

CHINA'S HUMAN RIGHTS RECORD SINCE TIANANMEN 1989 AND THE RECENT MIXED RESPONSE OF THE UNITED STATES

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I. INTRODUCTION

The human rights practices of the People's Republic of China (PRC) before¹ and after² the events of June 3-4, 1989, in Tiananmen Square, Beijing, are recounted elsewhere. In the aftermath, various short-lived measures were taken by the international community which showed displeasure³ with the PRC government's repressive response to the democra-

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¹ To gain some insight into the PRC's human rights practices before June 3-4, 1989, see generally Roberta Cohen, *People's Republic of China: The Human Rights Exception*, 9 HUM. RTS. Q. 447 (1987); HOUSE COMM. ON FOREIGN AFF., 97TH CONG., 1ST SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1980 (Comm. Print 1981), and the continuing annual report for each succeeding year through 1989; R. EDWARDS ET AL., HUMAN RIGHTS IN CONTEMPORARY CHINA (1986); J.F. COPPER ET AL., HUMAN RIGHTS IN POST-MAO CHINA (1985); YUAN-LI WU ET AL., HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA (1988); A. KENT, HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA: NATIONAL AND INTERNATIONAL DIMENSIONS 1-66 (1990).

On the history of the pro-democracy movement in China prior to the brutal military response on June 4, 1989, see generally A. NATHAN, CHINA'S CRISIS (1990); M. YI & M. THOMPSON, CRISIS AT TIANANMEN: REFORM AND REALITY IN MODERN CHINA (1989); L. FEIGON, CHINA RISING (1990); J. ETHRIDGE, CHINA'S UNFINISHED REVOLUTION: PROBLEMS AND PROSPECTS SINCE MAO (1990).

² On the PRC's human rights record since Tiananmen Square, June 1989, see generally ASIA WATCH COMMITTEE, PUNISHMENT IN CHINA AFTER MARTIAL LAW (1990); ASIA WATCH COMMITTEE, REPRESSION IN CHINA SINCE JUNE 4, 1989 (1990); Robert F. Drinan et al., *The 1991 Battle for Human Rights in China*, 14 HUM. RTS. Q. 21, 22 (1992); LAWYER'S COMMITTEE FOR HUMAN RIGHTS, PEOPLE'S REPUBLIC OF CHINA: TRIALS OF PRO-DEMOCRACY ACTIVISTS (1991); ASIA WATCH, PRISON LABOR IN CHINA (1991); Robin Munro, *Rough Justice In Beijing: Punishing the "Black Hands" of Tiananmen Square*, 10 UCLA PAC. BASIN L.J. 77 (1991); Robin Munro, *The Beijing Trials: Secret Judicial Proceedings and The Exclusion Of Foreign Observers*, 10 UCLA PAC. BASIN L.J. 136 (1991); *Asia Watch, The Case of Wang Juntao*, 10 UCLA PAC. BASIN L.J. 151 (1991).

³ See Beverley H. Earle, *China After Tiananmen Square: An Assessment of its Business Environment*, 23 CASE W. RES. J. INT'L L. 421, 424 (1991).

cy movement within its borders.

The Bush administration's viewpoint on the relationship of the PRC's most-favored-nation (MFN) trade status to human rights has been consistent since the events of June 1989. It has been expressed recently as follows:

. . . the basic objectives of our policy toward China [are to] Promote respect for human rights; Encourage responsible and cooperative Chinese international behavior, particularly in the area of non-proliferation; Promote peaceful and democratic reform within China; and Improve and sustain a trade relationship from which Americans - both producers and consumers - derive great benefit.

Toward these goals, the Administration's approach has been one of engagement rather than confrontation. . . This approach has led to positive results in the areas of human rights Accordingly, we continue to believe that China's unconditional MFN status provides our best approach for encouraging positive change⁴

Immediately following the events in Tiananmen Square, President Bush advocated a "reasoned response" on the part of the United States.⁵ Congress, on the other hand, after giving the President what it considered to be ample time to show how the PRC's human rights record improved by concrete evidence, found progress illusory and sought to bring direct pressure to bear. Differences of approach between the President and Congress on

⁴ Arnold Kanter, *U.S. Policy Objectives and MFN Status for China, U.S.*, 3 U.S. DEP'T STATE DISPATCH, 551 (1992) (statement of Under Secretary for Political Affairs before the Subcommittee on Trade of the House Ways and Means Committee on June 29, 1992). See also *U.S. Extends Most-Favored-Nation Status to China, U.S.*, 3 U.S. DEP'T STATE DISPATCH, 452 (1992) (statement of White House Press Secretary Marlin Fitzwater on June 2, 1992, and report to Congress by the White House); *United States-People's Republic of China Trade Relations, Including Most-Favored-Nation Trade Status For China: Hearing before the Subcomm. on Trade of the Comm. on Ways and Means*, 102d Cong., 1st Sess. 14-22 (statement of Deputy Secretary of State Eagleburger); *Renewal of MFN Trading Status For The People's Republic of China, Hearing And Markup before the Comm. on Foreign Affairs*, 102d Cong., 1st Sess 6-28 (1991) (statement of Deputy Secretary of State Eagleburger).

⁵ The President's News Conference 25 WEEKLY COMP. PRES. DOC. 839 (1989). U.S. and foreign responses are recounted in Earle, *supra* note 3, at 438-41.

sanctions against the Chinese government, demonstrated early on,⁶ continue to this day.

In this article, the approach will be to look at a number of areas of concern which Congress links with human rights and at the Bush administration's articulated rationale behind its decision to treat human rights as only one factor in our overall China policy, thereby affecting a positive influence on the PRC's human rights policy.

The divergent congressional and executive attitudes are clearly exemplified on the issue of MFN trading status for the PRC. According to the Jackson-Vanik amendment to the Trade Act of 1974,⁷ the United States grants MFN treatment to a communist country only on condition that the country permits free emigration. Furthermore, the provision empowers the President to grant temporary MFN status if he determines that the country shows progress towards the objective of free emigration of its citizens. Finally, the President must report on the emigration situation of that country to the Congress for the congressional annual review. Three times in as many years the President renewed China's MFN status, but not without a congressional battle.⁸

Most recently, Congress passed a bill that would have revoked MFN trading status for the PRC's state-owned enterprises, exempting private businesses and joint ventures. Goods created by prison labor were to be barred entry into the United States. Further, the President was not to recommend continuation of a waiver for the 12-month period beginning July 3, 1993, under section 402(d) of the Trade Act of 1974, unless the President reported appropriate PRC action on adherence to the provisions in the

⁶ See Lemon, *China: United States Policy after Tiananmen Square*, 3 HARV. HUM. RTS. Y.B. 195, 196 (1990); Jeffrey A. McCredie, *Human Rights Concerns In the People's Republic of China: An Appraisal of Recent Events*, 3 TEMPLE INT'L & COMP. L.J. 217, 240-43 (1989).

⁷ Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 2056, 19 U.S.C. § 2432(a)-(e) (1990). See Dow, *Linking Trade Policy to Free Emigration: The Jackson-Vanik Amendment*, 4 HARV. HUM. RTS. Y.B. 128 (1991). For an excellent review of the freedom-of-emigration requirements, assurances and waiver policy of the Jackson-Vanik restrictions, see Jessica Korn, *Institutional Reforms That Don't Matter: Chadha and the Legislative Veto in Jackson-Vanik*, 29 HARV. J. ON LEGIS. 455, 470-75 (1992).

