

The Predicament of China's Falun Gong

Systematic violations of human rights are difficult to wrap the heart and the mind around, especially when attempting to understand the violation of rights within another cultural context. Many factors must be considered, including the accuracy of the testimony of the defendants, the domestic law applicable to the violation, and the international law that determines the nature of the violation in the first place. This paper objectively considers the alleged human rights violations against the Falun Gong organization in China through all appropriate channels – individual testimony, domestic law, and international law. Then, this paper suggests a course of action within the international legal system to bring these alleged violations to light.

The first section of this paper explains the Falun Gong and its significance in China since its initial inception in 1992. Developing an understanding of the group and the role that the Falun Gong plays in affecting internal country dynamics and cultural politics provides a framework for examining the alleged violations. After a deeper understanding of the makeup of the group is imparted, then individual testimony and accounts of specific alleged violations are explored.

The paper then attempts to investigate the legal setting in which these violations have occurred. What is the applicable domestic law? What is the position of the Chinese government regarding the Falun Gong? How does this position coincide with, or conflict

with, the Chinese Constitution? Despite the articles of the Chinese Constitution and despite the apparent legal justifications that China claims, this paper reveals that there is still systematic abuse of human rights as claimed by Falun Gong practitioners.

Therefore, the last section of this paper discusses the international human rights law applicable to this case and how to utilize that law. Understanding the violations in legal terms might prompt the international community to take a closer look at the Falun Gong's current position in China and strive to make use of the mechanisms available within the international justice system to prevent further claims of violations. If the Chinese government will not stop the violations itself, then it is necessary to call on the international community to utilize the mechanisms available to stop the breach of international law occurring within China.

THE FALUN GONG

Basic Beliefs of the Falun Gong

Li Hongzhi founded the Falun Gong in 1992. Falun Gong is translated as “the practice of the wheel of law” (Schechter 45). This is a spiritual practice of body, spirit, and mind, based on an advanced cultivation method of the Buddha School. It consists of traditional forms of self-cultivation which center around a practice of meditation and Qi Gong exercises, where qi is the vital life force and gong is practice and cultivation. Qi Gong exercises seek sophistication of the mind – a mind that will transcend this world of illusion to bring salvation to the individual cultivator. Qi Gong is believed to date back in China some 7,000 years, and some suppose the basis of Qi Gong actually pre-dates the introduction of religion to China. Together with acupuncture, massage and herbal

medicine, Qi Gong “is one of the four pillars of Chinese traditional medicine” (Schechter 45).

The US-based spokesperson for Falun Gong, Erping Zhang, explains the eastern philosophy in the following terms:

Falun Gong practitioners have found that Falun Gong...is a science for life because of its merits in cultivating both mind and body. The ultimate goal of practicing Falun Gong is not for simply healing one’s illnesses, though practicing its exercises can bring health to the practitioners. More importantly, it provides a way of life that complies with the law of the universe for people to elevate themselves toward the spiritual goal of enlightenment (Schechter 45).

Falun Gong places an emphasis on the human connection to the rest of the universe through the mind and the body, especially through the notion of the “fa”. The “fa” is a “law wheel” representing the laws of the universe, and Li Hongzhi claims that the “law wheel” is actually present and rotating in the lower abdomen. The physical exercises that the practitioners engage in stir the energy of the “fa” that, in turn, affects the energy of the body, or the life force, ultimately resulting in physical health benefits (Li Hongzhi).

Guided by the laws of nature through the “fa”, each practitioner is encouraged to promote three key principles to further cultivate the mind: Zhen – truth and truthfulness; Shan – compassion, kindness, benevolence; Ren – tolerance and forbearance (Schechter 47). Although these seem to be time-honored values communicated through many religious channels, Li Hongzhi attempts to take these principles to the next level of spiritual cultivation that transcends the universe currently known to mankind. Li Hongzhi “sets out to unveil myths of the universe, time-space, and the human body” by asking his practitioners to take a fresh look at the universe and to challenge conventional mentality (Schechter 47). Only if people are willing to challenge conservative beliefs and

surrender to the “Buddha Fa” will they “truly distinguish the kind from the wicked, the good from the bad” and “dispel all misconceptions while providing the correct understanding” (Li Hongzhi).

One method to challenge traditional, conservative beliefs is to give up attachments, a central theme in Buddhist philosophy. Attachments may include fame, greed, ego, etc. Falun Gong does not oppose these emotions per se, but it does oppose the mental attachment ascribed to these emotions, because attachments ultimately are a distraction to cultivation. By giving up attachments associated with the universe as is seen in this dimension, the practitioners of Falun Gong are more likely to achieve the cultivation of the three systems of exercise, meditation, and moral guidance – the three mainstays of Falun Gong philosophy.

