

UNIVERSAL PRINCIPLE

—Human Rights Report from JCLU—

Number 2 Spring 1991

JCLU

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PLANNING MEETING FOR MANDELA'S VISIT TO JAPAN IN OCTOBER 1990

On September 1, 1990, a preparatory meeting was convened at PANSE Hall in Kanda by the JCLU to prepare for Mandela's arrival. About 140 people attended the 3 1/2 hour meeting which featured a video about the Anti-Apartheid movement. The meeting was opened by Mr. Kazuo Ito, a representative of the Board of Directors and Mr. Masao Yoshida, Secretary General of the Reception Committee. They made an appeal for cooperation to get signatures for the nation-wide petition campaign demanding the end to Apartheid, etc. The campaign eventually collected over 1,000,000 sig-

natures throughout Japan, and was presented to the Japanese Diet (parliament) shortly before the arrival of Mr. Mandela. It was regarded as being instrumental in pressuring the Diet to relent and allow Mr. Mandela to address its members on October 30.

Additional presentations were made by Attorney Yoko Hayashi, Political Commentator, Ms. Yoko Kitazawa and Attorney, Ms. Riko Suzuki, who spoke about then present conditions in South Africa, Japan's importation of South African gold and American Anti-Apartheid policies, respectively. The meeting concluded with a spirited singing of the Black national anthem, Nkosi Sikelel'i Afrika led by the famous Monma Family Gospel Singers.

Crisis Conditions in Present-day South Africa

A summary of the address by Yoko Hayashi, attorney and a member of JCLU, given at the JCLU Meeting

After Nelson Mandela's release, the Amenity Segregation Act, one of the four basic laws of Apartheid, was abolished.

President de Klerk has promised to abolish the Land Act and the Group Areas Act within the next year and the Population Registration Act is to be repealed at the time of the revision of the constitution. Regarding the new constitution, the ANC and the South African Government are so far apart on the fundamental concept that it will be difficult for both sides to reach an agreement.

The ANC blueprint for the constitution, which was

Universal Principle No. 2

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declared in 1955, called for the adoption of universal suffrage, recognition of the unity and diversification of the people of South Africa, and the duty of the government to take positive action to eradicate discrimination. But the white government insists upon the concept of group rights in which rights are given to each group, e.g. to whites, coloreds and blacks, and not to individuals. Also at this time, the confrontation among black tribes continues, with 500 people being killed in the last two weeks — the highest number of reported deaths in the history of this fighting. This confrontation among the anti-Apartheid groups, the ANC, UDF and Inkata, the ZULU tribe's organization, was created by the white South African Government. We should bear in mind that Mr. Mandela will be visiting Japan against this background of extremely unstable internal conditions in his own country. (Editor's Note: This meeting was held before Mr. Mandelas's visit to Japan in October of last year.)

ANTI-APARTHEID POLICIES IN THE UNITED STATES

By Ms. Riko Suzuki, Attorney and Member of the JCLU, given at the JCLU Meeting

America's comprehensive Anti-Apartheid laws were enacted in October of 1986. The most important single factor that put pressure on the government to pass the legislation was the Anti-Apartheid movement in the U.S., especially the well-known Divestment Movement. It was this movement that put pressure on universities, labor unions, churches, foundations and private institutions and the like to divest themselves of corporate shares of South African enterprises. As a result, beginning with the City Council of New York, which sold \$665 million worth of shares, 22 states decided also to divest themselves.

The law broadly prohibits imports from South Africa, including gold Krugerrand coins, uranium, coal, textiles, agricultural products, iron ore, crude oil, petrochemicals and sugar, and the goods which are produced by government owned or operated businesses. It also prohibits the exporting of military supplies and computers as well as new investment capital, South African Government banking accounts, air traffic between the U.S. and South Africa, and the promotion of travel and sightseeing to South Africa. It also suspends all government agreements related to taxation including a double taxation provision, thus having a wide effect.

The law provides for serious penalties in order to provide for effective enforcement.

As a result of the enactment of this law, GM, IBM,

Ford and other American - based large corporations have pulled out of South Africa. This has had an enormous impact on South Africa and has been one of the driving forces for causing changes in that country today. However, the following conditions for eliminating sanctions have not yet been fulfilled: (1) the release of all political prisoners; (2) the lifting of the state of emergency; (3) the repeal of laws restricting political activity; (4) the repeal of the Group Areas Act and the Population Registration Act; and (5) the beginning of unconditional negotiations with the leadership of the Black majority.

