participated in several important international human rights conventions, it has not yet signed the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social, and Cultural Rights. This is because certain Chinese legislation, regulations, or practices are clearly inconsistent with certain human rights standards prescribed in both covenants, and its domestic human rights situation is far from satisfactory. Also, the PRC seems concerned about the educational and promotional effect of the two covenants inside China, especially among students and intellectuals.
NOTES


3. E.g., see “Prospect and Retrospect, China’s Socialist Legal System,” Beijing Review, Vol. 22, No. 2 (January 12, 1979), p. 27, where the Cultural Revolution period was described as “feudal despotism married to a 20th-century Fascism.”


5. Ibid., p. 29.

6. Ibid.


13. Ibid., p. 41, translated in Jerome Alan Cohen and Hungdah Chiu,


15. Published by the Commission in Geneva in 1959.


20. He cited L. Oppenheim, International Law, Vol. 1, 8th ed. by H. Lauterpacht, London: Longmans, Green, 1955, p. 313, where it is stated that the reason for opposing humanitarian intervention by individual states because the [right to intervention] has been abused for selfish purpose "does not apply to collective intervention." This is because, as stated in this book, that "the Charter of the United Nations, in recognizing the promotion of respect for fundamental human rights and freedoms as one of the principal objects of the Organization, marks a further step in the direction of elevating the principle of humanitarian intervention to a basic rule of organized international society...."


24. Article 7 refers to "Rights of the Slovene and Croat Minorities" and Article 26 refers to "Property Rights and Interests of Minority Groups in Austria." Text of these articles can be found in Israel, Vol. IV, supra note 23, pp. 2711-2712 (Article 7) and 2733-2734 (Article 26). It is interesting to note that Article 6 on general human
rights in Austria was omitted from the Reference Documents book.


30. Ibid., p. 46.


32. Wu Daying and Liu Han, "Human Rights Have to be Analyzed Historically and Concretely," Faxue Yanjiu (Studies in Law), 1979, No. 4, pp. 10-11. A similar view is expressed in Chen Hanchu, "What is Human Rights?" Baike Zhishi (Encyclopedic Knowledge), 1979, no. 5, p. 10.

33. Ibid., p. 13. The authors pointed out that two earlier Chinese Communist regulations in the early 1940s, i.e., before the CCP assumed nation-wide power, did refer to "human rights." Ibid., p. 11. Moreover, on July 2, 1957, Dong Biwu, then President of the Supreme People's Court, referred to "infringement of human rights" in the countryside in his report to the Fourth Meeting of the First National People's Congress. Ibid., p. 12. Two other Chinese scholars also point out that even during the period of so-
cialism (China is now in this stage), there still exists the question of struggling for and protection of human rights. Lin Rongnian and Zhang Jinfang, "Talks on the Question of Human Rights," Xueyi Yu Tansuo (Study and Exploration), 1980, No. 1, p. 35.

34. Translated in part in Beijing Review, Vol. 22 No. 49 (November 9, 1979), p. 18. See also an article published earlier in the same newspaper where the author considers the concept of "human rights" as having class character and suggest that in the PRC one should use the term "citizens' right." Xu Bing, "On Human Rights and Citizens' Rights," Enlightenment Daily, June 19, 1979, p. 4.

35. Ibid., p. 19.
36. Ibid., p. 20.


40. Ibid.


43. Shi Daxin, supra note 39, pp. 53-54.
44. Li Zerei, supra note 38, pp. 98-99.
textbook in colleges and Wei's book is used as self-study material under Chinese government sponsored self-study programs.