⁸ In 1990, a bill to eliminate China's MFN status was passed in the Congress. President Bush vetoed the bill which Congress could not override with the required majority. In 1991, a bill to condition the MFN extension on certain conduct by the PRC passed in Congress, but the necessary two-thirds majority to override the president's veto was not mustered. See Keith Bradsher, *Senate Backs Curbs on Beijing's Access to Markets in U.S.*, N.Y. TIMES, Feb. 25, 1992, at A1; Keith Bradsher, *China Will Keep Trade Privileges*, N.Y. TIMES, Mar. 19, 1992, at A5; Drinan, *supra* note 2, at 30-34.

Universal Declaration of Human Rights; on unrestricted emigration of its citizenry; on acceptable accounting for Chinese citizens detained, accused or sentenced as a consequence of the Tiananmen Square events; and on release of those persons imprisoned as a result of those events. Moreover, the PRC was required to prevent export of products to the United States made by convict, forced or indentured labor. Congress failed to override the President's veto on October 1, 1992.⁹

Thus far, it would appear that the Bush administration's policy of engagement rather than confrontation has prevailed, but has it furthered the democratization process in the PRC and encouraged greater flexibility by the PRC government on the issue of human rights for its people?

Congress, on the other hand, felt that by linking a number of factors to MFN trade status, it could bring the necessary pressure on the PRC to achieve a greater adherence to human rights. At first glance, Congress appears to have been trumped. However, let us now examine the record for tell-tale signs of progress.

II. SIGNS OF PROGRESS

A. Protection of U.S. Goods in the Agrichemical, Computer, Entertainment and Pharmaceutical Industries

In January 1991, Assistant U.S. Trade Representative For Investment Services and Intellectual Property S. Bruce Wilson, pursuant to the Omnibus Trade and Competitiveness Act of 1988,¹⁰ requested public submissions¹¹

⁹ H.R. 5318, 102d Cong., 2d Sess. (1992); S. 2808, 102d Cong., 2d Sess. (1992). The House agreed to the Senate amendments on Sept. 22, 1992, 138 Cong. Rec. H. 8841, and the bill was presented to President Bush on the same day, 138 Cong. Rec. H 9442.

On Sept. 28, 1992, President Bush vetoed the legislation. See Michael Wines, *Bush Again Vetoes Trade Curbs on China; Override Is Unlikely*, N.Y. TIMES, Sept. 29, 1992, at A1.

On Sept. 30, the House voted 345 to 74 to override the President's veto. See *House Overrides Bush's Veto of Curb on Trade With China*, N.Y. TIMES, Oct. 1, 1992, at A5. The Senate voted on October 1, by 59 to 40, thereby failing to achieve the necessary 2/3 majority to override the presidential veto. See *Senate Sustains China-Trade Veto*, N.Y. TIMES, Oct. 2, 1992, at A9.

¹⁰ Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988) (codified as amended at 19 U.S.C. §§ 2411-2422 (Supp. II 1990 & Supp. III 1991)). On the origin and evolution of section 301, see Julia C. Bliss, *The Amendments to Section 301: An Overview "and generally Suggested Strategies" for Foreign Response*, 20 LAW & POL'Y INT'L BUS. 501 (1989); Judith H. Bello & Alan F. Holmer, *Section 301 Recent*

to identify countries whose policies and practices denied adequate protection or market access for U.S. intellectual property rights. This procedure enabled the U.S. Trade Representative (USTR), Carla Hills, to determine whether any of the identified countries would become subject to a section 301 investigation as a priority foreign country.¹² On April 26, 1991, the USTR identified India, the People's Republic of China, and Thailand as priority foreign countries.¹³ She was gathering evidence of these countries' acts, policies and practices ultimately to decide whether there was a factual basis for denying fair and equitable market access for persons relying on intellectual property protection.

Accordingly, on May 26, 1991, the USTR initiated an investigation¹⁴

Developments And Proposed Amendments, 35 FED. BAR NEWS & J. 68 (Feb. 1988). On the application of section 301, see generally, Marjorie A. Minkler, *The Omnibus Trade Act of 1988, Section 301: Permissible Enforcement Mechanism Or A Violation of the United States' Obligations Under International Law?*, 11 J. L. & COM. 283 (1992).

¹¹ 56 Fed. Reg. 1214 (1991).

¹² 19 U.S.C. § 2242 (Supp. II 1990 & Supp. III 1991). See also Leaffer, *Protecting United States Intellectual Property Abroad: Toward a New Multilateralism*, 76 IOWA L. REV. 272, 295-97 (1991).

¹³ Priority foreign countries are those countries whose acts, policies and practices are most onerous and egregious and have the greatest adverse impact on intellectual property rights of United States persons, or deny fair and equitable market access to United States persons who rely upon intellectual property protection, or are not making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights. 19 U.S.C. § 2242(b)(1) (Supp. II 1990 & Supp. III 1991).

As early as May 25, 1989, the PRC was one of eight countries on the USTR priority watch list. The others included Brazil, India, the Republic of Korea, Mexico, Saudi Arabia, Taiwan and Thailand. *USTR Fact Sheets on Super 301 Trade Liberalization Policies and Special 301 on Intellectual Property*, Released May 25, 1989, 6 Int'l Trade Rep. (BNA) 715, 719 (May 31, 1989).

On April 26, 1991, the USTR identified the three countries as priority foreign countries. 56 Fed. Reg. 20060 (1991). Ms. A. Jane Bradley, Chairman, Section 301 Committee of the USTR office, noted deficiencies in the PRC's intellectual property acts, policies and practices, specifically, (1) deficiencies in its patent law, to provide adequate patent protection for chemicals, including pharmaceuticals and agrichemicals, (2) absence of copyright protection for U.S. works not first published in China, (3) inadequate protection under the copyright law and regulations to be effective June 1, 1991, and (4) "inadequate protection of trade secrets" and trademarks. 56 Fed. Reg. 24878 (1991).

¹⁴ An investigation was initiated by the USTR with respect to the PRC's acts, policies and practices that deny adequate and effective protection of intellectual property rights to determine whether such act, policy, or practice was actionable under section 301 of the Trade Act. The USTR requested consultations with the PRC government concerning the issues

with respect to the PRC. Specifically, deficiencies were found in China's: (1) patent¹⁵ law, which failed to provide product patent protection for chemicals, including pharmaceuticals and agricultural chemicals; (2) lack of copyright¹⁶ protection for U.S. works not first published in China; (3) deficient levels of protection under the copyright law and regulations; (4) inadequate protection of trade secrets; and (5) deficient enforcement of intellectual property rights, including rights in trademarks.¹⁷

under investigation. Ms. Hills had until November 26, 1991 to determine on the basis of the investigation and consultations, whether the section 301 act, policy or practice exists, and what action to take under that section. The USTR could extend the deadline by 3 months if she thought additional time was required due to the complexity of the situation, and that the PRC was engaged in substantial progress to alleviate the problems. 56 Fed. Reg. 24878-79 (1991).