Through intense study and practice of the three systems, Li Hongzhi claims that practitioners may be able to cultivate “supernormal abilities”, such as “an open Third Eye, clairaudience, telepathy, precognition, etc.” (Li Hongzhi). This is so because Falun Gong was developed based on the principles of the universe, “so all supernormal abilities that exist in the universe exist in Falun Gong” (Li Hongzhi). Falun Gong also draws on interpretation of physics and other sciences in relation to human existence. U.S.

representative Zhang explains:

Chinese philosophies and the ancient personal transformation traditions of the original cultures have always held that the world we experience through our senses is but a fragment of what ‘is.’ In addition, an individual’s energy field is proposed to be more central to who they are than their physical body. As Western science digs itself out from under its ‘seeing-is-believing’ position, what occurs is a profound validation of ideas and traditions that were called ‘mysterious,’ ‘unscientific,’ and ‘primitive’ as little as a decade ago (Schechter 53).

Clearly, there are various mystical aspects of Falun Gong that many cultures find difficult to grasp. However, these mystical aspects are apparent in Eastern philosophies and Western philosophies alike (consider the mysteries of the Fatima as declared by the Vatican).

The Falun Gong and the Chinese Government

The practice of Qi Gong has increased steadily in China since the late 1980s, and many millions now practice Qi Gong in China in thousands of variants, each with their own figurehead or master. Li Hongzhi, the figurehead of the Falun Gong, declared the group's "Falun Gong philosophy" in 1992, and immediately this way of life gained popular support. "Before it was banned, the Falun Gong had training stations, practice sites and 'contact persons' across China, with practitioners coming from all sectors of Chinese society and almost all provinces" (Amnesty International). Practitioners came from all walks of life including ordinary workers and farmers, teachers, academics, university students, publishers, accountants, police officers, engineers, and even some Chinese officials serving in or retired from government office. In fact, before the Chinese government officially banned the Falun Gong on July 22, 1999, the government supported the Falun Gong due to the acclaimed health benefits of practicing Qi Gong exercises. With a health-care system unable to fully provide for its billions of citizens, the Chinese government saw the Falun Gong as an opportunity to increase the health of the nation's people without affecting the government budget.

What prompted the People's Republic of China to change its mind and to issue a crackdown on this so-called heretical cult? The unraveling of events shows increased concern by the Chinese government after a demonstration in Beijing on April 25, 1999

where an estimated 10,000 Falun Gong practitioners “stood quietly from dawn until late into the night outside the Zhongnanhai, the compound of the Communist Party leadership in Beijing” (Amnesty International). The silent protest was reportedly organized in reaction to the behavior of Chinese officials toward Falun Gong practitioners in the previous months, as practitioners reported the first acts of harassment and detainment due to their affiliation with the group. On April 25, 1999, the purpose of the demonstration was to demand official status for Falun Gong and to request dialogue with the government regarding the recent crackdown on practitioners. However, the government seemed more concerned with the fact that the group was able to mobilize thousands of people for a public demonstration in the nation’s capital. The leadership was also shocked when it learned, through one of its own surveys, that the Falun Gong had gained a following of 70 to 100 million people (although the party later downplayed these numbers, officially declaring Falun Gong support at only two million) (Amnesty International). Subsequently, the Falun Gong was labeled a “threat to social and political stability”, and it was officially banned on July 22, 1999 with this announcement:

The Department of Civil Affairs of the People’s Republic of China declares that the Falun Dafa Research Society and the Falun Gong Organization under its control are illegal organizations that should be banned. It is hereby prohibited for anyone in any circumstances to distribute books, video/audio tapes or any other materials that propagate Falun Dafa (Falun Gong). It is prohibited to hold gatherings or demonstrations that uphold or propagate Falun Gong such as sit-ins or appeals. It is prohibited for anyone to organize, coordinate, or direct any activities that go against the government (Schechter 71).

According to the Chinese government, any person associated with or seen practicing Falun Gong was now obstructing the law.

Along with officially banning the Falun Gong, the Chinese government also issued an arrest order for Li Hongzhi. The order read, in part, “Wanted for disturbing public order: Li Hongzhi; Gender: Male; Ethnicity: Han; Speaks Mandarin with a north-eastern accent; Eyebrows slope to the middle of his brow” (Schechter 72). The government also offered a \$6000 reward for his capture. Interpol, the international police agency, refused to serve the warrant because no criminal wrongdoing could be cited. Also, “they considered China’s request blatantly political” (Schechter 72).