46. Wang and Wei, supra note 45, pp. 261-262. A similar view is shared in Wei, supra note 45, p. 245.

47. Ibid.

48. Wang and Wei, supra note 45, p. 262.

49. Wei, supra note 45, p. 247.


51. Wang and Wei, supra note 45, p. 264 and Wei, supra note 45, p. 248.

52. Wang and Wei, supra note 45, pp. 264-265.


54. Wang and Wei, supra note 45, pp. 265-266.

55. Ibid., p. 266.


57. Wang and Wei, supra note 45, pp. 267-268.

58. Wei, supra note 45, p. 59.


60. Li Zerei, supra note 38, pp. 103-104.


62. 78 UNTS 277. On April 18, 1983, the PRC deposited its instrument of ratification which entered into force on July 17, 1983, with reservation to Article 9. All information on the PRC's participation in notes 63 to 67 infra comes from Shijie Zhishi Nianjian 1984 (1984
63. 189 UNTS 137. On September 24, 1983, the PRC deposited its instrument of accession which entered into force on December 23, 1982, with reservation to Article 14, second part and Article 16, p. 3.
64. 606 UNTS 267. On September 24, 1982, the PRC deposited its instrument of accession with reservation to Article 4.
66. 1015 UNTS 244. On April 18, 1983, the PRC deposited its instrument of accession which entered into force on May 18, 1983.
71. UN Doc. A/RES/39/46.
73. On May 20, 1976, the United Kingdom declared that its ratification of both covenants is applicable to Hong Kong. See Multilateral Treaties Deposited with the Secretary-General, Status at December 31, 1984. New York: The United Nations, 1985, pp. 121, 141.
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80. For English translation of the Regulations, see ibid., pp. 251-252.

81. 999 UNTS 171.


83. This right to residence was provided in the 1954 Chinese Constitution (Article 90, paragraph 2), but was omitted in all subsequent Chinese constitutions (1975, 1978, and 1982).

84. For a discussion of this issue, see Leng and Chiu, Criminal Justice, supra note 79, pp. 96-98.

85. Article 79 of the Chinese Criminal Law provides: “A person who commits crimes not explicitly defined in the specific parts of the Criminal Law may be convicted and sentenced, after obtaining the approval of the Supreme People’s Court, according to the
most similar article in this Law.” See Leng and Chiu, Criminal Justice, supra note 79, p. 129.


87. This right was provided in the 1975 Constitution (Article 28) and the 1978 Constitution (Article 45), but was removed by a constitutional amendment in 1980.

88. 993 UNTS 3.

89. Xu Hong, supra note 76.


94. See Professor Xiao Yongqing’s reply to two French professors’ inquiry on mass execution and reeducation through labor (i.e., sending a person to labor camp for up to four years without judicial review) in China, published in Faxue Zazhi (Law Magazine), 1985, No. 5, pp. 29-31.

APPENDIX


At least a thousand civilians—most of them unarmed—were killed and several thousands injured by troops firing indiscriminately into crowds in Beijing between 3 and 9 June 1989. According to official reports, several dozen soldiers were killed and over 6,000 injured in Beijing. At least 300 people are also reported to have been killed by troops and security forces on 5 June in Chengdu—the capital of Sichuan Province in central southern China—following student protests there. A number of civilians are also reported to have been killed by security forces in Lanzhou (Gansu Province) in early June.

During the night of 3 to 4 June, hundreds of armoured military vehicles escorted by tens of thousands of troops started moving from the outskirts of Beijing towards the centre of the capital to enforce martial law, which had been imposed in the city on 20 May following five weeks of peaceful student protests. Government reports say that the aim of this massive military operation was to "clear" Tiananmen Square in central Beijing, which had been occupied peacefully for several weeks by thousands of students, and to "restore order" in the capital.

The student protests, which started in Beijing in mid-April, spread in May to most major cities in China's provinces. The students originally demanded an end to official corruption and called for political reforms. Their demands evoked wide popular support and the protests developed into a pro-democracy movement.

On 13 May several hundred Beijing students started a hunger-strike in Tiananmen Square to press for a dialogue with top Chinese officials. During the following days, hundreds of thousands of people started congregating in the Square—at the time when Soviet leader Mikhail Gorbachev arrived in Beijing for his first visit to China. On 18 May, an estimated one million people demonstrated in Beijing to express their support for the students on hunger-strike and to demand democratic reforms and freedom of the press. The demonstrators included people from various sectors of society: workers, government employees,
members of the police and of the armed forces, journalists, intellectuals and representatives of various government departments.