The 3-month extension was filed on December 2, 1991 to decide on actionability by February 26, 1992. 56 Fed. Reg. 61447 (1991).

¹⁵ For a description of the operation of the PRC patent law, see Zhou Chuanjie, *Protection of Intellectual Property Rights in China*, 12 LOY. L.A. INT'L & COMP. L.J. 68, 68-73 (1989); Hong Liu & Jun Wei, *Technology Transfer To China: The Patent System*, 5 SANTA CLARA COMP. & HIGH TECH. L.J. 363 (1989); P.D. Woods, *Trademark and Patent Law in the People's Republic of China*, 13 N.C.J. INT'L L. & COM. REG. 473, 482-91 (1988) (explaining the PRC's patent law); Ross J. Oehler, Note, *Patent Law In The People's Republic of China: A Primer*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 451 (1987); Liwei Wang, Comment, *China's Patent Law And The Economic Reform Today*, 9 U.C.L.A. PAC. BASIN L.J. 254 (1991).

¹⁶ A copyright law was passed by the Chinese National People's Congress on September 7, 1990 and entered into force on June 1, 1991. The United States prepared a response to the copyright law, entitled "United States Government Views on the New Copyright Law of the People's Republic of China," and distributed by the Office of the USTR to Chinese government officials prior to a meeting held in Beijing in February 1991. See Chengsi & Pendleton, *A Response to United States Government Criticisms of the Chinese Copyright Law*, 13 EUR. INTELL. PROP. REV. 257 (1991); Sheng, *Waiting for Supplements: Comments on China's Copyright Law*, 13 EUR. INTELL. PROP. REV. 171 (1991). For an unofficial translation of the text of the Copyright Law, see 11 EUR. INTELL. PROP. REV. SUPP. (1990).

As concerns the PRC law on protection of copyrights before the 1990 law, see Yuanyuan Shen, *China's Protection of Foreign Books, Video Tapes and Sound Recordings*, 12 LOY. L.A. INT'L & COMP. L.J. 78 (1989); Joseph J. Simone, *Copyright in The People's Republic of China: A Foreigner's Guide*, 7 CARDOZO ARTS & ENT. L.J. 1 (1988); Elisa Cirillo, Note, *The Legal Protection of Computer Software In The People's Republic of China*, 7 CARDOZO ARTS & ENT. L.J. 387 (1989).

¹⁷ With respect to the PRC protection of trademarks, see Chuanjie, *supra* note 15, at 73-77; Benny Lee & Xavier B. Delmas, *Welcome Changes to the Trade Mark Law of the People's Republic of China*, 14 EUR. INTELL. PROP. REV. 67 (1992); Li Xiang Sheng, *Trade Mark Infringement in China*, 12 EUR. INTELL. PROP. REV. 448 (1990); Woods, *supra* note 15, at 474-82.

American business interests had complained¹⁸ about the PRC government's failure to stop piracy of U.S. goods in the pharmaceutical, entertainment, computer, and agricultural industries. During December of 1991, Ms. Hills proposed that retaliatory action in the form of increased duties on numerous Chinese imports be instituted if the USTR should find that the PRC's protection and enforcement of intellectual property rights was unsatisfactory.¹⁹ The PRC responded with a threat to impose counter-retaliatory tariffs on U.S. imports. On December 2, 1991, the USTR concluded that China's *modus operandi* was unreasonable.

Under the pressure of a looming all-out trade war, the parties negotiated a last-minute Memorandum of Understanding,²⁰ in Washington, signed on January 17, 1992, whereby the PRC agreed to initiate the necessary steps to adequately protect American copyrights, patents, trademarks and trade secrets.²¹ Generally, the United States has had difficulty in enforcing

¹⁸ See Ann Veigle, *U.S. Calls Off Trade War as China Agrees to Halt Piracy*, WASH. TIMES, Jan. 17, 1992, at A1.

¹⁹ The USTR compiled a list of products from the PRC, from which certain products would have had increased duties. 56 Fed. Reg. 61, 278-83 (1991).

The U.S. was prepared to commence collection of the duties, some as much as 100% or up to \$1.5 billion on Chinese imports, if the dispute was not resolved by January 16, 1992. China threatened retaliatory sanctions "of up to \$1.2 billion on U.S. goods including aircraft, steel and grain." Veigle, *supra* note 18.

²⁰ Memorandum of Understanding on the Protection of Intellectual Property, U.S.-P.R.C., 31 I.L.M. 997, 1000 (1992); Loke Khoo Tan, *U.S., China Sign Important Memorandum of Understanding*, COMPUTER LAW., June 1992, at 31. See also 57 Fed. Reg. 3084 (1992). For a discussion of the terms of the Memorandum of Understanding and changes to be implemented, see Joseph T. Simone, Jr., *Improving Protection of Intellectual Property*, CHINA BUS. REV., Mar.-Apr. 1992, at 9-11.

²¹ The PRC agreed to join the Berne Convention for the Protection of Literary and Artistic Works as last revised, July 24, 1971, 828 U.N.T.S. 221 (Paris Revision) [hereinafter Berne Convention], by October 15, 1992, and the Geneva Phonograms Convention in June 1993. It also agreed to enact the necessary changes in its domestic laws to protect the U.S. business rights in consonance with the undertakings in the Memorandum. See *U.S., China Agreement on Intellectual Property Ends Retaliatory Duties Threat*, Daily Rep. For Executives (BNA) No. 13, at A-6 (Jan. 21, 1992), available in LEXIS, Nexis Library, Drexec File.

The PRC acceded to the Berne Convention on July 10, 1992. U.S. DEP'T ST. DISPATCH, Sept. 14, 1992, at 708-09 31 I.L.M. 1256, 1257 (1992). See generally Stephanie L. Sgambati, Comment, *China's Accession to the Berne Convention: Bandaging the Wounds of Intellectual Property Piracy In China*, 3 FORDHAM ENT., MEDIA & INTELL. PROP. L.F. 139, 162-74 (1992) (critiquing China's proposed method of accepting and implementing the Berne Convention).

intellectual property rights in developing countries.²² Existing multilateral agreements have been inadequate to protect intellectual property rights of United States citizens in the global marketplace.²³ With the conclusion of the U.S.-PRC bilateral agreement, the USTR terminated the section 301 investigation and a long-standing irritant in U.S.-Sino relations was laid to rest. The PRC has shown itself to be cooperative in a matter that both the Congress and the President associate with human rights matters.

B. PRC Goods Produced by Prison or Forced Labor

For a number of years, human rights and labor organizations raised questions and provided evidence concerning the Chinese government's exploitation of prison or forced labor to manufacture goods for export to the United States. During the last quarter of 1991, the U.S. Customs Service Commissioner ordered customs agents to detain Chinese goods being imported that were suspected of being made by forced or prison labor.²⁴ Under section 307 of the 1930 Smoot-Hawley Tariff Act, importation of such goods is prohibited.²⁵ However, customs officials have been hampered by the misleading labels on packages,²⁶ by China's refusal to allow outside inspectors into its prisons and labor camps, and by its outright denial that it engaged in such practices. This left the U.S. Customs Service without

²² See generally Leaffer, *supra* note 12, at 281-88 (discussing the United States' problems in enforcing intellectual property rights in developing countries).

