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NOTE

HUMAN RIGHTS VIOLATIONS DURING THE TIANANMEN SQUARE MASSACRE AND THE PRECEDENTS OBLIGING UNITED STATES RESPONSE

INTRODUCTION

The fundamental human rights¹ codified in the Universal Declaration of Human Rights² and other international instruments³ are, by their definition, universal. Governments cannot legally ignore these rights to suit their own political purposes. Under articles 55 and 56 of the United Nations Charter,⁴ all member states have an obligation to promote and protect human rights and fundamental freedoms without distinction.

Through violent suppression of the pro-democracy demonstration at Tiananmen Square in Beijing on June 3 and 4, 1989, the government of the People's Republic of China committed gross violations of the Constitution,⁵ the Criminal Law,⁶ and the Criminal Procedure

¹ Fundamental human rights are generally defined as "those rights which are inherent in our nature and without which we cannot live as human beings." UNITED NATIONS, HUMAN RIGHTS QUESTIONS AND ANSWERS at 4, U.N. Doc. DPI/919 (1988) [hereinafter QUESTIONS AND ANSWERS]. They are claims that all individuals have equally or should have equally against the societies in which they live. Henkin, *The Human Rights Idea in Contemporary China: A Comparative Perspective*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 7-8 (1986).

² G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948). The Universal Declaration of Human Rights was signed December 10, 1948.

³ International instruments codifying fundamental human rights include the International Covenant on Civil and Political Rights, *infra* note 10, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *infra* note 11, the Code of Conduct for Law Enforcement Officials, *infra* note 12, and the Basic Principles on the Independence of the Judiciary, *infra* note 13. Each of these instruments will be discussed *infra* Part II of this paper.

⁴ U.N. CHARTER arts. 55, 56. The United Nations Charter was signed June 26, 1945, and entered into force October 24, 1945.

⁵ ZHONGHUA RENMIN GONGHEGUO XIANFA [Constitution], reprinted in THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1979-1982) 1-32 (1987) [hereinafter LAWS OF CHINA]. The Constitution of the People's Republic of China was adopted at the Fifth Session of the Fifth National People's Congress and was promulgated for implementation by the Proclamation of the National People's Congress on December 4, 1982.

⁶ ZHONGHUA RENMIN GONGHEGUO XINGFA [Criminal Law], reprinted in LAWS OF CHINA, *supra* note 5, at 87-119. The Criminal Law of the People's Republic of China was adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, was promulgated by Order No. 5 of the Chairman of the Standing Committee of the National People's Congress on July 6, 1979, and became effective January 1, 1980.

Law⁷ of the People's Republic of China. In addition, the government violated such international human rights instruments as: the United Nations Charter;⁸ the Universal Declaration of Human Rights;⁹ the International Covenant on Civil and Political Rights;¹⁰ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹¹ the Code of Conduct for Law Enforcement

⁷ ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONGFA [Criminal Procedure Law], reprinted in LAWS OF CHINA, *supra* note 5, at 120-49. The Criminal Procedure Law of the People's Republic of China was adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, was promulgated by Order No. 6 of the Chairman of the Standing Committee of the National People's Congress on July 7, 1979, and became effective January 1, 1980.

⁸ U.N. CHARTER arts. 55, 56. For a discussion of China's obligations under the United Nations Charter, see *infra* notes 175-76 and accompanying text.

⁹ G.A. Res. 217A (III), *supra* note 2. Chinese officials may argue that the Universal Declaration is not a treaty but a resolution adopted by the United Nations General Assembly, and as such, places no legally binding obligation on China. However, the argument is meritless. Through referrals to it in United Nations human rights treaties, conventions, and covenants, and in regional conventions and domestic constitutions, the Universal Declaration has emerged as a statement of customary international law, binding all nations including China. See Tarnopolsky, *Human Rights, International Law and the International Bill of Rights*, 50 SASKATCHEWAN L. REV. 21 (1985-1986). The Universal Declaration was designed as an enumeration of the "fundamental freedoms" referred to in the United Nations Charter. Sohn, *John A. Sibley Lecture: The Shaping of Int'l Law*, 8 GA. J. INT'L & COMP. L. 1, 18 (1978). The legal obligations that the Universal Declaration imposes on governments, in this case the Chinese government, derives from the duty the United Nations Charter imposes on governments to "promote" human rights. *Id.* at 19. A government's failure to respect the rights recognized in the Universal Declaration constitutes a violation of the United Nations Charter. *Id.* at 18; see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 701 (1987). For a further explanation of the human rights provisions of the United Nations Charter, see *infra* notes 175-76 and accompanying text.

¹⁰ G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). The International Covenant on Civil and Political Rights was adopted December 16, 1966, and entered into force March 23, 1976. Although Chinese officials may argue that China has neither signed nor ratified the International Covenant on Civil and Political Rights and therefore is not bound by this treaty, the argument is weak. (For a listing of those parties who ratified the Covenant, see QUESTIONS AND ANSWERS, *supra* note 1, at 12). Like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights gives "form and content to the general human rights provisions" of the United Nations Charter. As such, human rights experts regard the Covenant as a general instrument of the positive international law of human rights, binding all members of the United Nations community, including those not party to the Covenant. O. OZGUR, APARTHEID, THE UNITED NATIONS AND PEACEFUL CHANGE IN SOUTH AFRICA 8 (1982).

¹¹ G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1985). The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted December 10, 1984 and entered into force June 26, 1987. Insofar as China signed this Convention in December 1986 and ratified it in October 1988, China is legally bound by the Convention's provisions. See AMNESTY INTERNATIONAL, PEOPLE'S REPUBLIC OF CHINA, PRELIMINARY FINDINGS ON KILLINGS OF UNARMED CIVILIANS, ARBITRARY ARRESTS AND SUMMARY EXECUTIONS SINCE JUNE 3, 1989, at 38 (1989) [hereinafter AMNESTY INTERNATIONAL].

Officials;¹² and the Basic Principles on the Independence of the Judiciary.¹³

By limiting its sanctions against China, the United States violates its obligation under the United Nations Charter to promote and protect human rights. In addition, the United States violates a variety of its own military and economic laws including the Foreign Assistance Act,¹⁴ the Trade Act,¹⁵ the International Financial Institutions Act,¹⁶ and the Agricultural Trade Development and Assistance Act,¹⁷ all of which link United States foreign assistance to human rights performance.¹⁸

This paper examines the events of the massacre at Tiananmen Square, the domestic and international human rights violations committed by the Chinese government, the Chinese justifications for the massacre, and the United States's duty to sanction China to the fullest extent of international and domestic law.

I. MASSACRE AT TIANANMEN SQUARE AND THE REPRESSIVE AFTERMATH

From the night of June 3 through June 4, 1989, troops of the Chinese People's Liberation Army evacuated the streets of central Beijing and Tiananmen Square¹⁹ of all students and residents demonstrating in support of a pro-democracy movement that had been active since April 1989.²⁰ The evacuation was by no means peaceful; rather, it was accomplished through brute force, with little or no regard for humanity.²¹ When confronted with human and motor vehi-

¹² G.A. Res. 169, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1980). The Code of Conduct for Law Enforcement Officials was adopted December 17, 1979.

¹³ *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-September 1985: Report Prepared by the Secretariat* at ch. I, § D.2, U.N. Sales No. E.86.IV.1 (1985) [hereinafter *Seventh United Nations Congress*]. The Basic Principles on the Independence of the Judiciary were endorsed by General Assembly Resolutions on November 29, 1985, and December 13, 1985. G.A. Res. 32, at 205 and G.A. Res. 146, at 255, 40 U.N. GAOR Supp. (No. 53), U.N. Doc. A/40/53 (1986).

¹⁴ Foreign Assistance Act of 1961, 22 U.S.C. § 2304 (1988).

¹⁵ The Trade Act of 1974, 19 U.S.C. § 2432 (1988).

¹⁶ The International Financial Institutions Act, 22 U.S.C. §§ 262c, 262g (1988).

¹⁷ The Agricultural Trade Development and Assistance Act, 7 U.S.C. § 1712 (1988).

¹⁸ Each of these Acts will be discussed in detail *infra* Part IV.

¹⁹ For a detailed account of the massacre at Tiananmen Square, see AMNESTY INTERNATIONAL, *supra* note 11; H. SALISBURY, *TIANANMEN DIARY* (1989); INTERNATIONAL LEAGUE FOR HUMAN RIGHTS AND THE AD HOC STUDY GROUP ON HUMAN RIGHTS IN CHINA, *MASSACRE IN BEIJING, THE EVENTS OF 3-4 JUNE 1989 AND THEIR AFTERMATH* (1989) [hereinafter *MASSACRE IN BEIJING*].

²⁰ For a brief history of the pro-democracy movement, see *infra* Appendix A.

²¹ Government officials of the People's Republic of China maintain that the force used by the People's Liberation Army in the crackdown was moderate, that the troops exercised great

cle barricades used by the crowd to prevent the advance of the troops into the Square, the troops responded by indiscriminately firing on the people and recklessly driving armored vehicles and tanks into the crowd, crushing anyone in their midst.²² Shots were fired not only to disperse the crowd, but to kill people who were often escaping, retreating, or begging for mercy.²³ The troops made no attempt to arrest or detain the crowd; instead, they resorted to the use of lethal force against unarmed civilians.²⁴

Although the actual number of civilians killed during the massacre is uncertain, an account distributed through an underground computer network with China indicates that approximately 10,000 people were arrested and 28,790 were wounded between June 3 and June 9.²⁵

Since the massacre, the Chinese government has repressed those individuals who either participated in the pro-democracy movement and demonstration or who sympathized with the goals of the pro-democracy movement. The government has arbitrarily arrested thousands of individuals involved with the movement, and has held detainees in incommunicado detention, often without bringing criminal charges against them.²⁶

According to a *People's Daily* report in China, approximately 10,000 persons have been arrested and detained since the crackdown, 5,000 in Beijing alone.²⁷ Criminal charges against these individuals

restraint and that, under the circumstances, the use of force was appropriate. *Situation in China, Note by the Secretary-General submitted pursuant to sub-commission on Prevention of Discrimination and Protection of Minorities Resolution 1989/5*, 46 U.N. ESCOR (Agenda Item 12) at 2, U.N. Sales No. E/CN.4/1990/52 (1990) [hereinafter *Note by the Secretary-General*]. However, numerous eyewitness accounts refute the government's claims. See, e.g., *infra* notes 22-24 and accompanying text. See also *infra* notes 40-53 and accompanying text.

²² For the text of an eyewitness account, originally recorded in an "Open Letter of the Independent Student Union of Beijing Universities to the People of the World," see *infra* Appendix B.

²³ MASSACRE IN BEIJING, *supra* note 19, at 3.

²⁴ *Id.*

²⁵ *Human Rights and Political Developments in China: U.S.-China Relations: Where Do We Go From Here?: Hearings Before the Subcommittees on Human Rights and International Organizations, on Asian and Pacific Affairs, and on International Economic Policy and Trade of the House Comm. on Foreign Affairs*, 101st Cong., 1st Sess. 219 (1989) [hereinafter *Where Do We Go From Here?*] (statement of Ke Gang, Director, China Communist Party Resignation Coordinating Comm.). Government officials of the People's Republic of China have stated that at most hundreds of people were killed in the crackdown. *Deng Conciliatory Over Crackdown*, N.Y. Times, October 19, 1989, at A12, col. 4. However, the government has done nothing to substantiate its estimate of the number killed. In fact, the government has obstructed the discovery of truth by ordering hospitals and crematoria not to disclose the number dead. MASSACRE IN BEIJING, *supra* note 19, at 17-18.

²⁶ INTERNATIONAL LEAGUE FOR HUMAN RIGHTS, HUMAN RIGHTS IN CHINA: THE REPRESSION CONTINUES (1990) [hereinafter THE REPRESSION CONTINUES].

²⁷ See *Where Do We Go From Here?*, *supra* note 25, at 219 (statement of Ke Gang).

include involvement in "counter revolutionary" activities, disruption of traffic or public order, attacks on soldiers or military vehicles, sabotage, and looting.²⁸ Among those arrested were students, workers, peasants, teachers, writers, journalists, artists, academics, military officers, and the unemployed.²⁹ Some of these individuals were subject to public denunciation, torture, and other forms of cruel, degrading, and inhuman treatment.³⁰ Chinese television repeatedly displayed scenes of armed soldiers surrounding their handcuffed prisoners. Those in custody appeared beaten, with bruised faces and swollen lips. They were often pictured handcuffed to trees or with their arms pinned back and their heads forced down in the notorious "airplane" position.³¹

The government has imposed death sentences upon individuals, a penalty which is clearly disproportionate to the crimes committed. It has imposed these sentences through special expedited proceedings which do not afford the accused an adequate opportunity to receive the legal assistance necessary to prepare an effective defense.³² For example, in the first trial of Chinese pro-democracy demonstrators, the government sentenced three workers to death for setting fire to a train that had killed six demonstrators who were sitting on the train's tracks as a protest against the military crackdown.³³ The workers were arrested, convicted, and sentenced to death, all within four days.³⁴

Since the crackdown, the government has declared many organizations with peaceful goals and the means for achieving these goals illegal, and has arrested or harassed the organizations' members.³⁵ By the end of June 1989, the Chinese government reportedly declared thirty-one organizations in eleven provinces illegal.³⁶ The Autonomous Federation of Beijing University Students³⁷ and the Beijing

²⁸ AMNESTY INTERNATIONAL, *supra* note 11, at 2.