Since the banning of the Falun Gong, the Chinese government has launched a substantial propaganda campaign to denounce the group and its leader, Li Hongzhi. The government has accused the group of numerous allegations through publications distributed by the state media and by official statements of Chinese officials. For example, at a news conference on November 4, 1999, Ye Xiaowen, Director of the Bureau of Religious Affairs of the State Council, said that “Falun Gong had brainwashed and bilked [double-crossed] followers, caused more than 1,400 deaths, and threatened both social and political stability.” Emphasizing the political threat of the Falun Gong, Ye Xiaowen then added, “any threat to the people and to society is a threat to the Communist Party and the government” (Amnesty International)

Because of this threat perceived by the Chinese government, many tactics have been used to maintain control of the Falun Gong and to threaten its existence. Reeducation through labor is one of these tactics. At the start of the crackdown, practitioners were usually held for only a few days of reeducation, as the government did not perceive the “threat” to be quite as severe as it turned out to be. Once the government realized that when these practitioners were released, they immediately joined back up

with other practitioners in the protests in Tiananmen Square, reeducation through labor began to take on longer sentences. Soon, practitioners were being sentenced, in some cases, for as long as three years “in the hope of facilitating the permanent ‘transformation’ of identified ‘recidivists’” (Human Rights Watch). Human Rights Watch states that according to some estimates, since the start of the crackdown, as many as 10,000 followers may have been sentenced administratively to reeducation terms. An official Chinese source has stated that no one is sent for reeducation simply because of practicing Falun Gong, but rather for the minor crime of breaking the law and disturbing public order through protesting or disseminating Falun Gong publications. Human Rights Watch has noted that the case information available does appear consistent with this interpretation. However, these sentences are given following no judicial procedures. Therefore, often times, no judicial process is allowed. Practitioners are often detained in reeducation through labor camps with no mention of the right of detainees to be presumed innocent until proven guilty through a fair and open trial by an independent tribunal.

Of the cases of detainees who actually see a trial, many unfair practices and harsh sentences have been reported. Amnesty International states “the information available from many sources, including Chinese official sources, shows that the trials of those prosecuted for their role in Falun Gong were grossly unfair – the judicial process was biased against the defendants at the outset and the trials were a mere formality”. In most cases, legislation was used retroactively to secure convictions, and defense lawyers were prevented from entering pleas of ‘not guilty’ on behalf of their clients. This in itself is a breach of international law. Also, before the trials began, it was made clear to the court

that the people involved in the trial should fully understand the political importance of the cases and to treat them accordingly, usually implying that the defendants must be found guilty no matter the charges or the evidence against them (Amnesty International).

Aside from unfair legal practices and harsh sentences such as reeducation through labor, there have been several cases reported where Falun Gong practitioners were taken to mental hospitals. They were detained for anywhere from a few days to a few weeks and often forced to take drugs against their will. The purpose of this tactic is to prove to the local and the international community that Falun Gong practitioners are mentally ill and that they act from a certain level of “craziness” instilled in their beliefs and doctrines. Accounts from inside the hospitals are alarming, including the following account from Huang Jinchun, a former judicial officer from Beihai, Guangxi Province:

...I asked them why they sent me here. They said, “It is the order of the officials of Department of Public Security. They want you to take a rest here for a few days.” Since then, I have been detained in this mental hospital. This is a medical institute of forced treatment. If the patient does not comply, the staff members will resort to violence by beating or roping the patient. Only those patients who have been in the hospital for a long time are allowed to be outside in the fresh air for two hours every day. After I was detained, I was forced to take medicines and injections. I asked the doctors and nurses why they treated me like that as I did not have any mental or physical illnesses nor had they conducted any medical examinations on me. They asked, “then how come you end up here if you have no illnesses?” I told them that I was sent here by the police officers. They then said, “that means that you have illnesses; otherwise, they would not send you here.” I felt this was really ridiculous. (Schechter 86).

The practitioners have been forced to endure this “hospitalization” often times until their families are able to provide exorbitant amounts of money to pay for their release.

The use of psychiatric institutions to detain Falun Gong practitioners is becoming an international issue. The American Psychiatric Association, at its May 2000 meeting in Chicago, discussed this forced detention. The Committee on Misuse and Abuse in

Psychiatry unanimously passed a resolution asking that the American Psychiatric Association leadership request the World Psychiatric Association to investigate this problem (Schechter 87). This is the same body that helped end a similar practice in the Soviet Union in the 1970s and '80s.

Other punishments for Falun Gong have also been reported. Amnesty International states, “a number of Falun Gong practitioners are known to have been heavily fined, dismissed from their jobs or expelled from the Communist Party because of their Falun Gong beliefs”. In Beijing, police have reportedly raided suburban hotels and guesthouses and fined landlords for housing followers of Falun Gong. In other places, practitioners have been subjected to public humiliation and forced to renounce their beliefs. In Shandong province, for example, a police official from Guangrao county reportedly stated that in late December 1999 six Falun Gong members were forced “to parade in public with signs around their necks and their hands cuffed behind their backs,” where the signs condemned their actions and their affiliation with the group (Amnesty International). Police officials reported afterwards that this type of punishment has greatly deterred the practice of Falun Gong in their region.