²³ See *Intellectual Property, Domestic Productivity and Trade: Hearing before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 1st Sess. 75-80 (1989) (statement of Ralph Oman, Register of Copyrights' and Assistant Librarian for Copyright Services) (discussing USTR review of intellectual property laws of U.S. trading partners).

²⁴ John Burgess, *U.S. Blocks Exports By 4 Chinese Firms; Companies Alleged to Use Prison Laborers*, WASH. POST, Oct. 5, 1991, at B1; Keith Bradsher, *U.S. Takes Trade Actions Against Canada and China*, N.Y. TIMES, Oct. 5, 1991, at 33; Jim Mann, *U.S. Moves To Curb Suspect China Goods*, L.A. TIMES, Oct. 5, 1991, at A17; *U.S. Customs Blocks Suspected Chinese Prison-Labor Goods*, WALL ST. J., Oct. 7, 1991, at A9; *U.S. Probes Chinese Engines Allegedly Made In Prisons*, L.A. TIMES, Nov. 22, 1991, at B3.

²⁵ 19 U.S.C. § 1307 (1988).

²⁶ See Stuart Auerbach, *U.S. Agents Raid Clothing, Textile Firms; Illegal China Exports Sought by Treasury*, WASH. POST, Dec. 11, 1991, at A15 (reporting that a Hong Kong company had mislabeled Chinese-made textiles to avoid U.S. quotas).

the ability to detect how the goods were actually manufactured.²⁷ The term "forced labor" is defined in section 307 as "all work or service which is extracted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself (or herself) voluntarily."²⁸

Non-governmental organizations, in offering testimony to Congress on MFN status for China, have advocated that such status be conditioned on China's ending the "export of goods made by prison labor and the practice of holding prisoners beyond the completion of their sentences for the continued exploitation of their labor, and the opening up of labor camps and prison factories for international inspections."²⁹ It should be pointed out that the use of prison labor is not prohibited under international law, nor is it considered an abuse *per se*. Nevertheless, several American businesses adopted their own policy³⁰ of severing all ties with suppliers from nations that used forced or prison labor.

To bring about a change in the Chinese practice on this issue the Bush Administration negotiated with its Beijing counterpart, culminating in a bilateral agreement in the form of a Memorandum of Understanding

²⁷ See James M. Zimmerman, *U.S. Law and Convict-Produced Imports*, CHINA BUS. REV. Mar.-Apr. 1992, at 41 (noting that prior efforts under § 307 to forbid import of goods made by prison labor were largely unsuccessful due to insufficient evidence).

²⁸ This language is consistent with the language of the International Labour Organization's Convention concerning Forced or Compulsory Labour No. 29 (1930). However, the Convention excludes from its definition of forced or compulsory labor

any work or service exacted from any person as a consequence of a conviction in a court of law, provided that said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies, or associations.

Id.

²⁹ See *Most Favored Nation Status for the People's Republic of China, Hearings Before the Subcommittees on Human Rights and International Organizations, Asian and Pacific Affairs, and on International Economic Policy and Trade of the Comm. on Foreign Affairs*, 101st Cong., 1st Sess. 129, 141-42 (1990) (testimony of Holly J. Burkhalter, Asia Watch, detailing the grim working conditions).

³⁰ Levi Strauss & Co. made such an announcement on March 12, 1992. Similarly, Sears, Roebuck & Co. announced its policy on March 31, 1992. See Frank Swoboda, *Sears Agrees to Police Its Suppliers; Retailer Addresses Issue of Forced Labor*, WASH. POST, Mar. 31, 1992, at C1.

concluded in Washington on August 7, 1992.³¹ Under this agreement, the PRC promised to investigate accusations of the use of prison labor in the production of goods for export. In disputed cases, American diplomats were to have access to Chinese institutions for inspection. A U.S. customs official would be based in the American embassy in Beijing to carry out inspections of suspect goods.

Flexibility on the part of the PRC can be characterized as a positive response to the influence of the United States although a negative attitude by the PRC would have been detrimental to Sino-American relations.

C. *Missile Technology Control Regime (MTCR)*

The proliferation of weapons of mass destruction and long-range delivery systems to third world countries has been a focus of discussion on international security by western industrial nations since the mid-1980s. In retrospect, the Iraqi arms acquisition policy prior to its invasion of Kuwait has forced western suppliers to rethink their previous export policies; they now share a view of greater international cooperation and restrictions on the transfer of those goods and technologies which can be converted to military use. In 1987, the Missile Technology Control Regime (MTCR) was agreed to by seven industrial nations—Canada, the Federal Republic of Germany, France, Italy, Japan, the United States, and the United Kingdom (i.e., the G-7 Group)³²—and was aimed at limiting the proliferation of ballistic missiles

³¹ Memorandum of Understanding On Prohibiting Import and Export Trade In Prison Labor Products, U.S.-P.R.C., 31 I.L.M. 1071 (1992). The agreement entered into force on the date of signature. For reaction to the agreement, see Barbara Crossette, *China Signs Agreement with U.S. to Cut Exports Made by Prisoners*, N.Y. TIMES, Aug. 8, 1992, § 1, at 3. Criticism over the agreement was immediate. *China Agrees to Investigate Reports of Exports Made By Prison Labor*, L.A. TIMES, Aug. 8, 1992, at A22; *China, U.S. Sign Accord on Prison Labor*, CHI. TRIB., Aug. 8, 1992, at 19; Daniel Southerland, *U.S., China Sign Prison Labor Pact; White House Critics Fault Key Inspection Provision*, WASH. POST, Aug. 8, 1992, at B1.

³² Agreement on Guidelines for the Transfer of Equipment and Technology Related to Missiles, Apr. 7, 1987, 26 I.L.M. 599. The agreement consists of a policy set out in common guidelines along with a list of controlled goods and technologies that took effect on April 16, 1987.

For a discussion on the MTCR structure and how it is supposed to operate, see Jack H. McCall, Jr., "The Inexorable Advance of Technology"?: American and International Efforts to Curb Missile Proliferation, 32 JURIMETRICS J. 387, 407-10 (1992); M. NAVIAS, BALLISTIC MISSILE PROLIFERATION IN THE THIRD WORLD 47-69 (London: The International Institute

capable of carrying a nuclear warhead.

Tangential to the need to improve the human rights situation in the PRC, and to its continued MFN trading status, has been the issue of China's sale of missiles and missile technology to third world countries. In June 1991, the Bush Administration imposed sanctions against the export of high-speed computers and satellite parts to the PRC when it found that China had secretly delivered launchers for M-11 short-range missiles to Pakistan.³³ At the announcement of sanctions, the Commerce Department had pending twenty license applications pending to permit the sale of \$30 million worth of high-speed computers. During his visit to the PRC in November 1991, the Secretary of State received a verbal commitment that China would observe the guidelines and parameters³⁴ of the MTCR guidelines.