²⁹ *Id.*

³⁰ MASSACRE IN BEIJING, *supra* note 19, at Executive Summary. For the account of a foreigner who was tortured by a Chinese soldier, see *infra* Appendix C.

³¹ See *Land of Fear and Trembling*, ASIaweek, June 30, 1989, at 28, 32; *The Purge Begins*, ASIaweek, June 23, 1989, at 22, 29.

³² MASSACRE IN BEIJING, *supra* note 19, at Executive Summary.

³³ Kristof, *3 Chinese Workers Sentenced to Die*, N.Y. Times, June 16, 1989, at A1, col. 6.

³⁴ *Id.*

³⁵ MASSACRE IN BEIJING, *supra* note 19, at Executive Summary.

³⁶ *Note by the Secretary-General*, *supra* note 21, at 28.

³⁷ The Autonomous Federation of Beijing University Students was established in mid-April 1989 as an alternative to the official, government-sponsored student organizations. As an umbrella organization for students from more than forty Beijing universities, the Autonomous Federation of Beijing University Students played a major role in the pro-democracy

Workers' Autonomous Federation³⁸ were among the most prominent organizations declared illegal.³⁹

In addition, the government has launched a massive propaganda campaign to distort the realities of the massacre and its aftermath and to prevent its citizens from receiving contradictory information from non-government sources, both inside and outside China.⁴⁰ A report issued by the Beijing Communist Party Propaganda Department on June 14 stated that the massacre was caused by a "certain small group of people" who had "plotted to arrest party and state leaders and seize political power."⁴¹ The department further alleged that the group attacked the army on the night of June 3, killing an estimated 100 soldiers and policemen and wounding thousands.⁴² Only then, said the department, did the troops, after exercising extraordinary restraint, fire their weapons.⁴³

The government's account differs from Western news reporting and eyewitness accounts.⁴⁴ While civilians killed some soldiers in self defense, the violence clearly was precipitated by the troops' indiscriminate firing as they entered the Square.⁴⁵ The troops often shot at those civilians who were unarmed and those who were fleeing the Square.⁴⁶

To further entrench the alleged official account of the massacre, Chinese television reports broadcast pictures of burnt bodies of soldiers, and eyewitnesses in police custody retracting statements to Western journalists about the troops' indiscriminate killing of the students.⁴⁷ Citizens were prevented from hearing the truth about the

movement. The group put forth the students' demands to the government and organized and coordinated the student demonstrations at Tiananmen Square. *Id.*

³⁸ The Beijing Workers' Autonomous Federation was established in May 1989 as part of an effort to create workers' groups which were independent of the government-sponsored All China Federation of Trade Unions. The Federation representing workers in over forty Beijing industries supported many of the students' demands. *Id.* at 29.

³⁹ *Id.* Aside from declaring these organizations illegal, Martial Law Decree No. 10 of the Beijing People's Government, issued on June 8, 1989, requires that the organizations disband and that their leaders surrender to authorities. See *infra* notes 140-56 and accompanying text for a detailed discussion of martial law and its illegality. For the text of Martial Law Decree No. 10, see Appendix D, *infra*.

⁴⁰ MASSACRE IN BEIJING, *supra* note 19, at Executive Summary.

⁴¹ Kristof, *Beijing Ousts 2 American Correspondents*, N.Y. Times, June 15, 1989, at A16, col. 1.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Eyewitness Account, Appendix B, *infra*.

⁴⁵ Kristof, *supra* note 41; see also Appendix B, *infra*.

⁴⁶ Kristof, *supra* note 41; see also Appendix B, *infra*.

⁴⁷ See Bernstein, *At China's Ministry of Truth, History is Quickly Rewritten*, N.Y. Times, June 12, 1989, at A1, col. 4. In an interview conducted by ABC News in Beijing shortly after

massacre when the government replaced uncensored media with their official news organ, the New China News Agency.⁴⁸ In addition, the government jammed the Voice of America,⁴⁹ closed the *World Economic Herald*,⁵⁰ and banned live Western television broadcasts⁵¹ and distribution of such Western news sources as *Newsweek*, *Time*, *USA Today*, and the *Asian Wall Street Journal*.⁵² Three American reporters were also expelled.⁵³

II. HUMAN RIGHTS VIOLATIONS DURING THE MASSACRE AT TIANANMEN SQUARE AND ITS AFTERMATH

A. *Military Assault*

Through its repression of the pro-democracy movement, the Chinese government has committed gross and systematic violations of international law and of the domestic law of the People's Republic of China. The government's indiscriminate military assault on the pro-democracy supporters violates the supporters' rights to life, liberty, and security of the person, protected under article 3 of the Universal Declaration of Human Rights⁵⁴ and article 6 of the International

the crackdown, Xiao Bin, a 42 year-old factory worker, stated the following about the assault: "Tanks and armored personnel carriers rolled over students, squashing them into jam, and the soldiers shot at them and hit them with clubs. When students fainted, the troops killed them. After they died, the troops fired one more bullet into them. They also used bayonets. They were too cruel. I never saw such things before." *Id.* This interview was broadcast on Chinese national television for two nights. A caption on the bottom of the screen during the broadcast referred to Xiao Bin as "somebody spreading rumors about the cleanup of Tiananmen Square." *Id.* After Xiao Bin completed his statement, the news announcer warned the public against believing the rumors and urged the public to turn Xiao Bin in to the police. On June 11, 1989, the national news again showed Xiao Bin. This time in police custody and appearing haggard and terrified, Xiao Bin retracted his statement to ABC News. He stated, "I never saw anything," and apologized for "bringing great harm to the party and the country." He also admitted being a counterrevolutionary. *Id.* Since the broadcasts, Xiao Bin has been sentenced to ten years in jail. See Chew & Drake, *China's Repression: 'Purified' Journalism*, N.Y. Times, Sept. 14, 1989, at A29, col. 1.

⁴⁸ WuDunn, *China's Newspapers, After Crackdown by Beijing, Revert to a Single Voice*, N.Y. Times, June 22, 1989, at A10, col. 1.

⁴⁹ Levine, *The Uncertain Future of Chinese Foreign Policy*, CURRENT HIST., Sept. 1989, at 261, 263.

⁵⁰ *Four Months in Review*, CURRENT HIST., Sept. 1989, at 298, 299.

⁵¹ *Id.* at 304.

⁵² Chew & Drake, *supra* note 47.

⁵³ Alan Pessin of the Voice of America, John Pomfret of the Associated Press, and Joseph Kahn, a freelance reporter, were all accused of violating martial law. See Kristof, *Chinese Premier Says More Arrests Are Expected*, N.Y. Times, June 20, 1989, at A14, col. 4; Kristof, *supra* note 41.

⁵⁴ G.A. Res. 217A (III), *supra* note 2, at art. 3. Article 3 of the Universal Declaration provides: "Everyone has the right to life, liberty and security of person."

Covenant on Civil and Political Rights.⁵⁵ According to article 4, paragraph 2 of the International Covenant on Civil and Political Rights,⁵⁶ the right to life may not be derogated even in times of public emergency threatening the life of a nation.⁵⁷ The indiscriminate and disproportionate nature of the government's military assault violates article 3 of the United Nations Code of Conduct for Law Enforcement Officials.⁵⁸ This article permits the use of "force only when strictly necessary and to the extent required for the performance of their duty."⁵⁹ The commentary to article 3 provides that "[t]he use of firearms is considered an extreme measure" and should only be used "when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender."⁶⁰

In the case of the massacre, the pro-democracy supporters were unarmed, and except for a few isolated incidents of violence since the demonstration began on April 15, 1989, the supporters were peaceful in their conduct⁶¹ and in no way threatened Chinese security.⁶² At

⁵⁵ G.A. Res. 2200, *supra* note 10, at art. 6. Article 6 of the International Covenant on Civil and Political Rights states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

⁵⁶ *Id.* at art. 4, para. 2.

⁵⁷ *Id.* Article 4, paragraph 1 of the International Covenant on Civil and Political Rights states:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the Present covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Article 4, paragraph 2 provides, however, that "no derogation from article 6 . . . may be made under this provision." For article 6, *see supra* note 55.

⁵⁸ G.A. Res. 169, *supra* note 12, at art. 3.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ MASSACRE IN BEIJING, *supra* note 19, at 19.

⁶² Article 54 of the Constitution of the People's Republic of China prohibits "acts detrimental to the security, honour and interests of the motherland." ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 54, *reprinted in* LAWS OF CHINA, *supra* note 5, at 15. When justifying the necessity of force used to quell the pro-democracy movement, government officials repeatedly invoke this constitutional principle by arguing that the security, honor, and interests of the motherland were threatened by a counterrevolutionary rebellion intent on overthrowing the leadership of the Chinese Communist Party and the socialist system. *See* CHEN XITONG, REPORT ON CHECKING THE TURMOIL AND QUELLING THE COUNTER-REVOLUTIONARY REBELLION (1989). Assuming, *arguendo*, that the Chinese officials are correct in their perception of the goals of the pro-democracy movement, article 4, paragraph 2 of the International Covenant on Civil and Political Rights prevents the government from taking the lives of their citizens even in times of public emergency. *See supra* notes 56-57 and accompanying text. For a further discussion of the Chinese government's argument

the time the massacre began, the number of students in the Square had dwindled to a mere few thousand.⁶³ Rather than surrounding the city with 150,000 troops and indiscriminately firing machine guns, tanks, and dum-dum bullets⁶⁴ to disperse a crowd of a few thousand, the government could have used such crowd control methods as tear gas and water cannons. Such methods would have posed no serious harm to the demonstrators and would have accomplished the government's purpose of clearing Tiananmen Square and the surrounding areas.

B. *Arbitrary Arrest and Incommunicado Detention*

The government's arbitrary arrest and incommunicado detention of the supporters violates the supporters' rights to be free from arbitrary arrest, detention, and exile under article 9 of the Universal Declaration of Human Rights⁶⁵ and article 9 of the International Covenant on Civil and Political Rights.⁶⁶ The government's failure to

that the threats to national security posed by the pro-democracy movement necessitated the use of force, see *infra* notes 157-71 and accompanying text.

⁶³ See Appendix A, *infra*.

⁶⁴ MASSACRE IN BEIJING, *supra* note 19, at 20. The use of dum-dum bullets violates the Geneva Convention of which China is a member. *Where Do We Go From Here?*, *supra* note 25, at 206 (statement of Ye Ning, Director, China Communist Party Resignation Coordinating Committee). Article 35 of Protocol Additional to the Geneva Conventions of August 12, 1949 and relating to the protection of victims of international armed conflicts (Protocol I) states as follows:

Article 35—Basic rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
2. It is prohibited to employ weapons, projectiles and material and methods of warfare of nature to cause superfluous injury or unnecessary suffering.

U.N. Doc. A/32/144 (1977), reprinted in 16 INT'L LEGAL MATERIALS 1391 (1977). Insofar as dum-dum bullets explode upon impact, it is clear that such weapons violate the Convention's prohibition against methods of warfare which cause "superfluous injury." See MASSACRE IN BEIJING, *supra* note 19, at 20.

⁶⁵ G.A. Res. 217A (III), *supra* note 2, at art. 9. Article 9 of the Universal Declaration of Human Rights states: "No one shall be subjected to arbitrary arrest, detention or exile."

⁶⁶ G.A. Res. 2200, *supra* note 10. Article 9 of the International Covenant on Civil and Political Rights reads as follows:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without

bring charges against the detainees violates the detainees' rights under article 9 of the International Covenant on Civil and Political Rights⁶⁷ to be informed of the charges brought against them at the time of arrest and to be brought to trial within a reasonable time from the arrest.

Such arrest and incommunicado detention also violates the Constitution⁶⁸ and the Criminal Procedure Law⁶⁹ of the People's Republic of China. Article 37 of the Constitution prohibits "[u]nlawful detention or deprivation or restriction of citizens freedom of the person"⁷⁰ while articles 31 to 52 of the Criminal Procedure Law⁷¹ detail a series of procedures to be used in the handling of suspects, including use of arrest warrants,⁷² notification of arrest and detention,⁷³ and time limits for detention during investigation.⁷⁴ The government's failure to notify families of the detention of a relative or the place of detention for weeks or months after the detention occurred⁷⁵ violates article 50 of the Criminal Procedure Law,⁷⁶ which provides for notifi-

delay on the lawfulness of his detention and order his release if the detention is not lawful.