As long as this condition exists, the sanctions will continue.

On the other hand, Japan has not enacted any such laws providing for economic sanctions against the South African government. Japan has limited its dealings with South Africa through informal application of *gyōsei shidō* (administrative guidance). Through this means, it has applied the Foreign Exchange and Foreign Trade Control Act, to restrict the import and export of a small list of goods, and some direct investments.

The difference between the actions of the U.S. and the Japanese Governments with regard to sanctions is a reflection of the difference in attitude towards human rights of the people of each country.

SOUTH AFRICA'S GOLD AND THE JAPANESE

By Ms. Yoko Kitazawa, News Commentator and Analyst of International Affairs, given at the JCLU meeting

In 1985, the Japanese Government set forth a new policy on foreign trade to enlarge the amount of imported goods at a time when Japan enjoyed a large surplus of exports over imports. The most remarkable thing to come out of this change of policy was the increase of imports of South African gold, whose trade had barely existed before then. In that year, Japan imported 50% of its total imported gold from South Africa in order to issue a commemorative coin marking the 60th anniversary of the reign of Emperor Hirohito, the late emperor. Gold comprises 50% of the total exports of South Africa.

The gold in South Africa is mined by black laborers who are forced to work in two shifts of 12 hours each. The labor conditions in the mines are terrible. Because they are located deep within the earth, they are warmed by the heat of the earth and it is unbearably hot. The tunnels in the mines are very narrow having been dug

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by the miners without any machinery. The black laborers are forced to leave their families behind and are scattered throughout the country. They are watched closely in the boarding houses in which they live.

Although there are facilities for distributing food to them, there are no tables or chairs or a place provided for eating. They are not given knives and forks. They sit on the earth floor and eat with their fingers.

The laborers are on one-year contracts which they cannot cancel unilaterally. This is simply a modern version of slavery.

The money that the South African Government gets from the mining of gold is treated as if it were not in the budget and is used to buy armaments and as capital for investing in government-operated industries. The large corporations in South Africa are controlled by white English-speaking immigrants. The importance of the sanctions is reflected in the fact that industries in the public sector cannot get investment capital from foreign countries.

The only way for Afrikaners, Dutch immigrants who are the mainstay of support for the governing Nationalist Party, to gain economic power is by fostering publicly run industries. In this way, the mining of gold is not only the mainstay of South African public industries, but also the giant pillar which supports the system of Apartheid.

Naturally then, when Japan dramatically increased its import of gold from South Africa, Japan became the focus of international criticism. The Japanese government took a very strange measure to meet the criticism. Realizing that they would have to bear the brunt of criticism for becoming the largest single importer of gold from South Africa, the government deliberately manipulated the statistics reflecting the total amount of gold imported. They said that part of the gold imported by Japan really came from the English and Swiss gold markets, and therefore, Japan was the number 2 importer of South African gold, not the first. Moreover, it is said that the government is planning to issue a commemorative gold coin for the enthronement of Emperor Akihito, of the Heisei Era.

Besides gold, Japan also imports diamonds, platinum and rare metals from South Africa. The government says that it has to import these rare metals because there are no appropriate substitutes. But if we look at chromium, for example, Japan had originally imported it from Zimbabwe (formerly Rhodesia), but when Zimbabwe was freed from colonial rule and established a predominantly black government, Japan suddenly stopped its imports from Zimbabwe and began to buy an inferior grade of chromium from South Africa. This

is simply a matter of the Japanese government arbitrarily creating dependence on rare metals.

In the final analysis, we have to conclude that the real problem is related to the Japanese peoples' consciousness of human rights. In this regard Japan trails behind Western countries by 20 years.

NELSON MANDELA MAKES AN HISTORIC 6-DAY VISIT TO JAPAN IN 1990

ANC Deputy President Nelson Mandela, who was released from 27 1/2 years of imprisonment in February of last year, arrived at Narita International Airport on October 27, 1990. He was accompanied by an ANC entourage of 15 people and was tumultuously greeted by more than 100 friends and supporters. Because he came on the weekend, there was no official Japanese Government welcome until the following Monday.

The first major public event featuring the famed symbol of the fight against Apartheid was a public rally at Ogishima Park in Osaka on the following day. 20,000 people jammed the park and heard Mr. Mandela appeal for support on behalf of his brothers and sisters who continue to be oppressed under the yoke of the Apartheid regime.

