

REPORT NO. 11 OF THE  
SECTION OF  
INTERNATIONAL LAW AND PRACTICE  
PRESENTED JOINTLY WITH THE  
SECTION OF INDIVIDUAL RIGHTS  
AND RESPONSIBILITIES  
AND THE  
STANDING COMMITTEE ON  
WORLD ORDER UNDER LAW

**RECOMMENDATION\***

*BE IT RESOLVED*, That the American Bar Association condemns the actions of the Government of the People's Republic of China connected with the violent suppression of peaceful demonstrations in April-June, 1989. These actions constitute gross violations of fundamental human rights guaranteed by Chinese law and generally accepted international human rights standards.

*BE IT FURTHER RESOLVED*, That the American Bar Association calls upon the Government of the People's Republic of China to prosecute those officials responsible for military actions which resulted in the deaths and injury of unarmed citizens; to release those who are detained arbitrarily; and to take all necessary measures to insure that torture will not occur. Those who are detained should be formally charged, provided access to legal counsel as well as other procedural safeguards, and tried in public and in a timely manner before an impartial tribunal.

*BE IT FURTHER RESOLVED*, That the American Bar Association calls upon the Government of the People's Republic of China to end recently announced limitations on exit visas for Chinese citizens. These restraints are directly contrary to obligations of China under the Charter of the United Nations as interpreted by the Universal Declaration of Human Rights which allow free movement of persons.

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\*The recommendation was approved. See page 68.

*BE IT FURTHER RESOLVED*, That the American Bar Association urges the United States Government to assist Chinese nationals now in the United States both by modifying immigration regulations and by extending the period of deferred departure status for Chinese nationals now in the United States to permit lawful temporary residency, employment and possible permanent residency.

## REPORT

### I. Background

On May 20, 1989, the Premier of the People's Republic of China, Li Peng, announced that he was sending in the People's Liberation Army to "restore order and discipline" in China's capital, Beijing.<sup>1</sup> This announcement followed weeks of peaceful demonstrations in the center of Beijing, which had in the previous week culminated in millions of people congregating in Tiananmen Square while Soviet General Secretary Gorbachev met with Chinese leaders.

Despite this declaration of martial law, the crowds of protesters, supported by hundreds of thousands of citizens of Beijing, prevented the soldiers, sent to quell their demonstrations, from entering the square.<sup>2</sup>

<sup>1</sup>Order of the State Council of the People's Republic of China on Enforcing Martial Law in Part of Beijing Municipality, *People's Daily* [in Chinese], May 21, 1989, at 1 (enforcing martial law in part of Beijing municipality "so as to check the turmoil with a firm hand, maintain Beijing Municipality's public order, protect citizens' lives and property, defend public property, and protect the central state organs and the Beijing Municipal Government doing day-to-day official business."), translated in Foreign Broadcast Information Service [FBIS], *Daily Report: China*, FBIS-CHI-89-099, May 24, 1989, at 24. See also *Washington Post*, May 20, 1989, at A1, col. 4.

<sup>2</sup>See, e.g., N. Kristof, "As Beijing Standoff Goes On, 7 Top Ex-Commanders Warn Army 'Must Not Enter City,'" *New York Times*, May 23, 1989, at A1.

The situation appeared to be a stalemate as students, workers and citizens held out in the symbolic center of China, Tiananmen Square, for two more weeks. Although shortages of staple goods and disruptions of necessary services did occur, student organizers of the protests managed to maintain order and to prevent any violence from breaking out.<sup>3</sup>

### II. The Beijing Massacre

All hopes for a peaceful resolution to the impasse ended on the morning of June 4, 1989 when Chinese soldiers attacked the demonstrators, killing and injuring many people. Television reportage brought videotaped, verifiable evidence of the killings to hundreds of millions of viewers outside of China.<sup>4</sup>

The Government of the People's Republic of China has contended since the massacre that no one—or only a very small number of "hooligans"—was killed that morning in

<sup>3</sup>Sheryl WuDunn, "In Quest for Democracy, a Mini-City is Born," *New York Times*, May 31, 1989, at A12 ("Chinese students oversee police, propaganda and financial affairs"); see also, Robert Delfs, "The People's Republic," *Far Eastern Economic Review*, June 1, 1989, at 12.

<sup>4</sup>See, e.g., J. Birnbaum and H. Chua-Eoan, "Despair and Death in a Beijing Square," *Time*, June 12, 1989, at 24.