On February 1, 1992, the Chinese Foreign Minister sent a letter to the Secretary of State pledging to abide by the MTCR guidelines. As a consequence, the Bush Administration announced on February 21, 1992 that it was lifting sanctions against the PRC on the sale of American high-technology equipment.³⁵

In early December 1992, the United States announced that it had evidence of PRC sales or delivery of M-11 missiles to Pakistan, M-9 missiles to Iran, and other missile technology to Russia and Syria in violation of the MTCR.

for Strategic Studies, 1990) (Adelphi Papers No. 252, 1990); *see generally* *Ballistic and Cruise Missile Proliferation in the Third World: Hearing before The Subcomm. on Defense Industry and Technology of the Comm. on Armed Services*, 101st Cong., 1st Sess. (1989); *Nuclear and Missile Proliferation: Hearing Before the Comm. on Governmental Affairs*, 101st Cong., 1st Sess. (1990); *Missile Proliferation: The Need for Controls: Hearing before the Subcomm. on Arms Control, International Security, and International Economic Policy and Trade of the Comm. on Foreign Affairs*, 101st Cong., 1st Sess. (1990).

On January 7, 1993, revised guidelines were adopted by the MTCR governments to extend the scope of the regime to missiles capable of delivering biological and chemical weapons as well as nuclear weapons. The text of the revised Guidelines is found in *Missile Technology Control Regime Guidelines Revised*, 4 U.S. DEP'T. STATE DISPATCH 41 (1993).

³³ See Stephen Kurkjian, *U.S. Curb on China Firms is Delayed*, BOSTON GLOBE, June 25, 1991, at 3.

³⁴ The parameters of control involve missiles that have a range greater than 190 miles and payload capability greater than 1,100 pounds (300 kilometers/500 kilograms). The guidelines focus on delivery systems, that is, on missiles and boosters apart from "raw materials and technology" for nuclear weapons deemed subject to other regulation.

³⁵ See R. Jeffrey Smith, *U.S. Lifts Sanctions Against Chinese Firms; Biden Seeks Session on Reported Violations*, WASH. POST, Feb. 22, 1992, at A15; Elaine Sciolino, *U.S. Lifts Its Sanctions on China over High-Technology Transfers*, N.Y. TIMES, Feb. 22, 1992, at 1.

As a consequence, the United States postponed delivery of military equipment previously sold to the PRC.³⁶

D. The General Agreement on Tariffs and Trade (GATT)

On July 10, 1986, the PRC officially applied to resume³⁷ its membership in the General Agreement on Tariffs and Trade (GATT).³⁸ During the succeeding years, the PRC has been cooperative in furtherance of its application. In October 1991, the Beijing government submitted a report to the GATT of its overall economic reform since June 1989 and of the developments in its foreign trade system. However, GATT member nations have shown an ambivalent attitude toward the PRC in light of the events of June 1989 in Tiananmen Square as well as other factors.³⁹ Pressure on the PRC continues by United States and the GATT membership to improve its economic well-being and human rights record before confirming member-

³⁶ See Elaine Sciolino, *Sale of Computer to China Delayed*, N.Y. TIMES, Dec. 5, 1992, § 1, at 6. On December 22, 1992, the Bush Administration announced that it would deliver the military equipment despite PRC violations of the MTCR. See Keith Bradsher, *U.S. Will Release Weapons To China*, N.Y. TIMES, Dec. 23, 1992, at A4.

³⁷ The Chinese Nationalist government, on behalf of China, was one of the original 23 signatories to the GATT, signing the GATT on Oct. 30, 1947, depositing its Instrument of Acceptance of Provisional Application of the GATT on April 28, 1948, and becoming a Contracting Party on May 7, 1948. Subsequent to the PRC being founded on the mainland on Oct. 1, 1949, the Nationalist government was dislodged from the mainland and unable to continue its rights and obligations under the GATT and so notified the Secretary-General of the United Nations of its decision to withdraw from the GATT membership on March 6, 1950. The Beijing government has had observer status in the GATT since 1982.

The Beijing government claims that withdrawal in 1950 was null and void *ab initio* since it was the legal government of China from 1949 and that it merely needs to resume its original position rather than to be admitted as a new member. See Wenguo Cai, *China's GATT Membership: Selected Legal and Political Issues*, 26 J. WORLD TRADE, Feb. 1992, at 35; Michael A. Bezney, *GATT Membership for China: Implications for United States Trade and Foreign Policy*, 11 U. PA. J. INT'L BUS. L. 193, 194 & n.n.12-13 (1989); Paul D. McKenzie, *China's Application to the GATT: State Trading and the Problem of Market Access*, 24 J. WORLD TRADE, Sept. 1990, at 133. See generally Beth Van Hanswyk, *Legal Implications of China's Application to the General Agreement on Tariffs and Trade*, 5 CHINA L. REP. 75, 78 (1988).

³⁸ The General Agreement on Tariffs and Trade, opened for signature on Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

³⁹ James V. Feinerman, *The Quest for Gatt Membership*, CHINA BUS. REV., May-June 1992, at 24.

ship. Until China shows a marked improvement in these areas, it will not gain the benefits of GATT.

E. Arms Control

Congress considers arms control as another peripheral issue related to human rights and the other factors already outlined. In the Joint Communiqué of the United States and the PRC on Taiwan of August 17, 1982, the United States agreed that

it does not seek to carry out a long-term policy of arms sales to Taiwan, that its arms sales to Taiwan will not exceed, either in qualitative or in quantitative terms, the level of those supplied in recent years. . . and that it intends gradually to reduce its sale of arms to Taiwan.⁴⁰

At the end of July 1992, President Bush hinted that he might renew the arms supply to Taiwan that dwindled when the United States recognized the PRC in 1979.⁴¹ On September 2, President Bush announced that he had approved the sale of up to 150 F-16 fighters to Taiwan. Among the reasons given by administration officials for the change of U.S. policy was the PRC's recent acquisition of Russian Sukhoi 27 fighters.⁴² The Beijing government indicated that such a sale would be regarded as a violation of the 1982 Joint Communiqué.⁴³ A carrot was offered a few days later when the United States approved the sale of six space satellites to the PRC that had

⁴⁰ Joint Communiqué of the United States of America and the People's Republic of China On Taiwan, August 17, 1982, Art. 6, 21 I.L.M. 1147, 1148 (1982).

⁴¹ Norman Kempster, *Bush May Permit Sale of F-16s To Taiwan*, L.A. TIMES, July 31, 1992, at A7; See also Sheryl WuDunn, *China Frets as U.S. Mulls Taiwan Jet-Fighter Deal*, N.Y. TIMES, Aug. 30, 1992, at 7.

⁴² Jim Mann, *U.S. To Explain Taiwan Arms Deal To China*, L.A. TIMES, Sept. 3, 1992, at A4. Another reason advanced for the F-16 sale was that the United States was unable to supply Taiwan with spare parts for the aging F-5s and F-104s supplied before the 1979 U.S. recognition of the Beijing government. See David Holley, *China May Skip Arms Talks Over Taiwan Jet Deal*, L.A. TIMES, Sept. 4, 1992, at A1; Lena H. Sun & Stuart Averbach, *New Bush Policies Anger China, Trade Partners; F-16s to Taiwan, Wheat Subsidies at Issue*, WASH. POST, Sept. 4, 1992, at A1.