By far, the worst reports of human rights violations committed by the Chinese government are alleged reports of torture, ill treatment, and death while in custody of a Chinese official. Foreign media reports by September 2001 stated that at least 270 practitioners had died so far in government custody due to beatings or hunger strikes (Schechter 88). It is somewhat difficult to verify the reports of torture that are alleged against the government. Many of the cases contain detailed and specific information about the use of torture and what actually happened during the time in police custody.

Testimonies of different detainees held in the same location also corroborate each other, and testimonies in general provide the most chilling accounts. In fact, violence appears integral to China's campaign against the Falun Gong. One government official commented, "practitioners who are not beaten generally do not abandon the group" (Chlopak 18). Therefore, thoughtfully consider the following example as reported by Amnesty International:

Liu Juhua, from Tangshan city, Hebei province, who is currently serving a three-year term of "reeducation through labour", was reportedly tortured in police custody. Liu Juhua and another practitioner, Yang Xuezheng, were detained in Beijing on 22 September 1999 after resisting a police officer who tried to take away some Falun Gong books they had with them. Both were reportedly ill-treated, including by having their hands roped behind their backs to their feet and being burned with cigarettes on their hands. According to unofficial sources, they were taken the same day to the Beijing Zinghe Detention Centre and interrogated until 2 o'clock in the morning. They were deprived of sleep and were not allowed to talk to anybody. After three days they were sent to the Kaiping Detention Centre in Tangshan city. At the detention centre they met another practitioner, Zhang Shuzhen, who had also just been escorted back from Beijing by the police. She too had reportedly been tortured with electric shock batons, beaten with a large club and forced to stuff dirty underwear and socks into her mouth (Amnesty International).

Many other cases of cruel punishment and torturous acts have been reported since the crackdown of the Falun Gong in 1999.

Death while in the custody of Chinese officials has also been reported. Again the testimonies are shocking:

Chen Zixiu had been severely beaten and made to run barefoot through the snow before she died. According to the Wall Street Journal account of her death: "Two days of torture had left her legs bruised and her short black hair matted with pus and blood...She crawled outside, vomited, and collapsed. She never regained consciousness" (Schechter 88).

When the Chinese government made a statement to the UN Committee Against Torture regarding this allegation in the death of Chen Zixiu, the government denied that Falun

Gong practitioners had been tortured at all, saying that Chen Zixiu had died of a heart attack (Schechter 88). Many other confusing testimonials exist of death while in custody of Chinese officials, where the Chinese government reports one “official” story, but other news is somehow leaked containing allegations of mistreatment and torture leading to death. Gao Xianming, 41, a practitioner from Guangzhou in Guangdong province, reportedly died in police custody on January 17, 2000. The police, on the one hand, claim that Gao Xianming lost consciousness after being on hunger strike at the detention center for many days. They claimed he was hospitalized but never regained consciousness. On the other hand, news from unofficial sources claim that Xianming was forced-fed with highly salted water while tied up, and his nose was covered with wet towels causing him to suffocate (Amnesty International). Although the allegations brought against the government and the official claims by the government differ dramatically, too many cases of death while in custody of Chinese officials have been reported to ignore what is allegedly occurring inside China’s borders.

THE LAW OF CHINA

What rights do China’s citizens have as specified by the Chinese Constitution? What is the framework of the Chinese legal system? What is the legal backdrop against which these alleged human rights violations are taking place? This section examines the applicable domestic law in China to understand whether the Chinese government is acting legally within its own domain. First, this paper explores the Chinese Constitution to create a better understanding of the rights of the Chinese citizens defined by the Chinese government. Then, this paper looks at the Chinese legislation created to

legitimize the crackdown on the Falun Gong. Through an understanding of domestic law, the actions that must be taken within the international legal system to address these alleged violations become clear.

The Chinese Constitution

The People's Republic of China's most recent constitution was adopted on December 4, 1982. This section extracts the most relevant articles of the Chinese Constitution to the alleged violations of human rights abuses against the Falun Gong. Consider the following excerpts from the Chinese Constitution of 1982:

Chapter 2: The Fundamental Rights and Duties of Citizens

Article 35. *Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.*

Article 36. *Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens, or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.*

Article 37. *The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.*

Article 38. *The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge, or frame-up directed against citizens by any means is prohibited.*

Article 41. *Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case of complaints, charges, or exposures made by citizens, the state organ concerned must*

deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges, and exposures, or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law.

***Article 51.** The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens.*

***Article 53.** Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property, and observe labor discipline and public order, and respect social ethics.*

Article 54.

It is the duty of citizens of the People's Republic of China to safeguard the security, honor, and interests of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland.