Tiananmen Square or its environs. Denouncing all foreign media which have brought this story to the world's attention, the Chinese government has sought to intimidate foreign Journalists by expelling representatives of the Voice of America and the Associated Press for their reporting from China. All dissenting publications in the People's Republic of China have either been closed down or forced to parrot the official line about the events of June 4. The Chinese Government has continued to deny that any massacre ever happened.<sup>5</sup>

### III. Human Rights Violations

#### A. In General

The crackdown on dissent in the wake of the Beijing Massacre has infringed on the Chinese people's basic human rights in many ways. The martial law decrees in Beijing have been interpreted to permit the government, *inter alia*, to detain citizens arbitrarily without charge. Evidence of torture to extract confessions from those recently arrested (along with other evidence of police mistreatment) has been gleaned from Chinese official broadcasts monitored in the West. An earlier *Amnesty International Report on China: Torture and Ill-Treatment of Prisoners* lends even greater credence to these observations. As Amnesty International observes, "Torture and ill-treatment of prisoners is a persistent

<sup>5</sup>R. Bernstein, "At Beijing Ministry of Truth, History Is Quickly Rewritten," *New York Times*, June 12, 1989, at A1; see also S. WuDunn, "Giving the Official Spin: 6 Scenes on Chinese TV," *New York Times*, June 15, 1989, at A16.

and widespread problem in China."<sup>6</sup>

Most ominously, many of those arrested and those still sought by Chinese authorities have been labelled as "counter-revolutionaries." This makes it unlikely that the prodemocracy protesters will be able to enforce any of their rights as Chinese citizens. It is a long Communist Chinese tradition, rooted in one of Chairman Mao's most famous lectures, that enemies of the people are not to be accorded any of the freedoms normally granted to the Chinese people.<sup>7</sup> It has thus been a common tactic of the Chinese leadership to deprive its enemies of their citizenship and, correspondingly, their political rights.

Since the suppression of the demonstrations in Tiananmen Square, the Chinese Government has severely restricted emigration from China in an apparent attempt to prevent Chinese citizens now subject to government persecution from seeking refuge in other countries.

#### B. Executions

Since June 4, 1989, a number of people are known to have been sentenced to death and executed for their alleged participation in violence connected with demonstrations in Beijing and Shanghai. In none of these reported cases were

<sup>6</sup>Amnesty International, *China: Torture and Ill-Treatment of Prisoners*, at 1 (1987).

<sup>7</sup>Mac Zedong, "Problems Relating to the Correct Handling of Contradictions Among the People" (address at the 11th enlarged meeting of the Supreme State Conference, Feb. 27, 1957), translated in part in J. Cohen, *The Criminal Process in the People's Republic of China, 1949-1963*, Item 7, at 83-88 (1968).

any of the accused charged with having caused the death of any other person. In every case, the normal provisions of China's Criminal Law and Criminal Procedure Law were circumvented, allowing virtually no time for consultation with and assistance of defense counsel or for appeal of the death sentences. Less than two weeks passed between arrest and execution.<sup>8</sup> Articles 43-47 of China's Criminal Code make it clear that the death penalty is an extraordinary penalty in the overall scheme of China's criminal jurisprudence; that a two-year suspension of the imposition of the death penalty may be ordered in connection with death sentences; and that all death sentences must be reviewed by the Supreme People's Court for approval.

Even cases of counter-revolution, the charge against most of those already executed, do not necessitate imposition of the death penalty. In fact, Article 103 of the Criminal Law provides that the death penalty is reserved for those crimes of counterrevolution "when the harm to the state and the people is especially serious and the circumstances especially odious." Three to ten years' imprisonment is the more common sentence contained in the criminal law for counter-revolutionary crimes.<sup>9</sup>

<sup>8</sup>See Asia Watch, *New Information on Arrests in China*, June 26, 1989, at 2 (defendants accused of crimes allegedly committed on June 5 and 6, respectively, were sentenced on June 17 and publicly executed on June 21).

<sup>9</sup>*The Criminal Law of the People's Republic of China*, adopted by the Second Session of the Fifth National People's Congress, July 1, 1979, effective as of January 1, 1980, Part II, Chapter I, "Crimes of Counterrevolution". Articles 94 (defection or turning traitor) 95 and 96 ("active

In fact, the very rapidity of the criminal process in these cases argues that little attention has been paid to the procedural requirements of Chinese law. Criminal appellate procedure in China, as in most civil law countries, is not limited to a review of the record established at trial; indeed, it is supposed to involve a complete review of the facts determined and the law applied in the proceeding of first instance.<sup>10</sup> Especially in cases where the death sentence has been ordered, Articles 144-147 of the Criminal Procedure Law establish a procedure for review which criminal courts are supposed to follow.