⁴³ Mann, *supra* note 42. See also James Sterngold, *China Threatens Trade Reprisals*, N.Y. TIMES, Sept. 10, 1992, at A4. The sale was indeed a violation of the 1982 Joint Communiqué.

been blocked for over a year.⁴⁴ The stick was used again the next week when the United States announced an imminent sale to Taiwan of 12 SH-2F "Lamp" anti-submarine helicopters and spare engines.⁴⁵ Interestingly, in early October, the PRC government announced⁴⁶ that it was setting up a new office under its Defence Ministry which would handle armament transactions and be responsible for showing international agencies that China was abiding by the Nuclear Non-proliferation Treaty⁴⁷ and the MTCR.

Before leaving office, the Bush administration decided to approve the sale of jet engines and satellite equipment to China despite the fact that the components for the jet engines were capable of being used to build cruise missiles which could carry a heavier payload and could fly farther than current Chinese missiles.⁴⁸ The satellite components could be used as a clock to enable the PRC to coordinate with satellite systems.⁴⁹

⁴⁴ Don Oberdorfer, *U.S. Decries China's Sale of Reactor, But Clears the Way for Satellite Deal*, WASH. POST, Sept. 12, 1992, at A13.

⁴⁵ *China Denounces U.S. Helicopter sale to Taiwan*, Reuters, Sept. 24, 1992, available in LEXIS, Nexis Library, Reuters File. China has withdrawn from weapons control talks due to the U.S. sales to Taiwan. See James Sterngold, *Without the U.S.? China Envisions A New Order*, N.Y. TIMES, Oct. 4, 1992, at E6.

Interestingly, the PRC government warned France that it would react strongly if France or any other country made military sales to Taiwan. See Sheryl WuDunn, *Chinese Angered by French Arms Sale to Taiwan*, N.Y. TIMES, Nov. 20, 1992, at A4. When France contracted to sell 60 Mirage 2000-5 jet fighters and 1,000 missiles to Taiwan, the PRC retaliated by ordering France to close its consulate in Guangzhou. See Nicholas D. Kristof, *Stung by Sale of Jets to Taiwan, China Tells France to Close Office*, N.Y. TIMES, Dec. 24, 1992, at A1.

⁴⁶ *New Office For Armaments Transactions*, S. CHINA MORNING POST, Oct. 2, 1992, News, at 13.

⁴⁷ Treaty On The Non-proliferation of Nuclear Weapons, March 5, 1970, 21 U.S.T. 483, T.I.A.S. No. 6839. The Treaty has been in force since March 5, 1970. It has been reported that the PRC acceded to the Nuclear Non-proliferation Treaty in March 1992. See *China Joins International Arms Accords*, CHINA BUS. REV., May-June 1992, at 5.

There was concern however that despite the PRC accession to the Treaty, the Beijing government could claim its existing contracts with Third World countries were grandfathered, and therefore, exempt from International Atomic Energy Agency safeguards. *Weapons Proliferation in the New World Order: Hearings Before the Senate Comm. on Governmental Affairs*, 102d Cong., 2d Sess. 102-720 (1992) (statement of Robert M. Gates, Director, C.I.A.).

⁴⁸ Keith Bradsher, *Aides Meet Today on Dispute Over Sales to Iran and China*, N.Y. TIMES, Jan. 5, 1993, at A4.

⁴⁹ *Id.* See also Keith Bradsher, *U.S. Export Panel Is Said to Back Jet Engine Sale to China Military*, N.Y. TIMES, Jan. 6, 1993, at A4.

Meanwhile, the PRC's build-up of its armed forces and advanced weapons technology⁵⁰ has left its neighbors feeling increasingly threatened.⁵¹

F. U.S. Trade Deficit With China

The United States is the PRC's third-largest trading partner while China is America's ninth-largest trading partner.⁵² Efforts to cut the PRC's trade surplus by increasing U.S. exports over the last few years⁵³ have not been successful due to restricted foreign access to its markets through various mechanisms such as quotas on textile imports⁵⁴ and currency devaluation and customs operation, to mention just a few of their unfair practices. The result was a Chinese trade surplus of \$12.7 billion for 1991 with a projected surplus in excess of \$15 billion for 1992.⁵⁵

In an effort to bring pressure on the PRC to allow more market access to U.S. exports, United States Trade Representative Hills issued a deadline of October 10, 1992, for the Beijing government to publish all of its trade rules and restrictions and revise or remove a variety of bureaucratic obstructions and related trade barriers.⁵⁶ In August, she issued a forty-four page list of Chinese imports on which tariffs would be raised for entry to the United States, with a total increase of about \$3.9 billion.⁵⁷ China responded with

⁵⁰ Michael R. Gordon, *Moscow Is Selling Weapons To China, U.S. Officials Say*, N.Y. TIMES, Oct. 18, 1992, § 1, at A1; Sheryl WuDunn, *Yeltsin Starts 3-Day China Visit*, N.Y. TIMES, Dec. 8, 1992, at A3.

⁵¹ See Nicholas D. Kristoff, *China Builds Its Military Muscle, Making Some Neighbors Nervous*, N.Y. TIMES, Jan. 11, 1993, at A1; Nicholas D. Kristoff, *China Raises Military Budget Despite Deficit*, N.Y. TIMES, Mar. 17, 1993, at A9.

⁵² For a list of Chinese imports from the United States for 1991 and 1990, see 6.5 *Chinese Trade with the US*, CHINA HAND, Oct. 19, 1992, available in LEXIS, Asia/Pacific Library, CHINAH File.

⁵³ *Id.*

⁵⁴ Such quotas are contrary to the Agreement amending and extending the Agreement of February 2, 1988, as amended, concerning trade in textiles and textile products in the Exchange of Letters at Beijing on April 23 and 24, 1991, and in force on April 24, 1991.

⁵⁵ See 6.5 *Chinese Trade with the US*, *supra* note 52, at *2.

⁵⁶ Lena H. Sun, *China Threatens Tariff Retaliation on U.S. Goods*, WASH. POST, Sept. 10, 1992, at A9.

⁵⁷ *Id.* See also Uli Schmetzer, *China, U.S. Teetering on the Brink of Trade War*, CHI. TRIB., Sept. 17, 1992, Bus., at 1.

On Oct. 9, 1992, China and the United States reached an agreement which would bring down barriers to American imports. Steven Greenhouse, *China Will Lower Barriers To Trade*

a threat of similar sanctions on a number of U.S. imported goods.⁵⁸ Perhaps the Chinese leadership recognized that the United States was prepared to engage in more aggressive moves to curtail irregularities with respect to Chinese exports when, in early October, a Beijing-based Chinese government corporation, its U.S. subsidiary, and five individuals were indicted on charges that they fraudulently evaded U.S. quotas designed to protect the American textile industry.⁵⁹

Under these pressures, on October 9, 1992, it was announced that a Memorandum of Understanding between the PRC and the United States was reached,⁶⁰ thus averting greater tensions and trade restrictions between the two countries. Of course, the PRC was aware that it would have to overhaul its trading system if it wished to receive support from the United States for membership in the General Agreement on Tariffs and Trade (GATT).

G. Asia Democracy Radio

The principle of free flow of information is not a principle of customary international law,⁶¹ and domestic application of this principle varies widely.⁶² Many Western commentators regard the Universal Declaration

In Accord With U.S., N.Y. TIMES, Oct. 10, 1992, at A1. American corporations expressed guarded optimism over the agreement. Adam Bryant, *Companies Expect Benefits From U.S. - China Trade Pact*, N.Y. TIMES, Oct. 12, 1992, at D2.