On 19 May Party General Secretary Zhao Ziyang and Prime Minister Li Peng visited the students on hunger-strike, and Li Peng reportedly acknowledged the students' "patriotic enthusiasm" and their good intentions". The students decided to end their hunger-strike later that night. The next day, however, an order to impose martial law in "part of Beijing" was issued in the name of the State Council. The order was signed by Prime Minister Li Peng and was to be implemented by the Beijing Municipal Government. Martial law was effective from the morning of 20 May and applied to all of urban Beijing and most of the rural districts. The stated aim of martial law was to "firmly stop the unrest", to safeguard public order and to "ensure the normal function of the central departments and the Beijing Municipal Government".

During the following days hundreds of thousands of people took to the streets again to demonstrate against the imposition of martial law. Similar large-scale demonstrations took place in China's major provincial cities. There had never been such large-scale popular demonstration of discontent in the history of the People's Republic of China.

On 25 May Premier Li Peng acknowledged on television that many people—the majority of them "young students"—had been taking part in demonstrations. He said "many of their views are identical with those of the party and the government. There are no fundamental contradictions between them and the party and government". However, he reaffirmed the need to enforce martial law as "a precautionary measure to firmly stop disturbances". On 21 May the official New China News Agency (NCNA) also stated: "The troops are by no means targeted at the students. Under no circumstances will [the troops] harm innocent people, let alone young students". Similar reassurances were also issued by other official sources during the following days. By that time, however, the official press had also started denouncing a "handful of people with ulterior motives" who were exploiting the unrest for their own ends.

After the massive military intervention in Beijing on 3 to 4 June, the authorities justified their decision to use lethal force by saying that a "counter-revolutionary rebellion" had occurred in the capital on 3 June and by accusing a "tiny handful" of people of exploiting the student unrest to launch "organized and pre-
meditated political turmoil" with the aim of "overthrowing the leadership of the Chinese Communist Party [CCP] and the socialist system" in China. The government's justification for the extensive killings that did take place must be seriously questioned. Indeed, by 2 June, the number of students occupying Tiananmen Square had considerably decreased and the large-scale demonstrations had stopped. The authorities, however, do not seem to have attempted to restore order by traditional crowd control methods. Furthermore, the period since 4 June has seen a continuing wave of repression, including mass arbitrary arrests, summary trials and executions.

Since early June, at least 4,000 people are officially reported to have been arrested throughout China in connection with pro-democracy protests, but the total number of those detained is believed to be much higher. Those arrested include students, workers, peasants, teachers, writers, journalists, artists, academics, military officers and unemployed people. They are held on a variety of charges, including involvement in "counter-revolutionary" activities; disrupting traffic or public order; attacking soldiers or military vehicles; "sabotage" and looting. Some of them belonged to independent organizations formed by students, workers and residents during the student protests in Beijing and other cities. These organizations have now been banned and declared "illegal". Denunciations are openly encouraged by the authorities: citizens who fail to report people involved in banned organizations or other "counter-revolutionary" activities are themselves liable to be arrested and imprisoned.

Those arrested are believed to be held incommunicado, without access to relatives or lawyers. Chinese law does not permit access to lawyers until a few days before trial—or even in some cases until the trial starts. It is also a common practice in China not to allow visits by relatives until after the trial. The relatives of some of those detained have said that they were denied information by the authorities as to the whereabouts of their imprisoned relatives. Some of those arrested in June are reported to have been severely beaten by police or soldiers and it is feared that detainees may still be put under strong pressure—and, in some cases, beaten or tortured—to confess to crimes or to denounce others involved in the protests.

Some of those arrested have already been sentenced to imprisonment after trials which fell far short of international standards for fair trial. Some have been executed after summary
trials: many more executions than those officially reported are believed to have taken place. No details have been issued by the authorities about the fate of many detainees charged with offences punishable by death, other than some involved in publicized trials in June and July. However, the authorities have called on local courts to "try quickly and punish severely" people involved in the "counter-revolutionary" rebellion. Legislation adopted in 1983 provides for speedy trials and summary procedures in the cases of people regarded as "criminals who gravely endanger public security", and who are charged with offences punishable by death. This legislation is applicable to many of those arrested recently. In the past, those sentenced to death under this legislation have been tried, sentenced and executed within a few days of arrest.
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