⁶⁷ *Id.*

⁶⁸ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, reprinted in LAWS OF CHINA, *supra* note 5, at 1-32.

⁶⁹ ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONGFA, *supra* note 7, reprinted in LAWS OF CHINA, *supra* note 5, at 120-49.

⁷⁰ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 37, reprinted in LAWS OF CHINA, *supra* note 5, at 12. Article 37 states: "[The f]reedom of the person of citizens of the People's Republic of China is inviolable Unlawful detention or deprivation or restriction of citizens freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited."

⁷¹ ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONGFA, *supra* note 7, at arts. 31-52, reprinted in LAWS OF CHINA, *supra* note 5, at 126-29.

⁷² *Id.* at art. 50, reprinted in LAWS OF CHINA, *supra* note 5, at 129. Article 50 of the Criminal Procedure Law provides in part:

When making an arrest, a public security organ must produce an arrest warrant.

Within 24 hours after an arrest, the family of the arrested person or the unit to which he belongs shall be notified of the reasons for arrest and the place of detention, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.

⁷³ *Id.*

⁷⁴ *Id.* at art. 51, reprinted in LAWS OF CHINA, *supra* note 5, at 129. Article 51 reads as follows:

Interrogation must be conducted within 24 hours after the arrest, by a people's court or people's procuratorate with respect to a person it has decided to arrest, and by a public security organ with respect to a person it has arrested with the approval of the people's procuratorate. If it is found that the person should not have been arrested, he must be immediately released and issued a release certificate.

⁷⁵ THE REPRESSION CONTINUES, *supra* note 26, at 5.

⁷⁶ See *supra* note 72.

cation of, and the reasons for, detention within twenty-four hours of its occurrence.

Although in many cases the exact criminal charge against detainees has not been published, the majority of detainees have been charged with either committing crimes of "counterrevolution" or "crimes of seriously endangering public security."⁷⁷ The sentences imposed in these cases generally range from ten years to life imprisonment.⁷⁸ Such extended prison terms are disproportionate to the terms set forth in articles 98⁷⁹ and 102⁸⁰ of the Criminal Law which fix the maximum prison term for a mere participant in a counterrevolutionary rebellion to "not more than five years," while fixing the penalty for organizers or leaders of a counterrevolutionary rebellion to "not less than five years." In one example, three men charged with throwing ink and paint-filled eggshells at Mao Zedong's portrait in Tiananmen Square received prison terms ranging from sixteen years to life.⁸¹

Article 98 of the Criminal Law of China⁸² defines "counterrevolutionary" crimes, in part, as those crimes "organizing or leading a counterrevolutionary" group, while article 102⁸³ defines these crimes as those activities "inciting the masses" and "propagandizing for . . . the overthrow of the political power of the dictatorship of the proleta-

⁷⁷ MASSACRE IN BEIJING, *supra* note 19, at 28, 31.

⁷⁸ See ASIA WATCH COMMITTEE, PUNISHMENT SEASON: HUMAN RIGHTS IN CHINA AFTER MARTIAL LAW 9 (1990).

⁷⁹ ZHONGHUA RENMIN GONGHEGUO XINGFA, *supra* note 6, at art. 98, *reprinted in* LAWS OF CHINA, *supra* note 5, at 104. Article 98 of the Criminal Law provides that:

Whoever organizes or leads a counterrevolutionary group shall be sentenced to fixed-term imprisonment of not less than five years; others who actively participate in a counterrevolutionary group shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.

⁸⁰ *Id.* at art. 102, *reprinted in* LAWS OF CHINA, *supra* note 5, at 105. Article 102 of the Criminal Law provides as follows:

Whoever, for the purpose of counterrevolution, commits any of the following acts shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights, and ring-leaders or others whose crimes are very serious shall be sentenced to fixed-term imprisonment of not less than five years:

- (1) inciting the masses to resist or sabotage the implementation of the state's laws or decrees; or
- (2) propagandizing for and inciting the overthrow of the political power of the dictatorship of the proletariat and the socialist system, through counterrevolutionary slogans, leaflets or by other means.

⁸¹ See ASIA WATCH COMMITTEE, *supra* note 78.

⁸² See *supra* note 79.

⁸³ See *supra* note 80.

riat.”⁸⁴ The vagueness of these terms prevents citizens from regulating their conduct within the confines of the law and permits a subjective interpretation of an individual’s behavior rather than an objective assessment of the facts. The government can easily manipulate a political opinion into a crime of counterrevolution. Thus, to be legal under international law, these provisions regarding “counterrevolution” must be precise in their wording to enable proper interpretation and following.⁸⁵

Article 90 of the Criminal Law⁸⁶ limits crimes of “counterrevolution” to those acts “committed with the aim of overthrowing the political power of the dictatorship of the proletariat and the socialist system” and which endanger “the People’s Republic of China.”⁸⁷ In a speech before military commanders, former Chairman of the Central Military Commission and China’s paramount leader, Deng Xiaoping, accused the demonstrators of aiming to overthrow the Chinese state and the Chinese Communist party.⁸⁸ This is not so. The students’ demands included: freedom of speech and press, removal of restrictions on peaceful demonstrations, public disclosure of the finances of senior officials, and an end to corruption in government.⁸⁹ Nowhere did the students call for the overthrow of the government or the Communist party.⁹⁰

The government’s arrest of demonstrators calling for free speech and press, rights guaranteed in the Constitution,⁹¹ on charges of attempts to overthrow the government, constitutes a gross violation of international law and amounts to tyranny. Article 11 of the Universal Declaration of Human Rights⁹² states: “No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed.”⁹³

⁸⁴ MASSACRE IN BEIJING, *supra* note 19, at 32.

⁸⁵ *Id.* at 31.

⁸⁶ ZHONGHUA RENMIN GONGHEGUO XINGFA, *supra* note 6, at art. 90, reprinted in LAWS OF CHINA, *supra* note 5, at 103.

⁸⁷ *Id.*

⁸⁸ *Deng’s June 9 Speech: ‘We Faced a Rebellious Clique’ and ‘Dregs of Society’*, N.Y. Times, June 30, 1989, at A6, col. 1.

⁸⁹ See Appendix A, *infra*.

⁹⁰ Feinerman, *Human Rights in China*, CURRENT HIST., Sept. 1989, at 273, 293.

⁹¹ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 35, reprinted in LAWS OF CHINA, *supra* note 5, at 12.

⁹² G.A. Res. 217A (III), *supra* note 2, at art. 11.

⁹³ *Id.*

C. *Expedited Proceedings*

The government's special, expedited proceedings of the accused⁹⁴ violate the accused's rights under article 14 of the International Covenant on Civil and Political Rights "to have adequate time and facilities for the preparation of his own defence and to communicate with counsel of his own choosing."⁹⁵ In those cases where a pro-democracy supporter was accused of committing a capital crime, his attorney was given less than a week to prepare a defense, and only three days to prepare an appeal.⁹⁶ With the complexity of these cases and the difficulty in finding witnesses and evidence, the expedited proceedings in the Chinese criminal system make a mockery of the right to a defense enshrined in Article 125 of the Constitution.⁹⁷

Even with a protracted opportunity to prepare an adequate defense, the chance of acquittal for most pro-democracy defendants would not increase. According to the Chinese press, the Chinese Communist party explicitly requires that any defense lawyer who wants to plead "not guilty" on behalf of his client must obtain the party's permission before making the plea.⁹⁸ Conscientious defense lawyers are encouraged to argue for leniency.⁹⁹ Where a defense attorney insists on the innocence of his client, the lawyer is often jailed, punished, or maltreated.¹⁰⁰

In a telegram of support addressed to "Comrade Qiao Shi and

⁹⁴ THE REPRESSION CONTINUES, *supra* note 26, at 5. Under Chinese law there are two procedures which can be used to place pro-democracy supporters on trial: (1) the procedure provided in the Criminal Procedure Law applying generally to criminal trials, including trials for counterrevolutionary crimes; and (2) the expedited procedure, adopted in 1983, and providing for a hastened trial of those accused of crimes involving "serious endangerment to public security." Under article 131 of the Criminal Procedure Law, the time limit for an appeal or a protest against a judgment is ten days, whereas the time limit for an appeal under the expedited proceedings is only three days. See *Note by the Secretary-General*, *supra* note 21, at 29.

⁹⁵ G.A. Res. 2200, *supra* note 10, at art. 14.

⁹⁶ MASSACRE IN BEIJING, *supra* note 19, at 38. See also Kristof, *supra* note 33, and text accompanying notes 33-34. According to article 110 of the Criminal Procedure Law, normal procedures provide that a defendant receive a copy of the charges against him no more than seven days before trial. At that time, the defendant can appoint an attorney or have one appointed for him. ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONGFA, *supra* note 7, at art. 110, *reprinted in LAWS OF CHINA*, *supra* note 5, at 139-40. Under the expedited procedures, even this minimal seven day period between indictment and trial need not be observed. See *Note by the Secretary-General*, *supra* note 21, at 29.

⁹⁷ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 125, *reprinted in LAWS OF CHINA*, *supra* note 5, at 30. Article 125 states as follows: "Except in special circumstances as specified by law, all cases in the people's courts are heard in public. The accused has the right to defence."

⁹⁸ *Note by the Secretary-General*, *supra* note 21, at 16.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

the Standing Committee of the Political Bureau of the Party Centre" on June 4, 1989, the Supreme Court of the People's Republic of China endorsed the counterrevolutionary character of the pro-democracy demonstrations, thereby foreclosing any possibility of contesting this allegation in criminal proceedings in the lower courts.¹⁰¹ In another circular released on June 21, 1989, the Supreme Court encouraged judges to study the government's version of the events surrounding the pro-democracy movement and urged the judges to punish the organizers of the counterrevolutionary propaganda "without leniency."¹⁰² These actions directly contravene the organizer's rights to a fair and public hearing by an independent tribunal and the presumption of innocence until proven guilty enshrined in the Universal Declaration of Human Rights,¹⁰³ the Covenant on Civil and Political Rights,¹⁰⁴ and the Basic Principles of the Judiciary.¹⁰⁵

In direct violation of article 2 of the Basic Principles of the Judiciary,¹⁰⁶ the Communist party committees in the courts are instructed to "review and approve" significant cases and to determine the verdict and sentence before trial.¹⁰⁷ With instructions like these, and the

¹⁰¹ Dicks, *The Chinese Legal System: Reforms in the Balance*, 119 CHINA QUARTERLY 540, 573 (1989).

¹⁰² International Human Rights Law Group, *Law Group Joint Intervention Regarding China*, 6 L. GROUP DOCKET 6, 7 (Winter 1989-1990).

¹⁰³ G.A. Res. 217A (III), *supra* note 2, at art. 10, 11. Article 10 of the Universal Declaration of Human Rights provides as follows: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Article 11 provides: "1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

¹⁰⁴ G.A. Res. 2200, *supra* note 10, at art. 14. Article 14 of the International Covenant on Civil and Political Rights states:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

¹⁰⁵ See *supra* note 13. Article 1 of the Basic Principles on the Independence of the Judiciary provides as follows: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." *Seventh United Nations Congress, supra* note 13, at Ch. I, § D.2. Article 6 states: "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the party are respected." *Id.*

¹⁰⁶ *Id.* Article 2 states: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

¹⁰⁷ Note by the Secretary-General, *supra* note 21, at 15.

government's practice of publishing wanted lists identifying demonstrators as guilty prior to arrest or trial,¹⁰⁸ it is clear that the demonstrators' rights to a presumption of innocence and a judgment rendered on the clear weight of the evidence go unprotected in the Chinese legal system.

D. Public Denunciation and Torture

The government's public denunciation and torture of the supporters, specifically, its beating of the accused and its handcuffing to trees of those in custody,¹⁰⁹ violate the supporters' rights to be free from torture and other forms of cruel, inhuman, or degrading treatment and punishment.¹¹⁰ These rights are enshrined in article 5 of the Universal Declaration of Human Rights,¹¹¹ article 7 of the International Covenant on Civil and Political Rights,¹¹² and the Preamble of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.¹¹³

Insofar as article 32 of the Criminal Procedure Law prohibits officials from extorting confessions by torture,¹¹⁴ the Chinese legal system, in theory, coincides with the international prohibitions against torture. However, this theory is not reality.

Since the crackdown, law enforcement officials have repeatedly abused detainees through physical beatings and other forms of torture

¹⁰⁸ Feinerman, *supra* note 90, at 275.

¹⁰⁹ See *supra* note 31 and accompanying text. See also Appendix C, *infra*.

¹¹⁰ See *infra* notes 111-13.