⁵⁸ Schmetzer, *supra* note 57, at 1.

⁵⁹ Daniel Southerland, *Chinese Agency Named in Import Fraud Case*, WASH. POST, Oct. 6, 1992, at D1; James Bennet, *Chinese Agency Indicted in Jeans Import Scheme*, N.Y. TIMES, Oct. 6, 1992, at B1.

⁶⁰ Greenhouse, *supra* note 57; Jim Mann, *U.S., China Avert Clash Over Trade: Diplomacy; Agreement 'In Principle' After A Year Of Talks Is Aimed At Giving American Firms More Market Access, Avoiding Retaliatory Tariff Hikes*, L.A. TIMES, Oct. 10, 1992, at A1. For an explanation of what will have to be done by the PRC in order to comply with the Memorandum of Understanding, see Joseph Massey, 301: *The Successful Resolution*, CHINA BUS. REV., Nov.-Dec. 1992, at 9.

⁶¹ Leo Gross, *International Law Aspects of the Freedom of Information and the Right to Communicate*, in THE THIRD WORLD AND PRESS FREEDOM 55, 61 (Philip C. Horton ed., 1978); B.S. MURTY, THE INTERNATIONAL LAW OF PROPAGANDA 130-34 (1989).

⁶² See Buergethal, *The Right to Receive Information Across National Boundaries*, in CONTROL OF THE DIRECT BROADCAST SATELLITE: VALUES IN CONFLICT 73 (Aspen Institute Program on Communications and Society, 1974).

of Human Rights⁶³ as the cornerstone of the individual's right to free flow of information in international law.⁶⁴ Article 19 of the Universal Declaration provides that "[e]veryone has the right. . . to seek, receive and impart information and ideas through any media and regardless of frontiers."⁶⁵ The right is not without restrictions⁶⁶ nor is it free from state interference in practice.

The state, and in particular the PRC, will assert the primacy of national sovereignty⁶⁷ over any tenet of international human rights law if there is a conflict between the right of the state and the right of the individual, as the former is the primary subject of international law.⁶⁸ Moreover, the state can point to its right to non-interference from other states as concomitant to its national sovereignty, as expressed in Article 2 of the United Nations Charter.⁶⁹ Also, an argument can be made by any state for maintaining

⁶³ G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/810, at 71 (1948) [hereinafter *Universal Declaration*].

⁶⁴ Gross, *supra* note 61, at 59; Leonard D. Theberge, *UNESCO's "New World Information Order": Colliding with First Amendment Values*, 67 A.B.A.J. 714, 718 (1981).

It is not suggested that the *Universal Declaration* is legally binding.

⁶⁵ *Universal Declaration*, *supra* note 63, at art. 19.

⁶⁶ *Universal Declaration*, *supra* note 63. Section 2 of art. 29 of the *Universal Declaration* provides for some limitations on Article 19:

[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

For the Marxist-Leninist view of international law as concerns the traditional element of non-interference, see Richard N. Dean, *Beyond Helsinki: The Soviet View of Human Rights in International Law*, 21 VA. J. INT'L L. 55, 77-79 (1980). Proletarian internationalism is a basic tenet of the Chinese concept of international law. See Chen Tiqiang, *The People's Republic of China and Public International Law*, 8 DALHOUSIE L. J. 3, 16-21 (1984).

⁶⁷ For a discussion on freedom of communications across national frontiers, see Quincy Wright, *Freedom and Responsibility in Respect to Trans-National Communication*, 44 PROC. OF AM. SOC'Y INT'L L. 95 (1950).

⁶⁸ Socialist states like the PRC view all rights as collectively based and subordinate to state sovereignty. For an elaboration of this view see Louis Hencken et. al., *The Human Rights Idea in Contemporary China: A Comparative Perspective*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 26-34 (1986).

⁶⁹ "... 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, ¶ 7. It has also been asserted that a matter ceases to be domestic when it becomes the subject of an international obligation, such as a treaty. HERSCH LAUTERPACHT,

cultural integrity and cultural protection.⁷⁰

During 1991-92, several bills⁷¹ were introduced in Congress to create a radio station modeled on Radio Free Europe (RFE) and Radio Liberty (RL) to be called "Radio Free China."⁷² Action was unlikely in view of a presidential task force on international broadcasting which was to make recommendations by the end of the year.⁷³ A House-Senate conference proposal resulted in the formation of an 11-member commission to determine whether radio broadcasts into China were feasible.⁷⁴

In December 1991, this commission, over State Department objections, reported in favor of broadcasting into the PRC, Vietnam, North Korea, Laos and Cambodia.⁷⁵ Seven of the 11-member panel favored the RFE-RL prototype of broadcasts, with detailed coverage of day-to-day events in the particular country; while the minority favored the Voice of America (VOA) option, which reports on world events and U.S. government policies.⁷⁶ Predictably, the PRC warned that any proposed radio broadcasts into its territory would harm Sino-U.S. relations.⁷⁷

INTERNATIONAL LAW AND HUMAN RIGHTS 176 (1968). China, on the other hand, did not become a party to the basic human rights instruments.

⁷⁰ The issue is alive with respect to the debate over information flow of direct broadcast satellites. See, e.g., Jennifer Freeman, *Direct Broadcast Developments and Directions: The National Sovereignty and Cultural Integrity Positions*, 74 PROC. AM. SOC'Y INT'L L. 302 (1980). See also Hargrove, *International Law and the Case for Cultural Protectionism, in CONTROL OF THE DIRECT BROADCAST SATELLITE: VALUES IN CONFLICT* 85 (Aspen Institute Program on Communications and Society, 1974).

⁷¹ H.R. 1049, 102d Cong., 1st Sess. (1991); S. 2407, 102d Cong., 2d Sess. (1992); S. 2985, 102d Cong., 2d Sess. (1992).

⁷² See Charles Hutzler, 'Radio Free China' Plan Discussed, CHRISTIAN SCI. MONITOR, Aug. 29, 1991, at 13.

⁷³ *Id.*

⁷⁴ See *Congress Mulls Start of 'Radio Free China'*, WASH. TIMES, Oct. 7, 1991, at A2.

⁷⁵ R. Jeffrey Smith, *Task Force Urges Creation of Radio for a Free Asia*, WASH. POST, Dec. 17, 1991, at A10.

⁷⁶ *Id.* The 1992 budget for RFE and RL is \$212 million, and the VOA 1992 budget is \$365 million. See Don Shannon, *Communications; Radio Activists Hope To Keep Airwaves Alive; A Presidential Task Force Wants To Save Radio Free Europe and Radio Liberty From The Cost-Cutting Ax*, L.A. TIMES, Jan. 13, 1992, at A5.

⁷⁷ See *China Warns Against U.S. Radio Broadcasts*, L.A. TIMES, Dec. 20, 1991, at A20.