Chapter 6: The People's Court and the People's Procuratorates

***Article 125.** All cases handled by the people's courts, except for those involving special circumstances as specified by law, shall be heard in public. The accused has the right of defense.*

***Article 126.** The people's courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations, or individuals.*

The Chinese Constitution at Article 36 permits Chinese citizens to “enjoy freedom of religious belief” and to protect “normal religious activities”. What does the Chinese government consider “normal”, though? Religious activity deemed normal by the CCP is activity that occurs only within the organizations that have been granted official status by, i.e. registered with, a government agency. Therefore, freedom of religion is declared, but the state still maintains a stringent level of control over activities supported by religious organizations and spiritual movements not registered with the government. Such a hard line exists due to concerns about national security.

Many of the initial religious policies during the early years of the People's Republic of China were enacted to bring “Western” religions under the control of the Chinese government to protect the government from these “vehicle[s] for foreign and

domestic anti-China forces” (Human Rights Watch). In other words, the government sought to control religious forces to protect itself and its society from outside influences that might challenge the legitimacy of the Chinese authority structure – the Chinese Communist Party. Even today, religion in China has been limited to activity within the walls of churches and temples as approved by the government, hence the legal need to register religious groups with a government agency (Bush 15).

Therefore, the Chinese Constitution protects freedom of belief and “normal” religious activities, but a series of regulations limits both. These different regulations “provide for financial oversight on the part of government authorities, vetting of religious leaders and religious publications, determination of religious curricula, and a program to bring religious beliefs into conformity with socialism” (Human Rights Watch).

Therefore, if a religious movement is too large, too powerful, or too popular, then it is simply banned in China to protect the security of the state and to omit any challenge to the Chinese Communist Party, as many religious movements are viewed as separatist movements with direct goals against the government. The motives of the Chinese government to crack down on the Falun Gong, then, become more apparent as domestic laws are laid out and the government’s behavior patterns regarding religious or organized belief systems is examined.

Chinese Domestic Law

Consider the laws that have been developed just since the Chinese government began its crackdown on the Falun Gong and other “heretical organizations” in July of 1999.

Amnesty International's investigation provides the following information regarding legislation passed in China related to the anti-cult movement devised by the government:

- On July 22, 1999, the Ministry of Civil Affairs issued a decision banning “the Research Society of Falun Dafa and the Falun Gong organization under its control” as “illegal organizations.”
- On July 22, 1999, the Ministry of Public Security also issued a notice based on the above decision by the Ministry of Civil Affairs. The notice announced sweeping new prohibitions related to the ban on Falun Gong, including prohibition of the right to ‘petition’ which is guaranteed by the Chinese constitution. The prohibitions were:
 1. Everyone is prohibited from displaying in any public place scrolls, pictures and other marks or symbols promoting Falun Dafa;
 2. Everyone is prohibited from distributing in any public place books, cassettes and other materials promoting Falun Dafa;
 3. Everyone is prohibited from gathering a crowd to perform ‘group exercises’ and other activities promoting Falun Dafa;
 4. It is prohibited to use sit-ins, petitions and other means to hold assemblies, marches or demonstrations in defense and promotion of Falun Dafa;
 5. It is prohibited to fabricate or distort facts, to spread rumors on purpose or use other means to incite [people] and disturb social order;
 6. Everyone is prohibited from organizing or taking part in activities opposing the government’s relevant decision, or from establishing contacts [with other people] for this purpose.
- On August 28, 1999, the General office of the State Council (government) issued a notice on the implementation of “opinions” issued by three government bodies “concerning certain problems in strengthening the management of healthy Qi Gong activities.”
- On October 30, 1999, the Standing Committee of the National People’s Congress (NPC) passed a “Decision on Banning Heretical Organizations and Preventing and Punishing Heretical Activities.” The full text of the legislation states:

To maintain social stability, protect the interests of the people, safeguard reform and opening up, and the construction of a modern socialist country, it is necessary to ban heretic cult organizations and prevent and punish cult activities.

Based on the constitution and other related laws, the following decision is hereby made:

 1. Heretic cult organizations shall be resolutely banned according to law and all of their criminal activities shall be

dealt with severely. Heretic cults, operating under the guise of religion, qigong, or other illicit forms, which disturb social order and jeopardize people's life and property, must be banned according to law and punished resolutely. People's courts, people's procuratorates, public security, national security, and judicial administrative agencies shall fulfill their duties in carrying out these tasks. To be severely dealt with according to law are those who manipulate members of cult organizations to violate national laws and administrative regulations, organize mass gatherings to disrupt social order and fool others, cause deaths, rape women, swindle people out of their money and property, or commit other crimes with superstition and heresy.

2. The principle of combining education with punishment should be followed in order to unify and instruct the majority of the deceived public and to mete out severe punishment to the handful of criminals. During the course of handling cult groups according to law, people who joined cult organizations but were unaware of the lies being spread by the group shall be differentiated from criminal elements who organize and take advantage of cult groups for illegal activities and/or to intentionally destroy social stability.