¹¹¹ G.A. Res. 217A (III), *supra* note 2, at art. 5. Article 5 of the Universal Declaration of Human Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

¹¹² G.A. Res. 2200, *supra* note 10, at art. 7. Article 7 of the International Covenant on Civil and Political Rights provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

¹¹³ G.A. Res. 46, *supra* note 11, at art. 1. Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity

Although China is legally bound by the terms of this Convention, torture in China is widespread. AMNESTY INTERNATIONAL, *supra* note 11.

¹¹⁴ ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONGFA, *supra* note 7, at art. 32, reprinted in *Laws of China*, *supra* note 5, at 126. Article 32 of the Criminal Procedure Law specifically provides that "[i]t shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means."

and cruel, inhuman, or degrading treatment.¹¹⁵ Officials use these beatings as a means to extort confessions of crimes allegedly committed by the detainees.¹¹⁶ The confessions are then used as evidence in subsequent criminal proceedings against the accused.¹¹⁷ Such practices directly violate article 32 of the Criminal Procedure Law¹¹⁸ and the international prohibitions against torture.¹¹⁹

E. *Suppression of Democracy*

The government's suppression of the pro-democracy movement, particularly its suppression of non-government information through censorship and propaganda, violates the citizens' rights to free opinion, expression, and assembly. These rights are guaranteed by articles 19¹²⁰ and 20¹²¹ of the Universal Declaration of Human Rights, articles 19¹²² and 21¹²³ of the International Covenant on Civil and Polit-

¹¹⁵ See Note by the Secretary-General, *supra* note 21, at 27.

¹¹⁶ *Id.* For example, a report from Reuters on July 24, 1989, recounted evidence from two sources that beatings sometimes precede interrogations. The report cites the examples of a student who was hit with an electric cattle prod and a writer who was smacked with rifle butts.

¹¹⁷ *Id.*

¹¹⁸ ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONGFA, *supra* note 7, at art. 32, reprinted in LAWS OF CHINA, *supra* note 5, at 126.

¹¹⁹ *Supra* notes 111-13.

¹²⁰ G.A. Res. 217A (III), *supra* note 2, at art. 19. Article 19 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

¹²¹ *Id.* at art. 20. Article 20 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of peaceful assembly and association."

¹²² G.A. Res. 2200, *supra* note 10, at art. 19. Article 19 of the International Covenant on Civil and Political Rights reads as follows:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but those shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order . . . , or of public health or morals.

¹²³ *Id.* at art. 21. Article 21 of the International Covenant on Civil and Political Rights states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order . . . , the protection of public health or morals, or the protection of the rights and freedoms of others.

ical Rights, and article 35 of China's Constitution¹²⁴ which also secures freedom of press, association, procession, and demonstration.

For example, the government's jamming of the Voice of America, its closing of the *World Economic Herald*, and its banning of such live television and news sources as *Newsweek*, *Time*, *USA Today*, and the *Asian Wall Street Journal*¹²⁵ directly violates the citizens' rights to freedom of speech and press. The government's ideological campaign against Western thought since the crackdown, through new requirements of military training for students before college and grass roots employment after college,¹²⁶ violates the students' rights to free opinion under the Universal Declaration of Human Rights¹²⁷ and the International Covenant on Civil and Political Rights.¹²⁸

With these restrictions, the government apparently aims to control thought and the free flow of information to conceal the truth about the massacre. The government further entrenched this control on January 18, 1990, when Prime Minister Li Peng signed new restrictions on foreign journalists and banned articles which, in the government's view, "distort facts" or "violate the public interest."¹²⁹

The government's suppression of the demonstrations at Tiananmen Square not only violates the citizens' rights to free assembly and demonstration, but also violates the citizens' rights under article 41 of the Constitution to criticize their government and offer suggestions.¹³⁰ The Law Governing Parades and Demonstration Rights,¹³¹ promulgated on October 31, 1989,¹³² further restricts the

¹²⁴ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 35, reprinted in LAWS OF CHINA, *supra* note 5, at 12. Article 35 of the Constitution provides: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."

¹²⁵ See *supra* notes 49-52 and accompanying text.

¹²⁶ WuDunn, *China's Campus Life: A Torrent of Self-Criticism*, N.Y. Times, Oct. 20, 1989, at A4, col. 1.

¹²⁷ See *supra* note 120.

¹²⁸ See *supra* note 122.

¹²⁹ Kristof, *China Imposes Tighter Curbs on Foreign Reporters*, N.Y. Times, January 21, 1990, at 5, col. 1. As of January 21, 1990, reporters must obtain permission for any reporting trips outside of Beijing and may only report on authorized topics. Reporters may also be expelled from China on the vague ground that their articles "harmed the public interest." *Id.*

¹³⁰ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 41, reprinted in LAWS OF CHINA, *supra* note 5, at 13. Article 41 of the Constitution provides: "Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary."

¹³¹ See *Draft Law Stipulates Right to Demonstrate*, China Daily, July 4, 1989, at 1, col. 1. See also *infra* note 132.

¹³² See *Forum Discusses Law on Demonstration Rights*, reprinted in Foreign Broadcast Information Service, China Daily Report (November 28, 1989) at 14 (FBIS-CHI-89-228).

citizens' constitutional right to demonstrate.¹³³ In particular, organizers of rallies, parades, and demonstrations now need permission from the public security departments to demonstrate, and are required to provide their purpose, posters, slogans, number of participants, hours, place of demonstration, and names and addresses of the organizers.¹³⁴ In addition, no protesters are permitted to flaunt the principles of China's Constitution or challenge the leadership of the Chinese Communist party.¹³⁵

The government's repeated claims that its legitimate needs of social stability, order, and public security justified its crackdown on the pro-democracy demonstration¹³⁶ are meritless under international law. According to article 21 of the International Covenant on Civil and Political Rights,¹³⁷ limitations on the rights of freedom of association and expression in the interests of public safety, order, and national security are only permitted under international law if they are necessary in a democratic society.¹³⁸ Although China's Constitution theoretically safeguards many democratic elements, its society is not democratic, but totalitarian. The government accepts no challenges or limits on its authority, and the decision-making process rests in the hands of a few in the name of centralism.¹³⁹

¹³³ *Draft Law Stipulates Right to Demonstrate*, *supra* note 131. Article 35 of the Constitution of the People's Republic of China states: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 35, *reprinted in LAWS OF CHINA*, *supra* note 5, at 12.

¹³⁴ *Draft Law Stipulates Right to Demonstrate*, *supra* note 131.

¹³⁵ *Id.*

¹³⁶ See *Note by the Secretary-General*, *supra* note 21, at 30. See also Wei, *Why Impose Martial Law in Beijing?*, in *THE JUNE TURBULENCE IN BEIJING 21* (1989).

¹³⁷ G.A. Res. 2200, *supra* note 10, at art. 21. For a complete text of the article, see *supra* note 123.

¹³⁸ *Id.* See also *Note by the Secretary-General*, *supra* note 21, at 32.

¹³⁹ Copper, *Defining Human Rights in the People's Republic of China*, in *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA 9, 12* (1988) [hereinafter Copper, *Defining Human Rights*]. Law in the People's Republic of China is specifically designed to serve the interests of the 'revolutionary working classes'. However, because the Chinese Communist party is solely responsible for articulating and protecting working class interests, the working class interests are really the interests of the party. Gregor, *Counterrevolutionaries*, in *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA 121* (1988). The preamble of the Constitution of the People's Republic of China attributes China's success to the "leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao-Zedong Thought." ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at Preamble, *reprinted in LAWS OF CHINA*, *supra* note 5, at 3-4. "In effect, the interests of the people and the leadership of the Communist party are so intimately identified by Chinese Marxist-Leninists that the constitution of the People's Republic of China serves as a charter for the ideological control of the nation's entire population." Gregor, *supra*. Constitutional freedoms therefore can never be used to oppose communism. J. COPPER, F. MICHAEL, & Y. WU, *HUMAN RIGHTS IN POST-MAO CHINA 77* (1985).

III. CHINA'S JUSTIFICATIONS FOR THE MASSACRE AND ITS REPRESSIVE AFTERMATH

A. *Imposition of Martial Law*

According to Chinese officials, the military crackdown on the pro-democracy movement at Tiananmen Square was a legitimate exercise of martial law.¹⁴⁰ The pro-democracy supporters repeatedly violated martial law orders since they were issued in Beijing on May 20, 1989.¹⁴¹ To "check the unrest, restore social stability in the city, and to safeguard the life and property of the citizens," the government called on military "troops to assist the armed police, public security personnel and the broad masses."¹⁴² Had the government not done so,

the fruits of revolution earned by several generations through protracted struggle, the achievements made in the four decades of socialist construction and in the decadelong reform and opening to the outside world would have been destroyed, our country would have been split up, and hundreds of millions of people would have again fallen into the abyss of misery.¹⁴³

Under martial law, citizens' rights are restricted. Whereas in normal times citizens enjoy the rights afforded in the Constitution, under martial law, these constitutional rights are derogated and replaced with martial law decrees promulgated by the government.¹⁴⁴ For example, Martial Law Decree No. 1, issued on May 20, 1989, forbids "protests, petitions, student and worker strikes, and other mass activities which jeopardize the normal order Attacks on Party, government and military leaders and organs are [also] strictly forbidden."¹⁴⁵ If any of the martial law decrees are violated, "the public security forces, the armed security forces, and the People's Liberation Army have the power to adopt any method necessary to deal firmly with the situation."¹⁴⁶ Thus, according to Chinese government

¹⁴⁰ Chinese commentators define martial law as "the emergency measures carried out by the armed forces of a country when the security of that country or parts of that country is threatened from a macroviewpoint by factors such as war, turmoil, or natural disaster." *Article Discusses Martial Law Theory*, reprinted in Foreign Broadcast Information Service, China Daily Report (September 28, 1989) at 39 (FBIS-CHI-89-187).

¹⁴¹ See MASSACRE AT BEIJING, *supra* note 19, at 2.

¹⁴² Wei, *supra* note 136.

¹⁴³ *Excerpts from Speech Ending Martial Law*, N.Y. Times, Jan. 11, 1990, at 10, col. 1. The speech was made in Beijing on January 10, 1990 by Prime Minister Li Peng.

¹⁴⁴ See *supra* note 140.

¹⁴⁵ MASSACRE IN BEIJING, *supra* note 19, at Appendix C. For the full text of various martial law decrees instituted in Beijing from May 20 through June 12, 1989, see Appendix D, *infra*.

¹⁴⁶ *Id.* at Martial Law Decree No. 1.

officials, the suppression of the pro-democracy demonstration in Tiananmen Square, therefore, was a legal response to a violation of Martial Law Decree No. 1, among others. The suppression of domestic and foreign journalism both before and after the crackdown on June 3 and 4, was a legal response to violations of Martial Law Decree No. 3, which forbade inflammatory news coverage and news-gathering activities without the permission of the Beijing People's Municipal Government.¹⁴⁷

Although martial law may be legally imposed in China under the Constitution, martial law, in this instance, was illegal insofar as the correct procedures for implementing martial law were not followed. According to article 89, paragraph 16 of the Constitution, it is the function of the State Council "to decide on the imposition of martial law in parts of provinces, autonomous regions, and municipalities directly under the Central Government."¹⁴⁸ Article 67, paragraph 20 states that it is the function of the Standing Committee of the National People's Congress "to decide on the imposition of martial law throughout the country or in particular provinces, autonomous regions, or municipalities directly under the Central Government."¹⁴⁹ Article 80¹⁵⁰ requires the President of the People's Republic of China to proclaim martial law.¹⁵¹

Insofar as Li Peng, head of the State Council, signed an order imposing martial law in China, martial law was legal.¹⁵² However, it is unclear whether Yang Shangkun, President of the People's Republic of China, ever formally proclaimed the imposition of martial law in accordance with article 80 of the Constitution.¹⁵³ Furthermore, there are no reports of any decision by the National People's Congress to impose martial law.¹⁵⁴ Since the Congress was not even in session when martial law was imposed, it is highly unlikely they ever made such a decision.¹⁵⁵ Without the Congressional order and the President's proclamation, the declaration of martial law on May 20, 1989,

¹⁴⁷ *Id.* at Martial Law Decree No. 3.

¹⁴⁸ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 89, para. 16, *reprinted in* LAWS OF CHINA, *supra* note 5, at 24. Beijing is one such province. *See* 135 CONG. REC. S6411 (daily ed. June 8, 1989) (statement of Tao-tai Hsia) [hereinafter Hsia's Statement].

¹⁴⁹ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 67, para. 20, *reprinted in* LAWS OF CHINA, *supra* note 5, at 19. *See also* Hsia's Statement, *supra* note 148.

¹⁵⁰ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 80; *reprinted in* LAWS OF CHINA, *supra* note 5, at 21.

¹⁵¹ *See* Hsia's Statement, *supra* note 148.

¹⁵² *See infra*, Appendix D, at Martial Law Decree No. 1.