### C. Treatment of Political Opponents

Although most of the demonstrators in Beijing during the April-June 1989 period preceding the massacre were acting within rights to demonstrate and to protest guaranteed under the 1982 Chinese Constitution<sup>11</sup>, many of the protest

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participants" in mass rebellion or prison raids or jailbreaks), and 100 (various counter-revolutionary acts "when the circumstances are relatively minor") all specify fixed-term imprisonment for not less than three and not more than ten years as the criminal punishment for such crimes.

<sup>10</sup>*The Criminal Procedure Law of the People's Republic of China*, adopted by the Second Session of the Fifth National People's Congress, July 1, 1979, effective as of January 1, 1980, Part III, Chapter III, Article 134:

A people's court of second instance shall conduct a complete review of the facts determined and of the law applied in the judgment of first instance, and is not limited to the scope of an appeal or protest.

<sup>11</sup>*Constitution of the People's Republic of China*, adopted on December 4, 1982 by the Fifth National People's Congress of the People's Republic of China at its Fifth Session, Article 35:

leaders now have been placed on wanted lists and some already have been arrested or turned in by acquaintances and relatives. All indications are that those persons named as wanted do not benefit from any presumption of innocence and are unlikely to receive a fair hearing from any Chinese tribunal convened under current conditions. A large number of dissidents have already fled China or gone into hiding underground. China's most prominent dissident, Fang Lizhi, and his wife are currently being protected in the United States Embassy in Beijing; warrants have been issued for their arrest for inciting the spring demonstrations.<sup>12</sup>

Fang and two other prominent intellectuals, Liu Binyan and Wang Ruowang, were expelled from the Communist Party in 1987 during an earlier campaign against dissent known as the "Campaign against Bourgeois Liberalization." Nonetheless, despite this obvious slight, they had been allowed to retain their other posts and to travel outside the People's Republic

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Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

Also, additional freedoms are promised under the first sentence of Article 41:

Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary.

<sup>12</sup>N. Kristof, "Beijing Seeks Arrest of Foe U.S. Shelters," *New York Times*, June 12, 1989, at A1:

The Government issued a warrant today [June 11] for the arrest of Fang Lizhi, China's best known dissident, as official press organizations stepped up criticism of the United States. (A warrant was also issued for the arrest of Fang's wife, Li Shuxian).

of China. The current crackdown demonstrates that a much harder line is now being taken against dissidents: they are being charged with crimes, not just violations of Party discipline; they will likely have their freedom seriously restricted, if they are convicted; and they and their views will certainly be silenced, at least within the borders of the People's Republic of China.

Some Chinese students in the United States have reported harassment, including death threats, from Chinese Government sources. Such activities by Chinese agents violate United States law.

#### **D. Independence of the Judiciary and Attorneys**

In connection with the crackdown, the legal apparatus of the People's Republic has been mobilized to support the government's position. Within a few days of the incident in the Tiananmen Square, both the courts and the procuracy had issued statements of support for the actions of the armed forces and for the government's charges.<sup>13</sup> Such declarations call into question the ability of Chinese judges and prosecutors to deal with the resulting criminal cases in a fair and impartial manner and to render judgments independent of the government's interference. Judicial independence has long been a problem in the People's Republic of China, but encouraging progress had been made in the last decade

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<sup>13</sup>See, e.g., "Supreme Court Issues Circular on Speedy Trials," Beijing Domestic Service in Mandarin 0930 GMT 20 June 1989, reported in *FBIS Daily Report: China*, FBIS-CHI-89-118, June 21, 1989, at 15 (urging people's courts at all levels to "expedite" trials of "counterrevolutionaries and serious criminal offenders").

towards professionalizing and educating a modern judiciary. Now there is the threat that all this hard work will be set back by recent developments. The procuracy, too, following its restoration in 1978, was becoming more of an independent entity before coming into line behind the government to punish demonstrators. The future of China's legal reforms depends heavily upon its ability to allow the growth of independent institutions committed to the rule of law and free of political influence. The actions taken by the judiciary and the procuracy in line with the crackdown do not augur well.<sup>14</sup>

#### E. Exit from the Country

One of the responses of the Chinese Government to the student demonstrations this past spring has been an order that all exit permits issued prior to June 20, 1989 are invalid and must be renewed or reissued before any permit-holders will be allowed to leave the country.<sup>15</sup> In effect, this decree threatens punishment for those who dared to exercise their rights by demonstrating; if they are, or become, known to authorities, their application for a visa

<sup>14</sup>"Circular on Prompt Trials for 'Criminal Elements'," Beijing XINHUA in English 0958 GMT 21 June 1989, reported in FBIS Daily Report: China, FBIS-CHI-89-118, June 21, 1989, at 13:

The counter-revolutionary and criminal elements *should be convicted* according to the criminal law and the decision of the Standing Committee of the National People's Congress (NPC) regarding the severe punishment of criminal elements who seriously endanger public security, the circular said.