The majority of the deceived members shall not be prosecuted, while those organizers, leaders, and core members who committed crimes shall be investigated for criminal conduct; those who surrender to the authorities or contribute to the investigations shall be given lesser punishments in accordance with the law or be exempt from punishment.

3. Long-term, comprehensive instruction on the Constitution and the law should be carried out among all citizens, knowledge of science and technology should be popularized, and the national literacy level raised. Banning cult organizations and punishing cult activities according to law goes hand-in-hand with protecting normal religious activities and people's freedom of religious belief. The public should be exposed to the inhumane and anti-social nature of heretic cults, so they can knowingly resist influences of cult organizations, enhance their awareness of the law, and abide by it.
4. All corners of society shall be mobilized in preventing and fighting against cult activities, and a comprehensive management system should be put in place.

People's governments and judicial bodies at all levels should be held responsible for guarding against the creation and spread of cult organizations and combating cult activities.

This is an important, long-term task that will ensure social stability.

- At the same time as the NPC Decision, the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) issued on October 30, 1999, a judicial interpretation entitled "Explanation on Questions Concerning the Concrete Application of Laws in Handling Criminal Cases of Organizing and Making Use of Heretical Organizations."
- On November 5, 1999, the Supreme People's Court issued a notice giving instructions to local courts on how to handle the cases of people charged with crimes for "organizing or using heretical organizations, particularly Falun Gong."
- On November 24, 1999, the Ministry of Public Security also issued some "Regulations on Managing Mass Cultural and Sports Activities," which are intended to control and restrict certain types of public gatherings, including those by Qi Gong groups. They specifically ban gatherings that "threaten national security and public order" without further defining what this "threat" might be.

Under these laws and regulations, the charges that have been brought against practicing members of the Falun Gong are essentially political in nature. These charges include "disturbing social order", "assembling to disrupt public order", "stealing or leaking state secrets" and "using a heretical organization to undermine the implementation of the law".

The Falun Gong is considered a disturbance to social order because the organization has not been officially registered as a legitimate and recognized religious group within China. But, "the Falun Gong demonstrations had been prompted precisely by a desire for the official recognition and registration that the state refused to grant", because the government felt threatened by the group's size and ability to mobilize (Perry 173). Since the Chinese Constitution only protects the freedom of religious "activity" among the officially registered religious groups in society, Falun Gong is believed to be disobeying the law and obstructing social order.

The accusation mentioning the “use of a heretical organization to undermine the implementation of the law” incorporates many acts of criminal behavior in China, including organizing demonstrations or using the Internet to propagate information about the Falun Gong. A few people who have been tried as key members of Falun Gong were also charged with causing deaths, “a vague accusation whose validity in these cases has not been demonstrated by the authorities” (Amnesty International).

The more seemingly political charge of “leaking state secrets” is generally used against those people who have been detained in violation of international human rights standards who then go on to publish information or make that evidence supporting human rights violations available to the public outside of China. This information is often treated as a “state secret,” even though it would not be treated in this manner in most other countries. Therefore, it is clear that regardless of the freedoms declared in the Chinese Constitution, there is still direct control over and manipulation of those freedoms according to the goals of the People’s Republic of China (Amnesty International).

As China uses the above-mentioned accusations to justify its actions against the Falun Gong, the government also describes Li Hongzhi as anti-China, and it accuses the Falun Gong of attempting to overthrow the Chinese government. This is China’s main defense to support the human rights violations against Falun Gong practitioners. Important principles in international human rights law, both treaty-based and “customary”, are relevant and available to counter this argument.

In short, if the Falun Gong represented a legitimate threat to the Chinese government, many particular rights protected by the International Covenant on Civil and Political Rights and also the Convention Against Torture (both international treaties that

China claims to support) are non-derogable rights, meaning that even in times of state emergency, or when the security of the state may be in jeopardy, these rights must still be upheld and protected. Non-derogable rights applicable to this case include the freedom from torture and also freedom of conscience and religion (Weissbrodt 38). China's defense regarding the threat to state security will not hold if the government is found to be committing torturous acts and suppressing the freedom of conscience. No defense is a legitimate defense according to international law when violations have been committed against non-derogable rights. Non-derogable rights are fixed and unyielding.

THE LAW OF THE INTERNATIONAL COMMUNITY

Due to the many regulations and laws that have been passed to suppress the Falun Gong within China, it appears that little can be done within the domestic legal system to stop the Chinese government's malevolent campaign against Falun Gong practitioners or to halt the alleged human rights abuses against those who continue to practice Qi Gong. Therefore, it is necessary to look to the international legal system to examine the procedures available to begin to render change within China.

This section discusses China's commitments within the international system, including its obligations as a member of the United Nations and also its responsibilities under the International Covenant of Civil and Political Rights and the Convention Against Torture. Then, this paper recommends a course of action to be taken within the international system that might facilitate remediation of the alleged violations against the Falun Gong. With a recommended course of action, perhaps there will be further

scrutiny of these alleged violations to decide whether or not the violations should be considered “alleged” in the future.