¹⁵³ Hsia's Statement, *supra* note 148.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

was illegal under the Constitution.¹⁵⁶

B. *Illegal Counterrevolutionary Rebellion*

Although article 35 of the Constitution provides Chinese citizens with freedom of speech, press, assembly, association, procession, and demonstration,¹⁵⁷ these rights are not absolute. When exercising their rights under the Constitution, Chinese citizens have a duty "not to infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens."¹⁵⁸ In addition, Chinese citizens have a duty "to safeguard the security, honour and interests of the motherland," and may "not commit acts detrimental to the security, honour and interests of the motherland."¹⁵⁹

Although not clearly stated in the Constitution, the exercise of constitutional freedoms must conform to the confines of the communist system.¹⁶⁰ This means submission to Deng's Four Cardinal Principles:¹⁶¹ upholding the leadership of the Chinese Communist party, adhering to the Socialist Road, upholding the Dictatorship of the Proletariat, and adhering to Marxism-Leninism and the Thought of Mao Zedong.¹⁶²

In an attempt to justify its military crackdown on the pro-democracy movement, the Chinese government repeatedly portrays the demonstration as a counterrevolutionary rebellion whose goal was to "overthrow the Communist Party, topple the socialist system and subvert the People's Republic of China."¹⁶³ Such goals contradict Deng's Four Cardinal Principles and are expressly prohibited by articles 90 through 104 of the Criminal Law which refer to "Crimes of Counterrevolution."¹⁶⁴

Insofar as the goals or actions of the pro-democracy movement were a legitimate threat to the national security of China, the government may have been justified in its effort to quash the movement.¹⁶⁵

¹⁵⁶ *Id.*

¹⁵⁷ ZHONGHUA RENMIN GONGHEGUO XIANFA, *supra* note 5, at art. 35, reprinted in LAWS OF CHINA, *supra* note 5, at 12. For the complete text of article 35, see *supra* note 133.

¹⁵⁸ *Id.* at art. 51, reprinted in LAWS OF CHINA, *supra* note 5, at 14.

¹⁵⁹ *Id.* at art. 54, reprinted in LAWS OF CHINA, *supra* note 5, at 14.

¹⁶⁰ See *supra* note 139 and accompanying text.

¹⁶¹ See Copper, *Defining Human Rights*, *supra* note 139.

¹⁶² *Id.*

¹⁶³ See Deng Xiaoping on the Beijing Counter-Revolutionary Rebellion, in THE JUNE TURBULENCE IN BEIJING 1 (1989).

¹⁶⁴ ZHONGHUA RENMIN GONGHEGUO XINGFA, *supra* note 6, at art. 90-104, reprinted in LAWS OF CHINA, *supra* note 5, at 103-05. See also *supra* notes 77-90 and accompanying text.

¹⁶⁵ Article 54 of the Constitution of the People's Republic of China prohibits "acts detrimental to the security, honour and interests of the motherland." ZHONGHUA RENMIN

However, at no time did the supporters call for the "overthrow [of] the Communist Party"¹⁶⁶ or the "toppl[ing of] the socialist system."¹⁶⁷ The pro-democracy leaders considered their movement to be patriotic from the start.¹⁶⁸ During the demonstrations, they chanted "long live communism" and "support the correct leadership of the Party."¹⁶⁹ The Internationale and the national anthem were sung.¹⁷⁰ The only threat the pro-democracy movement posed was a challenge to the legitimacy and practices of the current leaders, not a challenge to the "security, honour and interests of the motherland."¹⁷¹

IV. REQUIRED SANCTIONS BY THE UNITED STATES

A. *Legitimacy of Sanctions under International Law*

Repeated claims by the Chinese government that its suppression of the pro-democracy movement is an "internal affair,"¹⁷² an action not to be interfered¹⁷³ with by the United States or any other "foreign countries, organizations and personages that maintain friendly relations with China,"¹⁷⁴ are unacceptable within the context of present international law and China's own actions in the international arena. As a member of the United Nations,¹⁷⁵ China assumes an obligation

GONGHEGUO XIANFA, *supra* note 5, at art. 54, reprinted in LAWS OF CHINA, *supra* note 5, at 15.

¹⁶⁶ See *supra* note 163.

¹⁶⁷ *Id.* For a list of the supporters' demands, see text accompanying note 89, *supra*.

¹⁶⁸ *Where Lies the Truth?*, 15 CHINA TALK 3 (January 1990).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See *supra* note 159 and accompanying text.

¹⁷² *China Urges US Not to Harm Relations*, China Daily, June 8, 1989, at 1, col. 1. According to a Chinese commentator, the term "internal affairs" means "the affairs within the jurisdiction of a country." These are affairs which can be freely handled by the countries concerned and which are not restricted by the obligations of international law. See *Article Condemns U.S. Interference*, reprinted in Foreign Broadcast Information Service, China Daily Report (December 12, 1989) at 2 (FBIS-CHI-89-237).

¹⁷³ Chinese commentators define "interference" as "an act by a country, several countries or international organizations which, directly or indirectly, meddles in the internal and external affairs of another country or disputes between countries." *Id.* at 3.

¹⁷⁴ *China Urges US Not to Harm Relations*, *supra* note 172. To substantiate this argument, Chinese commentators invoke article 2, paragraph 7 of the United Nations Charter which provides as follows: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State . . ." U.N. CHARTER art. 2, para. 7; *Article Condemns U.S. Interference*, *supra* note 172. With the international nature of human rights, however, this article may not be applied to prevent interference with the affairs of those member nations violating human rights. See generally Lewis, *China Draws Fire for Effort to Curb U.N. on Rights*, N.Y. Times, Dec. 17, 1989, at 34, col. 1. For a fuller discussion of the international nature of human rights, see Buergethal, *infra* note 176.

¹⁷⁵ The People's Republic of China became a member of the United Nations in 1971, and as

under articles 55 and 56 of the United Nations Charter to "take joint and separate action" to "promote universal respect for, and observance of, human rights and fundamental freedoms for all"¹⁷⁶ China is not excluded from observing this law within its own borders. Rather, China's obligation under articles 55 and 56 is twofold. China must promote observance and respect for fundamental human rights, both inside and outside its borders, and it must accept the legitimacy of international action in response to its poor human rights performance. This includes sanctions imposed by the United States.

As a member of the United Nations, China has either signed or ratified a number of international human rights treaties,¹⁷⁷ under which it accepts the legitimacy of international supervision over the treatment of its citizens.¹⁷⁸ By becoming a party to these treaties, China assumed, and continues to assume, a variety of substantive obligations to ensure that all of its citizens enjoy a range of basic civil and political rights,¹⁷⁹ most of which are contained in the Universal

such, became a signatory to the fundamental human rights principles embodied in the United Nations Charter. Copper, *Defining Human Rights*, *supra* note 139, at 14-15.

¹⁷⁶ U.N. CHARTER arts. 55, 56. See also M. MC DOUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* 323-24 (1980); Schwelb, *The Int'l Court of Justice and the Human Rights Clauses of the Charter*, 66 AM. J. INT'L L. 337, 339-40 (1972). Although these Charter provisions are vague, insofar as they do not define or list the human rights and fundamental freedoms to be promoted, the provisions are legally significant. They transform human rights, "once only a matter of domestic concern, into the subject of international treaty obligations." As such, violations of human rights can no longer be considered an issue exclusively within the domestic jurisdiction of the human rights violator. Buergenthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1, 4 (1988).

¹⁷⁷ These treaties include: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention Against Apartheid in Sports; the Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Crime and Punishment of the Crime of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention Relating to the Status of Refugees; and the Protocol Relating to the Status of Refugees. HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/5, U.N. Sales No. E.87.XIV.2 (1989).

¹⁷⁸ MASSACRE IN BEIJING, *supra* note 19, at 46.

¹⁷⁹ These are rights to which all human beings are entitled. They include, among others, the rights to: "life, liberty and security of person"; "freedom from torture and cruel, inhuman or degrading treatment or punishment"; "an effective judicial remedy for violations of human rights"; "freedom from arbitrary arrest, detention or exile"; "a fair trial and public hearing by an independent and impartial tribunal"; "the presumption of innocence until guilt has been proved"; "freedom of movement and residence, including the right to leave any country and return to one's country"; "asylum"; "a nationality"; "freedom of thought, conscience and religion"; "freedom of opinion and expression"; "freedom of peaceful assembly and association"; and "participation in the government of one's country." QUESTIONS AND ANSWERS, *supra* note 1, at 5-6.

Declaration of Human Rights¹⁸⁰ and the International Covenant on Civil and Political Rights.¹⁸¹

As a member of the United Nations Commission on Human Rights,¹⁸² China has repeatedly acknowledged the international nature of human rights and the right of United Nations members to scrutinize the human rights violations of various countries.¹⁸³ In particular, China has voted in favor of resolutions to send United Nations investigators to examine human rights violations in South Africa, Chile, and Afghanistan.¹⁸⁴ China has also joined consensus resolutions affecting other countries.¹⁸⁵

Although Chinese officials may argue that the United States's imposition of sanctions against China violates article 2, paragraph 4 of the United Nations Charter,¹⁸⁶ the argument is weak. Article 2, paragraph 4 states that "[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."¹⁸⁷ The majority interpretation of this article defines "force" to mean "armed force" only.¹⁸⁸ This interpretation never suggests that the prohibition of "force" could include the use of economic sanctions by one United Nations member state against another.¹⁸⁹ Insofar as the promotion of human rights and fundamental freedoms is one of the four purposes of the United Nations,¹⁹⁰ and is also one of the purposes of the United States's sanctions against China,¹⁹¹ the United Nations may even con-

¹⁸⁰ G.A. Res. 217A (III), *supra* note 2.

¹⁸¹ G.A. Res. 2200, *supra* note 10. *See also*, MASSACRE IN BEIJING, *supra* note 19, at 46-47.

¹⁸² *See* MASSACRE IN BEIJING, *supra* note 19, at 47.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ U.N. CHARTER art. 2, para. 4.

¹⁸⁷ *Id.*

¹⁸⁸ Maddox, *The Comprehensive Anti-Apartheid Act: A Case Study in the Legality of Economic Sanctions*, 44 WASH. & LEE L. REV. 1415, 1423 (1987).

¹⁸⁹ *Id.* Under international law, a state may criticize another state for failing to adhere to internationally recognized human rights standards. A state may also organize its trade, aid or other policies to disassociate itself from the human rights violator or to discourage human rights violations. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 703 (1987).

¹⁹⁰ Maddox, *supra* note 188, at 1424. Article 1, paragraph 3 of the United Nations Charter states as follows: "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all . . ." U.N. CHARTER art. 1, para. 3.

¹⁹¹ At the outset, the objective of the sanctions was to condemn Chinese leaders for ordering the massacre of unarmed demonstrators at Tiananmen Square, and to press the leaders to

done the sanctions.

B. *Duty to Sanction under International Law*

Like China, the United States is bound by international and domestic law to observe fundamental human rights and liberties. As a member of the United Nations, the United States assumes an obligation under article 55 of the United Nations Charter to "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."¹⁹² The United States also assumes an obligation under article 56 of the United Nations Charter "to take joint and separate action . . . for the achievement of the purposes set forth in article 55."¹⁹³ Assumption of these obligations suggests a corresponding duty not to support another state engaged in serious violations of internationally recognized human rights.¹⁹⁴ So long as China continues its flagrant violation of internationally recognized human rights, the United States has a duty under international law to deny China economic, military, and diplomatic support.

C. *Duty to Sanction under Domestic Law*

1. The Foreign Assistance Act

a. *Section 502B*

Like international law, the domestic law of the United States also forbids support to those states that consistently violate human rights. Section 502B of the Foreign Assistance Act of 1961¹⁹⁵ prohibits mili-

stop the killing in the aftermath of the massacre. Van Ness, *Sanctions on China*, FAR E. ECON. REV., Sept. 21, 1989, at 25. Sanctions later focused on urging the government leaders to: stop the arrests and executions of those involved in the pro-democracy movement, end the nationwide repression that followed the massacre, and lift martial law in Beijing. *Id.*

¹⁹² U.N. CHARTER art. 55(c).

¹⁹³ *Id.* at art. 56.

¹⁹⁴ Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT'L L. 246 (1982). The enforcement of human rights obligations under the United Nations Charter depends upon the recognition and implementation of such a duty. *Id.* at 246-47.

¹⁹⁵ Foreign Assistance Act of 1961, Pub. L. No. 93-559, § 46, 88 Stat. 1795, 1815-16 (1974) (codified at 22 U.S.C. § 2304 (1988)) (commonly referred to as section 502B). Section 502B provides in relevant part:

(a)(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

(2) Except under circumstances specified in this section, no security assistance may

tary assistance or licenses for the commercial sale of military items to governments engaged in a consistent pattern of gross violations of internationally recognized human rights.¹⁹⁶ In keeping with this provi-

be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1979 . . . for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights

22 U.S.C. § 2304 (1988). Although President Carter never formally labelled a country a "violinist," he used this section to deny security assistance to twelve countries during his administration: Argentina, Bolivia, El Salvador, Guatemala, Haiti, Nicaragua, Paraguay, Uruguay, the Philippines, South Korea, Iran, and Zaire. See D. FORSYTHE, HUMAN RIGHTS AND U.S. FOREIGN POLICY 53 (1988).