On Sunday evening, October 29th, Mr. Mandela addressed a packed auditorium of nearly 3,000 people in a benefit concert at Nihon University in Tokyo. In his 20 minute address, the charismatic leader thanked the people of Japan for their past support, acknowledging that he owed his freedom to people from around the world who had actively demanded his release. He focussed his address on the needs of the thousands of returning ANC activists and functionaries who had been forced to leave South Africa in the course of their struggles against Apartheid. He asked for financial support for their housing, education for their children and other related needs. A host of well-known Japanese performers, highlighted by "Bakafu Slump," donated their services to raise money for the cause.

In the following days, Mr. Mandela received an official welcome from the Japanese Government, by whom he was invited. The highlight of this activity was his historic address to a special joint session of the Japanese Diet. It was the first time that a private person (not a head of state), and the first time that a Black person, had addressed the Japanese legislature.

Mr. Mandela also met with a wide variety of leaders of government, industry and private groups, as well as members of the diplomatic corps stationed in Tokyo. On October 31st, he addressed a gathering of 5,000 people in Hibiya Park in Tokyo in an event that was organized after his arrival in Japan. The Committee was afraid to schedule too many activities because of the

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reports of Mr. Mandela's weak condition. But when the 70-year-old activist was asked if he would agree to the additional event, he characteristically immediately responded affirmatively. The event was extemporaneously put together by the same group of activist volunteers who had worked so tirelessly in the weeks and months preceding. The theme of the Hibiya Park Rally was solidarity and featured speeches by Mr. Uesugi of the Buraku Liberation League, Labor Leader, Mr. Yamagishi, and Mr. Akira Kusuhara, Japan Anti-Apartheid Committee.

In a dramatic moment, Mr. Mandela personally greeted Mr. So Sung, a Korean national who had been a political prisoner and tortured by the Korean Government for many years.

The musical highlights included a special appearance by Mr. Sadatoshi Watanabe, a famous saxophonist and political activist in Japan; and Peter, Paul and Mary, an American entertainment trio, who are now performing in Tokyo, and who have been identified with Anti-Apartheid and other causes since the Civil Rights movement in the U.S. in the 1960's.

In order to offset the disappointment to the ANC delegation because of Japan's refusal to make a commitment to assist the ANC, the Reception Committee made a symbolic presentation to Deputy President Mandela of the ¥43 million (\$330,000), which it had raised privately through its various fund raising activities. As Mr. Mandela pointed out to the press, all of the ANC requests for financial assistance were met by all of the other Asian countries it had visited on this tour, including countries which are poor compared with Japan.

JCLU Appeal to the U.N. on the Plight of Zhang Zhenhai and other Chinese Students

The JCLU sent four members to Geneva in August of 1990 to attend the "Sub-Commission on Prevention of Discrimination and Protection of Minorities" ("Sub-Commission") of the United Nations. The members obtained credentials from the International League for Human Rights and appealed to the Sub-Commission to criticize the stance of the Japanese government in the case of Zhang Zhenhai and other Chinese students.

The JCLU supported the defense lawyers who handled the case of Zhang Zhenhai, a Chinese pro-democracy dissident who hijacked a China Air airplane on December 16, 1989 in order to seek political asylum in Japan. However, he was extradited to China on April 28, 1990, because the Japanese Government dis-

regarded his human rights and ignored many appeals to deny extradition from various human rights organizations (including the Congressional Human Rights Caucus of the United States) and individuals. Also, the Japanese courts did not review the human rights issues thoroughly and eventually ratified the stance of the Japanese government.

In addition to that issue, many Chinese students who have been involved in pro-democracy movements and are presently staying in Japan, face the fear of being refused renewal of their visas by the Japanese government and of being sent back to China. The Japanese government is very rigid with regard to the renewal of their visas. (See Supplement "Human Rights Violations in Japan—Two Cases—The Political Asylum Case of Zhang Zhenhai and The Japanese Government's Inhumane Treatment of Chinese Students in Japan")

LEGAL RIGHTS OF FOREIGNERS IN JAPAN

JCLU appealed to the Supreme Court and the Japanese Government regarding the rights of foreigners in the criminal process. (See the following article from the Mainichi Daily News)

[MAINICHI DAILY NEWS, February 17, 1991]

Legal System Discriminates Against Foreigners—JCLU Report Cites language Problems, Deprivation Of Rights—

Kyodo News Service

The legal system here routinely discriminates against foreigners, and some practices are in violation of international human rights accords, a human rights group says.