What are China’s obligations within the International Legal System?

First and foremost, China is a member of the United Nations. Therefore, China is bound to promote respect for the rights and freedoms specified by the Universal Declaration of Human Rights (UDHR). For example, some of the various rights identified in the UDHR that pertain to the case of the Falun Gong include:

***Article 2.** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

***Article 5.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

***Article 7.** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

***Article 10.** 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 18.** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

***Article 19.** 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.*

The personal accounts of Falun Gong practitioners and other evidence that have been gathered is in absolute contrast to the above-mentioned rights and freedoms that China

claims to support as a member of the United Nations. In fact, in August 1999, the United Nations “denounced China’s treatment of Falun Gong, declaring that the banning of the group, the destruction of its materials, the detention of its practitioners, and the prevention of their free assembly” violates the true resolve of the universal human rights instruments that China claims to support (Chlopak 19).

Aside from its membership in the United Nations, China also has commitments under the International Covenant on Civil and Political Rights (ICCPR). This covenant codifies many of the principles laid out by the UDHR, and China actually signed this covenant in 1998, although it has yet to ratify it. Under the ICCPR, the following articles, among others, are significant to the case of the Falun Gong:

***Article 7.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

***Article 18.** (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Although China has yet to ratify the ICCPR, its signature is indicative of the government’s recognition of the importance of the document and the principles that the covenant embodies. However, members of the international community cannot bring claims against China under this covenant pertaining to human rights abuses occurring within the Chinese borders, because the covenant has not been ratified. Therefore, the complaint mechanism, i.e., intervention before the UN Committee on Human Rights, available to the international community cannot be used in China’s case and cannot be

considered an effective tool for bringing the alleged violations against the Falun Gong to public light.

China *has* ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), however. Although this document mainly stresses such economic concerns as the right to just and favorable working conditions, or social concerns such as the right to an education, China's ratification of the ICESCR stresses China's desire to improve its reputation within the international human rights arena. Possibly, there are some relevant articles of the ICESCR that correlate to the situation of the Falun Gong, such as the right to education to further "enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups..." Even if a distinct connection could be made between the situation of the Falun Gong and China's violation of the ICESCR, there is not a complaint mechanism devised by the ICESCR to formally address the charges against the Chinese government.

How about the Convention Against Torture (CAT) then? China *did* ratify this convention in October 1988. The CAT 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, or for any reason based on discrimination of any kind, 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" (Article 1(1)).

The state has given its officials and agents the power to inflict physical pain and suffering upon Falun Gong practitioners in order to coerce them to renounce their beliefs. This meets the definition of torture. However, China has stated reservations in ratifying the

Convention Against Torture, rejecting the authority of the U.N. Committee on Torture to take jurisdiction over alleged violations. That is, for a complaint to be lodged against a state, that state must make a declaration under Article 22 of the CAT asserting that the state “recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party...” Instead of making a declaration under this article, China instead has used article 28 of the CAT to opt out of the Committee’s jurisdiction:

Article 28

- (1) Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
- (2) Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Because China has stated its reservations under article 28 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this treaty, again, is useless as a basis for addressing alleged human rights violations committed against the Falun Gong and to attempt to bring justice to the situation.

A Recommended Course of Action

Thus far, it appears that China has ensured that the mechanisms prescribed by these international legally binding documents to investigate alleged cases of human rights violations do not apply to its own government, even though China claims to support these documents. However, there is still a course of action that may be taken within the international legal system to draw attention to the abuses reported by Falun Gong practitioners using customary international law. In order to establish the existence of a

rule of customary international law, it is necessary “to demonstrate a widespread practice by states conforming to the alleged rule, together with evidence that they have followed this practice because they believe that they are under a normative obligation to comply with that rule” (Hannum 9). Since both torture and freedom of conscience are non-derogable rights in the international treaties of the United Nations, then it is highly arguable that a violation of these rights is a violation of customary international law.

The Human Rights Commission of the United Nations may hear complaints to examine information relevant to gross violations of human rights and fundamental freedoms. This complaint mechanism is not a treaty-based mechanism, so whether or not a state has signed or ratified any of the conventions, covenants, or other treaties of the United Nations, complaints may be brought against those countries that violate customary international human rights law. A complaint brought under the Economic and Social Council (ECOSOC) Resolution 1235, then, gives broad authority to the Commission and Sub-Commission “to debate particular country situations and, if they choose, to adopt resolutions on them” (Hannum 63). It is recommended, then, to file a formal complaint to the United Nation’s Commission on Human Rights under Resolution 1235 outlining the pattern of human rights violations allegedly committed against the Falun Gong organization. Furthermore, it is recommended to request a special country rapporteur to conduct a detailed investigation of the situation at hand.