¹⁹⁶ Section 502B, *supra* note 195. To find that a particular government "engages in a consistent pattern of gross violations of internationally recognized human rights," four elements must be satisfied: (1) there must be violations of "internationally recognized human rights"; (2) the violations must be "gross"; (3) the pattern of violations must be consistent; and (4) the government must be responsible for the violations. Cohen, *supra* note 194, at 267.

Subsection (d)(1) of section 502B contains a definition of "gross violations of internationally recognized human rights." According to that section, this term "includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, . . . and other flagrant denial of the right to life, liberty, or the security of the person." 22 U.S.C. § 2304(d)(1) (1988). The human rights violations committed during the Tiananmen Square Massacre, reviewed in Part II of this paper, are sufficient to meet the first element for denial of security assistance to China.

The second element, referring to "gross" violations, means that the violations must be significant in their impact. Cohen, *supra* note 194, at 267. For example, although arbitrary imprisonment is an internationally recognized violation, detention for several days would not be considered "gross" due to the relatively short period of confinement. *Id.* However, in the case of China, most of the detainees have been confined without charge or trial since the massacre in June 1989. See ASIA WATCH COMMITTEE, *supra* note 78, at 8. Such prolonged detention would be considered a "gross" violation of the internationally protected right against arbitrary imprisonment. Thus, the second element for prohibiting foreign assistance to China is satisfied.

The third element of a "consistent pattern" of violations means that abuses must be significant in number and recurrent. Isolated instances of torture and execution, while certainly gross violations, would not be enough to trigger prohibition of security assistance under section 502B. Cohen, *supra* note 194, at 268. Applying this element to China, it is clear that security assistance should be prohibited. The massacre and its repressive aftermath are part of a consistent pattern of gross human rights violations in China. Since 1949, the Chinese government has broken up peaceful demonstrations for Tibetan autonomy with brutal force and has imposed stringent restrictions on the internationally recognized freedoms of religion, expression and association. During the peaceful demonstrations in Tibet in March 1989 alone, the Chinese security forces killed hundreds of people. See *Law Group Joint Intervention Regarding China*, *supra* note 102, at 6.

The fourth element, that the government be responsible for the violations, is also present in the case of China, where the Chinese government ordered the People's Liberation Army and other security forces to suppress the pro-democracy movement. U.S. DEPT OF STATE, HOUSE COMM. ON FOREIGN AFFAIRS & SENATE COMM. ON FOREIGN RELATIONS, 101ST CONG., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1989 at 802 (Joint Comm.

sion, on June 5, 1989, President Bush issued an Executive order, which among other sanctions, suspended the sales and exports to China of all military items requiring export licenses from the Office of Munitions Control, and also suspended high-level military exchanges between the United States and China.¹⁹⁷ The major result of these sanctions was to postpone a \$500 million deal whereby the United States was to provide China with upgraded avionics for its F-8 fighter planes.¹⁹⁸ Also affected was a \$28 million program for modernizing production of large caliber artillery ammunition; a \$62 million sale to China of AN/TPQ-37 artillery-locating radars; and a \$10 million aggregate sale of a Mark 46 surface ship and two anti-submarine torpedoes.¹⁹⁹ Such sanctions undoubtedly impede the strength and modernization of the Chinese military.

Despite the imposition of these sanctions on June 5, 1989, President Bush has essentially reversed his position on military sales to China. On July 7, 1989, the President authorized the sale to China of four commercial Boeing 757-200 jetliners containing navigation control systems requiring export licenses from the Office of Munitions Control.²⁰⁰ In addition, the postponed \$500 million project to upgrade China's F-8 fighter planes with United States electronics was permitted to proceed.²⁰¹ The President's authorization of these deals constitutes a flagrant violation of section 502B of the Foreign Assistance Act of 1961 and should be withdrawn.

Section 502B also prohibits the transfer of crime control and police equipment to governments violating human rights.²⁰² Although

Print 1990) [hereinafter COUNTRY REPORTS]. Given that all four of the criteria for denying foreign assistance to China under section 502B have been met, it is clear that all military assistance to China should be terminated.

¹⁹⁷ Presidential sanctions against China include: suspension of all arms sales to China; suspension of exchanges between United States and Chinese military and diplomatic leaders; extension of visas to Chinese nationals in the United States; humanitarian and medical assistance through the Red Cross for those injured in the massacre; instructions to United States representatives of international financial institutions to seek delay of loan requests that would benefit China; suspension of new insurance and financing in China by the Overseas Private Investment Corporation; suspension of new licenses for exports of nuclear power to China; and suspension of the license to China permitting China to use its missiles to launch United States manufactured satellites. The sanctions were imposed by Executive order on June 5, 1989. H.R. 2655, 101st Cong., 1st Sess., 135 CONG. REC. 3446, 3455 (1989).

¹⁹⁸ See Felton, *Brutal Crackdown in Beijing Deals Blow to U.S. Ties*, 47 CONG. Q. 1411, 1414 (1989).

¹⁹⁹ *Id.*

²⁰⁰ Memo from Richard Kessler, Jeff Sims & William Triplet to United States Senate Committee on Foreign Relations, United States Policy Toward China 8 (February 1, 1990) (on file with the Cardozo Law Review) [hereinafter Kessler Memo].

²⁰¹ *Id.*

²⁰² Section 502B, *supra* note 195; see also *supra* note 195 for text of statute.

President Bush temporarily suspended the sale and export of military weapons to China,²⁰³ he failed to suspend licenses authorizing the sale of police equipment.²⁰⁴ He also failed to suspend some \$2.9 billion in high-technology exports, including computers and other strategic goods, which could be used to aid the sale of military equipment²⁰⁵ in violation of section 502B. It is especially important in this instance that President Bush abide by the provisions of the Foreign Assistance Act with respect to the sale of police equipment since it was police equipment that provided the tools of repression in the military crackdown. It should be noted here that both the House and Senate introduced bills prohibiting licenses for the export of any crime control or detection equipment.²⁰⁶

b. *Section 239(l)*

Section 239(l) of the Foreign Assistance Act of 1961 prohibits Overseas Private Investment Corporation (OPIC) activity in those countries whose governments violate human rights.²⁰⁷ OPIC is a

²⁰³ See *supra* note 197.

²⁰⁴ Memo from Holly Burkhalter, Washington Director, Human Rights Watch, at 2 (July 6, 1989) (discussing sanctions against China) (available from Asiawatch, Washington, D.C.) [hereinafter Burkhalter Memo].

²⁰⁵ *Where Do We Go From Here?*, *supra* note 25, at 124 (statement of Aryeh Neier, Executive Director, Human Rights Watch) [hereinafter Neier's Statement].

²⁰⁶ H.R. 2655, 101st Cong., 1st Sess. (1989) and S. 1160, 101st Cong., 1st Sess. (1989). The House-passed amendment to the fiscal 1990-1991 foreign aid authorization bill (H.R. 2655) would legalize several sanctions that President Bush imposed by Executive order. For a list of the President's sanctions, see *supra* note 197. In addition to legalizing the President's sanctions, the House bill would: eliminate China's eligibility for a trade promotion program run by the Agency for International Development; expand the President's prohibition on export of nuclear supplies to China; stop plans to increase China's access to such high-technology items as computers; and prohibit the export of crime control equipment. The bill was passed by the House on June 29, 1989. Felton, *House Stiffens Sanctions on China*, 47 CONG. Q. 1642 (1989). The Senate-passed amendment to the fiscal 1990 State Department authorization bill (S. 1160) essentially parallels the House amendment, although the Senate amendment requests that the President reconsider almost all of the United States economic ties with China. In particular, the Senate requests that the U.S. Export-Import Bank halt its subsidies of exports to China, that the President oppose all future loans by the World Bank to China, and that China's status as a "most favored nation," which entitles China to reduced tariffs, be reconsidered. *Senate Approves Sanctions Plan*, 47 CONG. Q. 1800 (1989). On January 31, 1990, the Senate passed the bill, which for technical reasons, had not been enacted after being introduced in the summer of 1989. Although the bill is expected to become law without a presidential veto, the bill is largely symbolic since President Bush has removed most of the sanctions imposed by Executive order, and the new bill permits the President to waive others if it is in the national interest. Awanohara, *China Card Shuffled*, FAR E. ECON. REV., Feb. 15, 1990, at 12.

²⁰⁷ Foreign Assistance Act of 1961, Pub. L. No. 95-268, § 8, 92 Stat. 213, 216 (1978) (codified at 22 U.S.C. § 2199(i) (1988)). Section 239(l), provides as follows:

The corporation shall take into account in the conduct of its programs in a country, in consultation with the Secretary of State, all available information about observance of and respect for human rights and fundamental freedoms in such

United States government corporation which provides long-term risk insurance to businesses investing in foreign countries.²⁰⁸ Currently OPIC insures approximately ten percent of new businesses in China.²⁰⁹ In 1988, OPIC insured eleven new projects in China totaling over \$46 million.²¹⁰

In compliance with section 239(l), the President's Executive order of June 5, 1989, suspended action on applications of new insurance and financing by OPIC, as did the House and Senate bills.²¹¹ Without OPIC political risk insurance coverage, private investment by American companies will decline. As the United States is the second largest investor in China,²¹² with \$3 billion in assets,²¹³ even a minimal decrease in American investment would stifle Chinese economic and social development. To increase the negative impact on China, the President should do more than suspend action on applications for OPIC; he should suspend OPIC activity in China altogether.²¹⁴

2. The Trade Act of 1974

Sections 402(a) and (b) of the Trade Act of 1974,²¹⁵ known as the

country and the effect the operation of such programs will have on human rights and fundamental freedoms in such country. The provisions of section 2151n of this title shall apply to any insurance, reinsurance, guaranty, or loan issued by the Corporation for projects in a country, except that in addition to the exception (with respect to benefitting needy people) set forth in subsection (a) of such section, the Corporation may support a project if the national security interest so requires.

22 U.S.C. § 2199(i) (1988).

²⁰⁸ Burkhalter Memo, *supra* note 204, at 4.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *See supra* notes 197 and 206.

²¹² Hong Kong is the largest investor in China. *See Where Do We Go From Here?*, *supra* note 25, at 11 (statement of Ambassador Richard L. Williams, Acting Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs).

²¹³ *Id.*

²¹⁴ Felton, *supra* note 198, at 1414.

²¹⁵ Trade Act of 1974, § 402(a)-(b), 19 U.S.C. § 2432 (1988). 19 U.S.C. § 2432 provides in relevant part:

(a) Actions of nonmarket economy countries making them ineligible for most-favored nation treatment, programs of credits, credit guarantees, or investment guarantees, or commercial agreements

To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after January 3, 1975, products from any nonmarket economy shall not be eligible to receive nondiscriminatory treatment (most-favored nation treatment), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial

Jackson-Vanik amendment, prohibits the President of the United States from designating a communist government as a Most Favored Nation (MFN) beneficiary if such government "denies its citizens the right or opportunity to emigrate."²¹⁶ Although China was granted MFN beneficiary status in 1980,²¹⁷ China clearly is denying its citizens the right to emigrate.²¹⁸ On June 20, 1989, the Chinese government announced that all passports were null and void, and those wishing to travel would need to apply for new passports at police stations around the country.²¹⁹ This measure was designed as a dragnet to catch the pro-democracy demonstrators.²²⁰ By denying MFN status to China, the United States would compel China to pay the same high tariffs on Chinese exports to the United States that most communist countries pay.²²¹ Although President Bush renewed an annual waiver allowing MFN status for China on May 24, 1990,²²² the Jackson-Vanik Amendment requires the President to overturn his decision and deny China the privilege of MFN status. If the President fails to comply with the Amendment, Congress could pass legislation requiring him to do so.

3. The International Financial Institutions Act

Section 701 of the International Financial Institutions Act²²³ requires the United States directors of the multilateral development banks to oppose loans and other credit to countries violating human

agreement with any such country, during the period beginning with the date on which the President determines that such country-

(1) denies its citizens the right or opportunity to emigrate; . . .

²¹⁶ 19 U.S.C. § 2432(a)(1) (1988). See also Neier's Statement, *supra* note 205.

²¹⁷ Other communist countries receiving MFN beneficiary status are Yugoslavia, Poland, Romania, and Hungary. See Burkhalter Memo, *supra* note 204; Forsythe, *supra* note 195, at 74-76.

²¹⁸ Neier's Statement, *supra* note 205, at 5.