<sup>15</sup>"New Exit Permit Regulations Announced," Beijing Television Service in Mandarin 1300 GMT 17 June 1989, monitored in FBIS Daily Report: China, FBIS-CHI-89-116, June 19, 1989, at 22.

to go abroad may be denied. Similarly, returned students who wish to resume their studies abroad also may not be allowed to depart. Such actions contravene all relevant provisions of the United Nations Charter and the Universal Declaration of Human Rights concerning the free movement of persons.<sup>16</sup>

#### IV. United States Sanctions

This recommendation calls for specific responses by the governments of the People's Republic of China and of the United States. It should be noted that in response to the Chinese Government crackdown, a number of legislative proposals have been introduced in the United States Congress. Most of these proposals attempt to extend the rather limited range of sanctions invoked by President Bush immediately following the Beijing Massacre.<sup>17</sup> Representative of the strong sentiment involved is an act introduced by Senator Jesse Helms of North Carolina on June 8, 1989, the "Democracy, Liberty, and Justice in the People's Republic of China Act of 1989."<sup>18</sup> It calls for extreme sanctions, including the suspension of United States assistance, trade benefits and commercial relations, limitations on imports from China, suspension of military cooperation and science

<sup>16</sup>Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (signed at San Francisco June 26, 1945; entered into force October 24, 1945); Article 13, Universal Declaration of Human Rights, U.N.G.A. Res. 217A (III), U.N.Doc. A/810, at 71 (December 10, 1948).

<sup>17</sup>M. Tolchin, "House, Breaking with Bush, Votes China Sanctions," *New York Times*, June 30, 1989 at A1.

<sup>18</sup>S. 1151, 101st Cong., 1st Sess., *Congressional Record*, June 8, 1989, S 6409.

and technology cooperation between the two countries and sympathetic treatment of requests by students from China and Tibet to remain in the United States, unless the Chinese Government "stops using violence against its citizens, lifts martial law and makes significant progress in providing for democracy, liberty and justice in Tibet and the People's Republic of China." A bipartisan substitute for a number of separately proposed sanctions bills was ultimately passed by the House of Representatives on June 29, 1989 by a vote of 418 to 0; it later passed the Senate by a veto-proof but not unanimous majority. These sanctions suspend financial support of the Overseas Private Investment Corporation (OPIC) for investments in China, halt expenditure of previously authorized funds for trade and development programs, oppose (for six months) liberalization of export controls and ban the export of military-use crime control and nuclear equipment.<sup>19</sup> In addition, this measure prevents the President from lifting the sanctions that he has already imposed, except for national security reasons, unless he assures Congress that China has retreated from its hard-line policies.

### V. Conclusion

This resolution comes at a critical moment in the course of recent Chinese history—two months after the killing of Chinese citizens peacefully demonstrating in exercise of

constitutionally protected rights to free speech, assembly and protest and ten years after China's post-Cultural Revolution process of legalization. It is an appropriate time for the American Bar Association to express serious concern about the events in China and their implications for the development of the rule of law there. Encouraging adherence to the rule of law throughout the world is an established and worthy goal of the Association. Since 1979, until June of this year, China had made encouraging progress towards greater respect for the rule of law. The American Bar Association, through such activities as the *China Law Reporter* and the People's Republic of China Law Committee, both sponsored by the Section of International Law and Practice, has endeavored to encourage such progress. The Section of Individual Rights and Responsibilities, the Standing Committee on World Order Under Law and the Section of International Law and Practice, therefore, urge that the American Bar Association adopt the proposed resolution.

Respectfully submitted,

STEVEN C. NELSON  
*Chairperson*  
Section of International  
Law and Practice

CLIFFORD D. STROMBERG  
*Chairperson*  
Section of Individual Rights  
and Responsibilities

ROBERT C. MUSSEHL  
*Chairperson*  
Standing Committee on  
World Order Under Law

<sup>19</sup>En bloc amendment to Title IX. H.R. 2655, 101st Cong., 1st Sess., *Congressional Record*, June 29, 1989, H 3455; Foreign Relations Authorization Act, Fiscal Year 1990, S. 1160, 101st Cong., 1st Sess., *Congressional Record*, July 14, 1989, S. 7963.

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