Filing a complaint under Resolution 1235 will serve three important functions for the Falun Gong.

First, it may give political impetus to further action by the Commission; second, even if the Commission is unwilling to act, a Sub-Commission resolution represents the opinion of a formally-constituted UN body of human rights experts...; and third, it may build up an official documentary

record by requesting a report from the Secretary-General on the situation (Hannum 63).

Moreover, if a special country rapporteur is appointed, then additional facts may be uncovered that either support or refute the defense used by the Chinese government in response to charges that it is violating the rights of the Falun Gong, i.e., that the Falun Gong represents a threat to the internal peace and security of the country. Also, the findings under 1235 are reported and made public by the special rapporteur to the Human Rights Commission, causing embarrassment and shame to the Chinese government. The experience of shame and embarrassment within the international community may prompt the Chinese government, in turn, to begin to find just, peaceful, and lawful solutions to the problem at hand, however it is defined. Although there can be no direct or formal punishment imposed upon the Chinese government, there are many political, economic, and moral implications that China will have to face in confronting a complaint under Resolution 1235 if the human rights violations are found to violate customary international law. Hopefully, this pressure from the international community will effectively ameliorate the predicament of China's Falun Gong.

Although no official complaints under Resolution 1235 have been filed with the United Nations thus far, the Special Rapporteur on Civil and Political Rights, Including Religious Intolerance, Mr. Abdelfattah Amor, reported on religious freedom in China in February 2001. In his report to the fifty-seventh session of the Commission on Human Rights, Mr. Amor discusses religious intolerance toward Catholic and Buddhist practitioners in China, and he also mentions many alleged violations against the Falun Gong from the time since the group had been banned in July 1999. Mr. Amor writes:

26. According to a communication from the Special Rapporteur, in December 1999, four leaders of the Falun Gong movement, Li Chang, Wang Zhiwen, Ji Liewu and Yao Lie, were reportedly given prison sentences in Beijing, officially for having illegally organized and practiced a religion, for being responsible for a number of deaths and for having illegally obtained and disseminated State secrets. On 11 May 2000, some 200 Falun Gong practitioners demonstrated to commemorate the birthday of the movement's founder and were immediately arrested by the police. In mid-June 2000, a total of 35,000 Falun Gong practitioners were allegedly arrested, and 84 of them were officially sentenced to prison, while 5,000 more were allegedly sent to re-education camps without a trial.
28. On 1 October 2000, the national holiday of the People's Republic of China, several hundred members of the Falun Gong sect demonstrated on Tiananmen Square. Most of the demonstrators were reportedly arrested by the police and placed in detention. The demonstration, which had been announced on the Falun Gong web site, was preceded by mass arrests of at least 600 Falun Gong members (Amor 9).

Although the Falun Gong is mentioned in the Special Rapporteur's report to the Commission on Human Rights, China is not the only country being investigated. Mr. Amor also discusses the situation of religious freedom in some fifty other countries, thereby diluting the importance of the alleged violations against the Falun Gong. Filing a formal complaint under ECOSOC Resolution 1235 and requesting a special country rapporteur to China specifically will allow for more progress in articulating and highlighting the Falun Gong's plight, as the case will gain explicit attention within the United Nations.

A formal complaint under Resolution 1235 would be a breakthrough for the Falun Gong. However, a recent salutary development has just occurred outside of the United Nations system. On February 7, 2002, The Center for Justice & Accountability based in San Francisco, California, filed a lawsuit against Beijing mayor Liu Qi here in the United States under the Alien Tort Claims Act of 1789. The Alien Tort Claims Act (ATCA) authorizes U.S. courts to hear cases brought by aliens for violations of the "law of

nations” (customary international law) as long as the perpetrator can be physically served while in the United States (Hannum 250). Therefore, when Mayor Liu Qi arrived at San Francisco International Airport en route to Salt Lake City for the Olympics, he was immediately served with the lawsuit on the basis that he has allowed human rights abuses against Falun Gong practitioners to go unchecked.

Six practitioners who claim to have been “severely beaten by Beijing police in detention centers in Beijing during the last three years” brought the suit against Mayor Liu (The Center for Justice & Accountability). The plaintiffs include two Chinese women who are now refugees in the U.S., one man with joint U.S. and Israeli citizenship, two Swedish men and a French woman. One of the plaintiffs was reportedly tortured by electric shock.

The Alien Tort Claims Act is an effective means to bring human rights violations to light in the United States, as is seen in the case of Mayor Liu. However, it is still highly recommended that a formal complaint under ECOSOC Resolution 1235 be brought to the United Nations to officially lodge the alleged violations with the international legal body and to embarrass China within the international community, not just within the United States. Formal procedures exist, and in order to bring more attention to the case, these formal procedures should be used.