²¹⁹ *Id.* In the wake of the massacre, the Government implemented more restrictive criteria for issuing new passports. Applicants must now obtain a political "good bill of health" from their party committees and the work units to which they have been assigned. They also must submit to background checks by the Public Security Bureau. Applicants are screened to determine their political loyalties and the nature of their participation in the pro-democracy demonstrations. Dissident Zhang Cai was detained at the airport in Shanghai when he attempted to board a flight out of China. See COUNTRY REPORTS, *supra* note 196, at 817.

²²⁰ Neier's Statement, *supra* note 205, at 5.

²²¹ *Id.*

²²² Barale, *U.S. MFN Renewal for China: The Jackson-Vanik Amendment*, 12 E. ASIAN EXECUTIVE REP. 9 (1990). Representative Tom Lantos introduced a joint resolution to disapprove the renewal of the waiver (see H.J. Res. 581), as did Representative Gerald Solomon (see H.J. Res. 586). Senators Alan Dixon and Alfonse D'Amato introduced a joint resolution in the Senate to deny MFN status to China for one year (see S.J. Res. 325). *Id.* at 12.

²²³ International Financial Institutions Act, § 701(a)(1), 22 U.S.C. § 262d (1988).

rights.²²⁴ While the United States does not have enough power to veto loans or credit extensions to violating countries, United States opposition is extremely influential.²²⁵

In his Executive order, President Bush also instructed United States representatives of the international financial institutions to seek delays in consideration of loan requests benefitting China.²²⁶ This request, in conjunction with similar requests by the other major industrial countries was the likely impetus for the World Bank's freeze on seven loans to China worth a total of \$780.2 million, due to be sent to the Bank's board for approval by June 30, 1989.²²⁷ Deferral of these loans would retard China's development in key areas. The most significant losses include: \$180 million earmarked for the cost of a 600-mW coal-fired power station at Yanshi; \$150 million for rehabilitation of the Nanjing-Shanghai highway and Dan-Yeng portion of the Grand Canal; and \$150 million for a Shanghai industrial development project designed to set up electronic components, precision and scientific instruments, printing machinery, and electrical apparatus factories.²²⁸

On February 8, 1990, however, the World Bank announced approval of a \$30 million loan to China for earthquake relief and the Export-Import Bank, a United States agency, announced a \$23.1 million loan for the Shanghai transportation system.²²⁹ On February 2, 1990, the Export-Import Bank approved a \$9.75 million loan to the China National Offshore Oil Corporation.²³⁰ Although these loans were the first since the crackdown in June 1989,²³¹ their approval con-

²²⁴ Section 701 provides in relevant part:

Sec. 701. (1) The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, . . . the Asian Development Bank . . . shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in-

- (1) a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person

22 U.S.C. § 262d (1988).

²²⁵ Neier's Statement, *supra* note 205. For example, the United States is the leading stockholder in the World Bank, a 152-nation lending institution. See Farnsworth, *China Wins Two Loans Backed by U.S.*, N.Y. Times, February 9, 1990, at A3, col. 4.

²²⁶ See *supra* note 197.

²²⁷ *Put on Hold*, FAR E. ECON. REV., July 6, 1989, at 69.

²²⁸ *Id.*

²²⁹ See Farnsworth, *supra* note 225.

²³⁰ *Id.*

²³¹ *Id.*

stitutes a flagrant violation of section 701 of the International Financial Institutions Act and should be withdrawn.

4. Agricultural Trade Development and Assistance Act of 1954

Like the other statutes linking human rights criteria to foreign assistance, section 112 of the Agricultural Trade Development and Assistance Act²³² also establishes human rights criteria for its assistance. In particular, section 112 prohibits any agreement that finances the sale of agricultural commodities to a country engaged in a consistent pattern of gross violations of internationally recognized human rights.²³³ Although in his Executive order, President Bush did not place sanctions upon agricultural trade, the United States's offer on December 5, 1990, to sell China one million metric tons of subsidized wheat²³⁴ clearly violates section 112 and should be prohibited.

Insofar as section 112 permits trade between the United States and those human rights violators who prove, by written report, that the sale of agricultural products would directly benefit the needy people of that country,²³⁵ trade in the instant circumstances would violate the Act. According to X. Z. Yuan, China's chief grain buyer in the United States, China's purchase of nearly a million metric tons of wheat from Britain satisfied China's wheat needs through the first quarter of 1990.²³⁶ This indicates that any wheat purchased from the

²³² Agricultural Trade Development Assistance Act of 1954, § 112, 7 U.S.C. § 1712 (1988).

²³³ *Id.* 7 U.S.C. § 1712 provides as follows:

(a) Agreements prohibited with countries violating internationally recognized human rights: exception for agreements directly benefitting needy people

No agreement may be entered into under this subchapter to finance the sale of agricultural commodities to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person, unless such agreement will directly benefit the needy people in such country. An agreement will not directly benefit the needy people in the country for purposes of the preceding sentence unless either the commodities themselves or the proceeds from their sale will be used for specific projects or programs which the President determines would directly benefit the needy people of that country. The agreement shall specify how the projects or programs will be used to benefit the needy people and shall require a report to the President on such use within 6 months after the commodities are delivered to the recipient country.

²³⁴ *U.S. Offers to Sell China Million Tons of Subsidized Wheat*, N.Y. Times, Dec. 6, 1989, at D2, col. 1. According to the terms of the offer, wheat sales will be made through United States exporters who can sell to China at preferential rates and be subsidized with grain from United States government stockpiles. *Id.*

²³⁵ 7 U.S.C. § 1712(a) (1988).

²³⁶ See *supra* note 234.

United States during the first quarter of 1990 would have been superfluous. The wheat would not have been required for the subsistence of the needy people of China.

D. *Precedent for Imposing Sanctions*

In addition to international and domestic law, legal precedent compels the imposition of sanctions against China. In his book, *Economic Sanctions Reconsidered*, Gary Hufbauer examines 103 instances of sanctions since World War I.²³⁷ Of these, sixty-eight were cases in which the United States employed sanctions against other countries for various reasons including the promotion of human rights.²³⁸ For example, in 1977 alone, the United States instituted sanctions against Paraguay, Guatemala, Argentina, Nicaragua, El Salvador, and Brazil to coerce those countries into improving their human rights records.²³⁹ The following two examples demonstrate that the threat or actual imposition of sanctions by the United States can help to improve human rights.²⁴⁰

1. Sanctions against Argentina

Legislative restrictions on military aid and sales, in addition to restrictions on Export-Import Bank loans to Argentina, were a key ingredient in a United States foreign policy that sought to pressure Argentinean military leaders to end the "dirty war" in which thousands of innocent people disappeared.²⁴¹ In February 1977, President Carter announced reductions of military aid to Argentina from \$36 million to \$15 million for the fiscal year 1978.²⁴² In July 1977, the United States froze a sale of police equipment to Argentina, and the Export-Import Bank rejected a \$270 million loan to Argentina, which was to be used for the purchase of electrical equipment.²⁴³ In September of 1978, the United States Defense Department suspended consideration of 212 license requests for \$100 million in United States military equipment.²⁴⁴ Following the imposition of sanctions and a range of diplomatic initiatives by the United States and other coun-

²³⁷ G. HUFBAUER, J. SCHOTT & K. ELLIOT, *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* (1985).

²³⁸ *Id.* at 7, 13-20.

²³⁹ *Id.* at 18.

²⁴⁰ Posner, *A View from a Non-Governmental Organization*, 31 *FED. B. NEWS & J.* 209, 210 (1984).

²⁴¹ *Id.*

²⁴² See G. HUFBAUER, *supra* note 237, at 560.

²⁴³ *Id.*

²⁴⁴ *Id.*

tries, change in Argentina's human rights performance began to occur, culminating in the 1983 democratic election of President Raul Alfonsin.²⁴⁵

2. Sanctions against Poland

In response to the 1981 declaration of martial law in Poland, the Reagan Administration instituted a variety of sanctions against Poland. These sanctions included a prohibition on United States loans and credits, United States opposition to Polish participation in the International Monetary Fund, and denial of MFN status to Poland.²⁴⁶ The sanctions were to remain in effect until Poland: (1) ended martial law; (2) freed all political prisoners; and (3) resumed talks with the Polish Church and Solidarity.²⁴⁷ The subsequent release of political prisoners and the hastening of democratic reform in Poland resulted, at least in part, from these sanctions.²⁴⁸

E. Opposition to Sanctions

The Bush Administration, certain members of Congress, and some business leaders oppose additional sanctions against China for two reasons: (1) additional sanctions will hurt those people the United States seeks to help, specifically, the political and economic reformers;²⁴⁹ and (2) additional sanctions will threaten United States security interests.²⁵⁰ Although appealing in theory, such arguments are unsupported by fact. United States support for the victims of human rights violations by a repressive government gains support of that country's people, regardless of that country's ideology.²⁵¹ Failure to impose maximum sanctions or, in the case of the United States, the decision to send two secret missions of high-level government officials to cajole Chinese officials only months after the crackdown,²⁵² sends a

²⁴⁵ Posner, *supra* note 240, at 210.

²⁴⁶ Neier's Statement, *supra* note 205, at 10.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 10-11.

²⁴⁹ *Where Do We Go From Here?*, *supra* note 25, at 249 (statement of Richard E. Gillespie, Vice President, U.S.-China Business Council).

²⁵⁰ See Lewis, *The Kissinger Syndrome*, N.Y. Times, Dec. 17, 1989, § 4, at 21, col. 1.

²⁵¹ AMNESTY INTERNATIONAL USA, HUMAN RIGHTS AND U.S. FOREIGN POLICY: A MANDATE FOR LEADERSHIP 3 (1987).

²⁵² The first mission occurred over the Fourth of July weekend in 1989, just one month after the crackdown. See Kessler Memo, *supra* note 200, at 5, 10. In violation of his sanctions against high level military exchanges with China, President Bush sent National Security Advisor Brent Scowcroft and Deputy Secretary of State Lawrence Eagleburger to China. *Id.* at 8. This mission was not revealed until December 18, 1989, after the second secret mission had occurred. *Id.* at 10. The contents of the first meeting has not been revealed. *Id.*

The second mission occurred on December 9, 1989. See Friedman, *China Trip Seeks to*

message to the victims of the massacre that the United States only minimally supports their cause. The missions further signal the repressive Chinese government that it may keep violating human rights without suffering significant repercussions.²⁵³

When defending the secret diplomatic missions to China, President Bush repeatedly states that he does not "want to isolate" the Chinese people.²⁵⁴ However, he apparently means that he does not want to isolate those in power.²⁵⁵ Preserving relations with the repressive government in China may serve the short-term interests of the United States if American foreign policy continues to be dominated by Cold War concerns,²⁵⁶ but it does not serve the long-term interests in a democratic China, nor does it serve America's "moral responsibility to assist the forces of freedom and reform."²⁵⁷ In short, the Bush Administration has nothing to show for its forbearance toward the Chinese dictatorship.²⁵⁸

As the United States continues to remove sanctions against China, repression in that country worsens. Although martial law in Beijing was lifted on January 11, 1990, the change has been symbolic at best.²⁵⁹ Army forces remain in the capital, and security forces have been ordered to intervene at the first sign of trouble.²⁶⁰ Efforts to keep foreign reporters under strict surveillance and to limit unauthorized

Alter Americans' Perceptions, N.Y. Times, Dec. 10, 1989, at 23, col. 1. According to a government official, the purpose of the second mission was to send "a political signal that we are now ready to resume relations on a more normal basis." *Id.* The *New York Times* reported that the administration would like to treat the crackdown in June, "as an unfortunate affair—which, while regrettable, should not be allowed to overshadow the strategic importance of Chinese-American relations." *Id.*

²⁵³ See generally *Human Rights and Multilateral Aid to China and Somalia: Hearings Before the House Subcomm. on International Development, Finance, Trade and Monetary Policy*, 102d Cong., 1st Sess. 22 (1989) (statement of Minxin Pei, Chinese graduate student, Harvard University).

²⁵⁴ See Lewis, *supra* note 250. However, isolation is precisely what he accomplished. The pro-democracy supporters will long remember National Security Advisor Brent Scowcroft's toast to Chinese leaders: "in both our societies there are voices of those who seek to redirect or frustrate our cooperation. We both must take bold measures to overcome these negative forces." Kessler Memo, *supra* note 200, at 10.

²⁵⁵ See Lewis, *supra* note 250.

²⁵⁶ While China was initially perceived as a counterbalance to Soviet expansionism, the importance of that strategic force diminishes as tensions between the United States and the Soviet Union decrease. See generally *U.S. Policy Toward China: Hearing Before the Senate Comm. on Foreign Relations*, 102d Cong., 2d Sess. 3 (1990) (statement of Lawrence S. Eagleburger, Deputy Secretary, Department of State).

²⁵⁷ Lewis, *supra* note 250.

²⁵⁸ Lewis, *Trahsion Des Clercs*, N.Y. Times, Mar. 9, 1990, at A35, col. 1.

²⁵⁹ Ming, *Cosmetic Change*, FAR E. ECON. REV., Jan. 25, 1990 at 8.