The Japan Civil Liberties Union (JCLU) said in a recently released report that foreigners who commit minor crimes are more likely to be prosecuted than Japanese and, if convicted, are more likely to receive harsher sentences.

Moreover, a lack of translation services means some defendants do not get a fair trial because they are unable to understand indictments, which are issued in Japanese, and are prevented from accurately conveying testimony in court, the report says.

"Foreigners who come from developing countries are regularly deprived of their rights," said Lawyer Kensuke Onuki, one of the authors of the report. He added the Westerners from industrialized countries, on the other hand, appear to receive better treatment while in detention than the average Japanese.

The 50-page report documenting cases of unfair

procedures was submitted to the government and Supreme Court on Thursday along with a list of recommendations to eliminate inequities.

Yoshiaki Iwahashi, an attorney at the Criminal Affairs Bureau of the Justice Ministry, acknowledged that language problems are "no small issue," but said government offices would have to study the report before commenting on its allegations.

According to data compiled by a group of lawyers who represent foreign clients, police in 1985 dropped 37 percent of theft cases involving Japanese, while all foreigners apprehended were prosecuted.

Meanwhile, 63 percent of Japanese who were sentenced for shoplifting the same year did not have to go to jail, compared with 24 percent of foreigners.

Discrimination in the handing down of suspended sentences decreased after the issue received publicity, Onuki said.

He said, however, that foreigners can still expect inferior treatment in areas ranging from interrogation tactics to access to legal assistance.

Interviews with lawyers and interpreters for foreigners in detention indicate that foreigners are more likely than Japanese to be subject to physical abuse while in police custody, Onuki said.

The most common types of reported abuse are grabbing a suspect by the hair and knocking his or her head against the wall, slapping the suspect's face with a shoe, and kicking over the chair the suspect is sitting on, Onuki said.

The report, based on surveys and interviews with over 70 attorneys, foreign workers' advocacy groups and court administrators, indicated that in many cases defendants are not made aware of their right to counsel, their right to contact their embassy or their right to remain silent. Such information is provided only in Japanese and English.

Courts are often not equipped to provide interpretation for defendants who speak languages other than English, Korean or Chinese, and defendants are sometimes charged for interpretation services in violation of the international covenant on civil and political rights.

Once in detention, suspects are usually only allowed to speak to visitors or write and receive personal letters in Japanese or English. Korean and Chinese are sometimes allowed, the report said.

The number of criminal cases involving foreigners has burgeoned in recent years from 782 in 1980 to 2,989 in 1989, in tandem with the influx of laborers, mostly from developing Asian nations.

Onuki said it would be wrong, though, to think that foreigners are more likely to run afoul of the law than Japanese. On a per capita basis, Japanese committed 10 times more crimes such as petty theft in 1988 than

foreigners, with 116 crimes per 10,000 Japanese, compared with 12 per 10,000 foreigners, according to data compiled by Onuki.

The crime rate for major offenses such as homicide is 5.4 per 10,000 Japanese, compared with 0.2 per non-Japanese.

The JCLU was launched under the guidance of the American Civil Liberties Union in 1947, the year the postwar Constitution was promulgated guaranteeing human rights for Japanese citizens.

The group regularly lobbies government bodies and the courts on issues such as rights of disadvantaged groups, and freedom of information.

JCLU's Activities on ODA

ODA and Human Rights in Asia: Reassessing Japanese Policy: Report of the Monthly Meeting

At a recent meeting, the JCLU welcomed Assistant Professor of Sophia University Mr. Yoshinori Murai to lecture on the theme of "ODA and Human Rights in Asia."

The Facts about ODA

Because of the Marcos scandal of 1986 and the corruption in the Japan International Cooperation Agency (JICA), ODA is beginning to be discussed as being linked to corruption and graft. Moreover, the basic human rights and environmental problems involved with ODA have not been adequately addressed.

In the discussions ODA was viewed as basically a good thing. By virtue of the rapid increase in the amount contributed to ODA, Japan will probably surpass America this year as the number one contributing country to foreign aid. However, this huge amount of money is being targetted into the sacred precincts of military expenditures, and similarly, regularly included in the budget.

As the amount of ODA grows, the diplomatic character of the aid is changing more and more from the simple economic motive of "if the money is used to make a profit, it is fine" to the political motive; "if we give money, we want a say in how you use it."