In 1983, Congress passed legislation to establish a new U.S.-funded radio station to broadcast the "truth" about the Castro regime to the Cuban people. The model of RFE and RL was deemed by some to be inappropriate to the Cuban situation as compared to the VOA type of broadcast. Much of the reasoning appears to be applicable to the Asia concept. See

The commission planned to visit the PRC in June 1992 to study first-hand the feasibility and implications of establishing a radio service for Asia.⁷⁸ However, the Chinese government imposed conditions for the visit and denied a visa for one commission member, which caused the commission to scuttle the proposed visit.⁷⁹ In September 1992, the commission published its report in which the majority favored creation of "Asia Democracy Radio," a radio service to pierce the "bamboo curtain" into the PRC, North Korea, Vietnam, Laos, Cambodia and Myanmar.⁸⁰

Any new radio service into the PRC would have a positive impact on the free flow of information and would impact the overall human rights picture in the country. However, it would certainly bring PRC governmental jamming to prevent outside interference.⁸¹

H. Tibet

It will be remembered that Tibet was an independent nation between 1911 and 1950.⁸² In 1950, the PRC forcibly occupied Tibet and eventually

Jeffrey Feltman, *Voice of America's New Radio Station to Cuba*, 8 FLETCHER FORUM 81 (1984).

⁷⁸ John M. Goshko, *U.S. Radio Panel Cancels Planned Visit to Beijing*, WASH. POST, June 13, 1992, at A18.

⁷⁹ *Id.*

⁸⁰ Andrew Borowiec, *Commission urges radio broadcasts to Far East*, WASH. TIMES, Sept. 15, 1992, at A7; Barbara Crossette, *U.S. Panel Backing Broadcasting to Asia*, N.Y. TIMES, Sept. 15, 1992, at A7; Max Boot, *U.S. Considers Beaming New Radio Voice To China*, CHRISTIAN SCI. MONITOR, Sept. 16, 1992, at 9. See also *A Voice for China*, BOSTON GLOBE, Sept. 16, 1992, at 16. See also *The Radio Free China Act*, S. 2985: *Hearing before the Comm. on Foreign Relations*, 102d Cong., 2d Sess. (1992).

⁸¹ The Chinese government is certain to regard the transmission of programs between states to be an act of intervention in the receiving state's internal affairs as well as a breach of its sovereignty when the receiver-state has not given prior consent to the transmission's content. See Bruce S. Kessler, *Politics Among the Airwaves: An Analysis of Soviet and Western Perspectives On International Broadcasting And The Right To Exchange Ideas And Information Regardless Of Frontiers*, 7 HOUSTON J. INT'L L. 237, 260-64 (1985) (discussing Soviet resistance to Western broadcasts); Rochelle B. Price, *Jamming and the Law of International Communications*, 1984 MICH. Y.B. INT'L LEGAL STUD. 391.

⁸² See Charles Alexandrowicz-Alexander, *The Legal Position of Tibet*, 48 AM. J. INT'L L. 265 (1954); Tieh-Tseng Li, *The Legal Position of Tibet*, 50 AM. J. INT'L L. 394 (1956); Autonomous Regions, 1 WHITEMAN DIGEST § 28, at 455-68 (1963); MICHAEL C. VANWALT VAN PRAAG, *THE STATUS OF TIBET* 14-60, 140 (1987).

reorganized it into the "Tibet Autonomous Region" in 1965.⁸³ Since 1983, the PRC government has engaged in population transfer of Han Chinese into Tibet and adjacent provinces that were historically under Tibetan political domination, in order to dilute the Tibetan identity and culture.⁸⁴ The PRC has also persistently abused the human rights of Tibetans.⁸⁵

A rift between Congress and the Bush Administration existed in which the latter's view was simply that the "U.S. policy accepts the Chinese position that Tibet is part of China."⁸⁶ Congress, on the other hand, through the State Department Authorization bill signed into law by President Bush in October 1991, declared Tibet to be an occupied country whose true representatives were the Dalai Lama and the Tibetan government-in-exile.⁸⁷ On July 28, 1992, the first ever Senate hearing devoted solely to the Chinese occupation of Tibet⁸⁸ shifted the focus from human rights to the question of Tibetan self-determination.

Chinese officials are not tolerant of any peaceful protest for Tibetan independence. Just before the end of 1992, ten Tibetans, mostly monks and nuns, received prison sentences of up to nine years for such activities.⁸⁹ Early in 1993, the newly appointed Communist Party leader of Tibet called for a purge of officials who did not take a tough enough stance against the

⁸³ See Melvyn C. Goldstein, *The Dragon and the Snow Lion: The Tibet Question in the 20th Century*, in CHINA BRIEFING, 1990, 129, 138 (Anthany J. Kane ed., 1990).

⁸⁴ See Asia Watch, Human Rights in Tibet 41 (1988); International Campaign For Tibet, *The Long March: Chinese Settlers and Chinese Policies In Eastern Tibet* 10 (1991); Patricia Wing Lau & Jeffrey Sims, *Human Rights in Tibet: An Emerging Foreign Policy Issue*, 5 HARV. HUM. RTS. J. 193, 195-96 (1992) and references therein; *U.S. And Chinese Policies Toward Occupied Tibet: Hearing Before the Senate Comm. on Foreign Relations*, 102d Cong., 2d Sess., 43-45 (1993) [hereinafter *Tibet Hearing*] (prepared statement of Professor Jeffrey Hopkins), and the background analysis by the Committee's staff in the Appendix, at 54-55.

⁸⁵ See *Tibet Hearing*, *supra* note 84, at 53-54; See also *id.* at 24-25 (prepared statement of Lodi G. Gyari, Special Envoy of the Dalai Lama).

⁸⁶ *Id.* at 53. See also *id.* at 5 (statement of L. Desaix Anderson, Principal Deputy Assistant Secretary of State For East Asian and Pacific Affairs). For the PRC view concerning Tibet, see Zhou Geng Shen, *The Illegality of UN Intervention in the Question of Tibet*, 6 STUDIES IN POLITICAL SCIENCE AND LAW 8 (1959); Fu Zhu, *Oppose US Intervention in China's Domestic Affairs on the Pretext of Protection of Human Rights*, *ibid.*, 12.

⁸⁷ *Tibet Hearing*, *supra* note 84, at 56. For earlier Congressional support for Tibet and its people, see Lau & Sims, *supra* note 84, at 199-203.

⁸⁸ *Tibet Hearing*, *supra* note 84.

⁸⁹ *Rights Group Says Chinese Jailed 10 Tibetans for Protests*, N.Y. TIMES, Dec. 27, 1992, at A12.

Dalai Lama.⁹⁰

III. CONCLUSIONS

After the tragic events of June 1989, the Bush Administration and Congress advocated different approaches on how to promote human rights and reform in the PRC. The President favored leverage while Congress recommended heavy-handedness. Neither branch of the U.S. government should adhere to its present course. A more forceful diplomatic persuasion is warranted on the part of the Clinton Administration. A less threatening posture emanating from Congress can still get the same message to the Beijing government that the United States is looking for marked improvement in the Chinese human rights record. This review of the current record on human rights in the PRC shows that the U.S. foreign policy towards China has brought only modest gains for the people in the world's most populous nation.

⁹⁰ Nicholas D. Kristof, *Communist Party Chief Calls for a Purge in Tibet*, N.Y. TIMES, Feb. 14, 1993, at A11.