²⁶⁰ Kristof, *China Seeks Respectability, But Painlessly*, N.Y. Times, Jan. 14, 1990, § 4, at 1, col. 1.

contacts with Chinese citizens have intensified since the announcement.²⁶¹ Unauthorized demonstrations remain illegal; even shouting on Tiananmen Square is an offense.²⁶²

By imposing sanctions, the United States could accomplish what the Bush Administration has failed to do diplomatically: (1) induce China to change its repressive policies and practices; and (2) strengthen the pro-democracy movement by assuring United States support and bolstering the participants' resolve to fight government repression of their fundamental rights.²⁶³ United States imposition of sanctions provides Chinese officials with a choice: they may continue their repression and forego aid, or they may forego repression and receive aid.

CONCLUSION

The Bush Administration's "wait and see" attitude with respect to additional sanctions against China is not only a grave mistake, but a violation of the law and moral order for which the United States stands. In his speech to military commanders on June 9, 1989, Deng Xiaoping affirmed China's commitment to economic reform.²⁶⁴ He cited several areas in need of investment, including the supply of raw materials, transportation, and energy,²⁶⁵ and stated that obtaining foreign loans to improve these areas is a vital necessity.²⁶⁶

As a means of alleviating repression in China and encouraging compliance with international human rights, President Bush should exploit China's need for aid by attaching a human rights agenda as a condition to assistance. Presidential sanctions against China should be reinstated and maintained until China:

1. Terminates the persecution of the peaceful demonstrators of May-June 1989 and grants amnesty to those imprisoned;
2. Terminates the propaganda and ideological campaigns against legitimate foreign reporting;
3. Resumes the commitment to economic and political reform, including observance of the constitutional provisions of free speech, press, assembly, and demonstration; and,
4. Establishes a plan for succession to the leadership of the aging

²⁶¹ Kristof, *China Is Watching Watchers Closely*, N.Y. Times, Feb. 26, 1990, at A2, col. 4.

²⁶² Kristof, *supra* note 260 at 3, col. 1.

²⁶³ For a discussion of the purpose of sanctions in general, see Nagan, *Economic Sanctions, U.S. Foreign Policy, International Law and the Anti-Apartheid Act of 1986*, 4 FLORIDA INT'L L.J. 85, 110 (1988).

²⁶⁴ *Deng's June 9 Speech*, *supra* note 88, at A6.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

Deng Xiaoping. The potential successors should not include the perpetrators of the massacre.²⁶⁷

Provided these conditions are ultimately satisfied by China, removal of sanctions and an offer of further aid will fully comply with United States's security and economic legislation.²⁶⁸ In contrast, the Bush Administration's "wait and see" attitude with respect to imposing additional sanctions against China results in illegal application of United States's domestic foreign assistance legislation and vilifies the pro-democracy demonstrators who lost their lives for freedom while attempting to uphold the principles upon which the United States stands: freedom of speech, press, and assembly.

Jennifer E. Morris

²⁶⁷ See *Where Do We Go from Here?*, *supra* note 25, at 103 (statement of Michael Ok- senberg, Center for Chinese Studies, University of Michigan).

²⁶⁸ If China were no longer engaged in a "consistent pattern of gross violations of internationally recognized human rights," as defined by section 502B, aid to China would not violate United States's security and economic legislation.

APPENDIX A

History of the Pro-Democracy Movement

The military crackdown at Tiananmen Square marked the culmination of a series of events which began on April 15, 1989, with the death of former Communist Party General Secretary, Hu Yaobang.²⁶⁹ Hu, an outspoken champion of political reform and intellectual freedom, resigned as General Secretary in 1987 when the 1986-87 pro-democracy demonstrations were suppressed. His death sparked a new protest beginning on April 17, 1989, by over 10,000 students from People's University and Beijing University.²⁷⁰ The students' demands included rehabilitation of Hu's reputation, repudiation of prior campaigns against "spiritual pollution" and "bourgeois liberalization," freedom of speech and press, removal of restrictions on peaceful demonstrations, public disclosure of the finances of senior officials, an end to the corruption in government, increased expenditure on education, and higher salaries for intellectuals.²⁷¹ Despite official bans on public demonstrations promulgated by the Beijing's People's Congress, thousands of students began camping in Tiananmen Square on April 22, 1989, the date of Hu's funeral. On April 24, 1989, the students began boycotting classes.²⁷²

In the ensuing weeks, government officials repeatedly rejected student requests for dialogue and retraction of a *People's Daily* editorial labelling the student movement, as "turmoil." In response, 1000 students began a hunger strike on May 13; another 2000 joined a few days later.²⁷³ The visit of Soviet Union President Mikhail Gorbachev to the People's Republic of China aroused additional support for reform. On the first day of the Gorbachev visit, 100,000 people were in Tiananmen Square and by May 18, over one million.²⁷⁴ Students no longer formed the overwhelming majority since teachers, workers, journalists, and other citizens had joined the demonstrations.²⁷⁵ The students ended their hunger strike on May 19 after a visit from Prime Minister Li Peng who reportedly acknowledged the students "patriotic enthusiasm" and their "good intentions."²⁷⁶

²⁶⁹ See Bachman, *China's Politics: Conservatism Prevails*, CURRENT HIST., Sept. 1989, at 259-60.

²⁷⁰ *Id.*

²⁷¹ MASSACRE IN BEIJING, *supra* note 19, at 21-22.

²⁷² *Id.* at 22.

²⁷³ *Id.*

²⁷⁴ Bachman, *supra* note 269, at 296-97.

²⁷⁵ See Bachman, *supra* note 269, at 296-97; MASSACRE IN BEIJING, *supra* note 19, at 21-22.

²⁷⁶ AMNESTY INTERNATIONAL, *supra* note 11, at 2.

On May 20, however, Li Peng signed an order executing martial law in part of Beijing. Under martial law, demonstrations, petitions, class boycotts, work stoppages, and other activities amassing people were banned.²⁷⁷ In addition, people were forbidden from spreading rumors, making speeches, and distributing leaflets.²⁷⁸ Journalists were forbidden to use press coverage to incite propaganda. Assault of the party, the government, the army, and communication units was further prohibited.²⁷⁹ Although the demonstrators initially rushed to the streets of Beijing to block the entrance of the military into the city, popular mobilization declined. By May 29, the number of students in the square had fallen to approximately 2000. The number remained in the low thousands until the army forced its way into Tiananmen Square on June 3, when the slaughter began.²⁸⁰

²⁷⁷ See *Martial Law for Part of Beijing*, China Daily, May 22, 1989, at 1, col. 3.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ MASSACRE IN BEIJING, *supra* note 19, at 23.

APPENDIX B

Eyewitness Account of Massacre at Tiananmen Square

At early dawn of 4 June, three armoured vehicles sped from the north into the Xidan intersection, crushing a bus that had been parked in the intersection as a barricade. Rumbling vehicles and continuous gun shots were heard approaching from the direction of the Military Museum. People fell in large numbers in the area between the Military Museum and Xidan. Workers returning home from night shifts also suffered gun shots.

At 0040 hours, troops fired tear-gas at around 500 metres from Xidan. Unable to keep their eyes open, the people had to squat down to keep away from the gas. At this moment, a vehicle caught fire. This was the work of plainclothes police for the purpose of blaming it on the students and creating an excuse for the government to kill.

At 0050 hours, huge numbers of anti-riot police yelling "open fire" emptied rounds of ammunition into the defenceless students and citizens. Scores of people were shot to death on the spot, and hundreds were injured. Among the dead were bystanders. Those taking refuge in small alleys were found by soldiers and killed. Deep in an alley in Xidan, four people were shot dead, among whom a 3-year-old child and an old man over 70. There was no survivor in this group. A little over 0100 hours, many troops charged into Xidan intersection. Soldiers poured bullets into crowds of spectators, who fell in large numbers. Not only did they continue the shooting rampage, but they also chased people running away from them, and used sticks, whips and guns to beat them. A female student from the Second Foreign Language Institute suffered injuries in both feet. Several schoolmates came up to help her. They were shot at with automatic guns. Five fell.

Three hours later, the troops had deserted Xidan. People who had survived the onslaught rushed back toward Tiananmen Square. All the roadways had been blocked by the army, which started firing at the approaching people again. Those running away were shot in the back. The louder the chanting of slogans, the more intense the gun fire.²⁸¹

²⁸¹ AMNESTY INTERNATIONAL, *supra* note 11, at 20.

APPENDIX C

Victim's Account of Torture

On the morning of 4 June 1989, F wanted to go sight-seeing in Beijing. He apparently did not know what had happened during the night and was cycling in the streets close to Tiananmen Square when, without knowing, he entered a restricted area. At 1130 hours he was stopped by soldiers and beaten with a stick on the shoulders and back. They took away his rucksack, his camera and films. An officer then took him to a government building on one side of Tiananmen Square, and subsequently into a building inside the Forbidden City, which he thought to be a centre for radio communication. He was questioned about his belongings, hit on the hand, then an officer took out his pistol to intimidate F. F was asked to stand close to the wall, then to sit down, then to stand up again (several times).

He was then taken out on the Square and walked under escort for about ten minutes across the park on the right side of the entrance to the Forbidden City (seen from outside). There he was held in a room under military guard with the four other foreigners: an American and his pregnant wife; a fifteen-year-old Pakistani boy and a 47-year-old Italian journalist who had a bleeding head wound and bruised ribs.

All five were repeatedly struck by a soldier with an electric baton as they were brought to this holding centre. They were questioned by officers of the Beijing Police for about 60 to 90 minutes each, and were not allowed to contact their embassies. During this time F could hear screams from a nearby building into which wounded Chinese detainees were being taken. They had head wounds and other injuries, and they were tied with hands behind their backs and attached to a cord tied around their necks. The foreigners saw a number of detainees being beaten by soldiers before they were themselves released.

At 0200 hours the foreigners were taken out of the room and F came close to the building. He looked inside the building and saw a room, which was about 12 by six metres, containing at least 80 wounded people. "It looked like a butchery" said F. About one hour later the foreigners were released outside the park. F had bruises and suffered from pain for about 14 days.²⁸²

²⁸² *Id.* at 37.

APPENDIX D

*Various Martial Law Decrees Instituted in Beijing from May 20, 1989 Through June 12, 1989***Martial Law Decree No. 1, issued May 20, 1989:**

Based on the order to impose martial law on parts of Beijing signed by Premier Li Peng, in order to speedily check the social turmoil and to restore day to day work, production, education and research activity in the capital, the Beijing People's Government specially issues the following order:

1. Commencing at 10 A.M. on 20 May 1989, martial law will be imposed on the Dong Cheng [East City], Xi Cheng [West City], Song Wen Xuan Wu, Dan Jing Shan, Hai Dan, Feng Tai, and Cha Yang districts.

2. During the martial law period, protests, petitions, student and worker strikes, and other mass activities which jeopardize the normal order are strictly forbidden.

3. It is strictly forbidden in any way to create and spread rumours, establish ties [networking], make speeches, distribute leaflets, and to foment social turmoil.

4. Attacks on Party, government and military leaders and organs are strictly forbidden. Attacks on broadcasting, communications, and other important work units are strictly forbidden. Destruction of important public facilities is strictly forbidden. Beating, breaking, looting, arson, and all other destructive activities are strictly forbidden.

5. It is forbidden to harass foreign diplomatic missions and UN organs stationed in Beijing.

6. If any one of the forbidden activities enumerated above occur during the martial law period, the public security forces, the armed security forces, and the People's Liberation Army have the power to adopt any method necessary to deal firmly with the situation.

It is hoped that all the city's citizens will respect and observe the regulations set out above.²⁸³

Martial Law Decree No. 3, issued May 20, 1989:

During the period of martial law, the following rules will govern news coverage by journalists:

1. Chinese and foreign journalists are strictly forbidden to use news coverage to issue inciting or inflammatory propaganda.

2. Foreign journalists . . . may not, either in the streets or by going to official institutions, organizations, schools, factories, en-

²⁸³ MASSACRE IN BEIJING, *supra* note 19, at Appendix C.

terprises and neighbourhoods, conduct newsgathering activities, take photos, make videotapes, or engage in similar activities without the permission of the Beijing People's Municipal Government.²⁸⁴

Martial Law Decree No. 10, issued June 8, 1989:

The Autonomous Federation of Beijing University Students and the Autonomous Federation of Beijing Workers are unregistered, illegal organizations. They must immediately disband.

The members of these organizations must immediately cease all illegal activities.

The leaders of these two organizations were important elements in inciting and organizing the counter-revolutionary turmoil. Upon the issuance of this announcement today, the two categories of people mentioned above must immediately turn themselves in to their local public security organizations in order to win more lenient punishment. As for those people who refuse to turn themselves in, a "wanted" bulletin will be issued and they will be severely punished.²⁸⁵

²⁸⁴ *Id.*

²⁸⁵ *Id.*