The term "the strategization of economic aid" has come into use. Aid has been poured into countries on which America has placed importance, especially those countries bordering the "front line." Because Japan cannot offer military aid, it has, as a substitute, extended economic aid.

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For example, although aid has been given in the form of refugee relief to such countries as Thailand, neighboring Cambodia, and Pakistan neighboring Afghanistan, the aid has in effect supported the guerilla forces and has a strategic, political significance.

The multilateral aid to the Philippines also has a strategic, political character of support for the continuity of the agreement between America and the Philippines concerning American military bases and payment for their use.

Further, calls for "soft aid" are increasing. Until now Japan's aid has gone only to building basic infrastructure, such as dams and bridges, but since an important aspect of aid is given through "soft aid," attention has turned to such things as technological aid, and technological training. Japan has begun to focus on building Industrial Skills Training Centers and sending teachers abroad. The Japanese government also said that its plan for this year is to subsidize the activities of NGO's. However, the amount is no more than 0.01%.

A Fundamental Law is Needed

Because many doubts about ODA have surfaced, the Board of Audit sends staff members abroad. However, the numbers of staff sent are extremely limited and no audit results have been made public.

The government has said that with the consent of the recipient country, it will release the names of the companies that receive ODA contracts abroad, but even if one examines the government White Paper, the names of those companies are virtually unmentioned. Even JICA will not release the names. The barrier to the information is incredibly thick.

Although the Ministry of Foreign Affairs (MFA), in recent years, has made follow-up evaluations, 97.8% of the evaluations have been favorable. Moreover, these evaluations have been carried out by bureaucrats from MFA, not by disinterested third parties, so unfavorable reports cannot be expected.

What can be concluded from all the problems with ODA is that it must be controlled by a basic law. Yet, there is no such law.

Civic organizations have begun working toward the establishment of a basic law and it has been discussed in a subcommittee of the Committee on Foreign Relations of the Upper House of the National Diet. At first it was addressed by a multipartisan committee, but the Liberal Democratic Party later pulled out because the

bureaucracy objected vehemently. Thereafter, the Communist Party and the Social Democratic Party each independently formulated draft bills.

The most important thing for a basic law is the philosophy of aid. When asked about this subject, the MFA, up until now, has stated that the philosophy of aid has been based upon (1) humanity and (2) mutual dependence.

ODA as a Business

ODA is certainly a business, and has turned out as a system to profit Japanese enterprises. The request for ODA must first come from abroad, but because of the enormous amount of paperwork and the complicated procedures, in reality Japanese consultants act as a representative of the applicant. Moreover, aid projects are brought to the consultants by Japanese trading companies. For example, in order to sell bulldozers and tractors, they will make a plan for agricultural development. If the plan looks good on the surface, MFA will hand out the money.

Furthermore, when the aid is in the form of a grant rather than a loan, it is invariably given with the condition that "you must use XYZ Japanese company." Once the condition has been accepted, the Japanese Government will transfer the money to the account of the foreign government. The foreign government will then put the money in the account of a Japanese company, with the result that the funds circulate only in Japan.

Human Rights Must Receive More Attention

While ODA waives the banner of humanism, it is really controlled by political and diplomatic policy. Japan's ODA is bound by the Japan-U.S. Security Agreement and as a "partner" with the Western nations, it will give no aid to a socialist or anti-American country, no matter how poor it is.

Also, many of the countries in the Third World have military governments. The act of giving aid itself strengthens these military governments.

ODA has the further dilemma that giving aid to Third World countries catches them in the vicious cycle of: insufficient foreign exchange — receiving ODA and other foreign loans/sacrificing its people to expand exports — the impoverishment of the people/impoverishment of society — increasing military spending to maintain public order — insufficient foreign

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exchange.

Japan's ODA is focused on the countries of South and Southeast Asia: Indonesia, China, the Philippines, Bangladesh, India, Thailand and Myanmar. These countries have extremely severe human rights problems. Japanese aid has become a tool for exacerbating the human rights situation.

In Myanmar 80% of the aid come from Japan and in China, 75% of its aid come from Japan. We can see how great a percentage Japan's aid is.

When Japan builds dams in foreign countries, one of its specialties, there are environmental problems as well as the problem of relocating residents. The projects are sprung on the residents without notice and without any explanation; and ODA does not allocate funds for compensating the residents. This is happening in central Java and the northern Philippines. Pollution in such countries as the Philippines and Thailand is also very serious.

Previously, there was no "human rights" in Japan's diplomacy. However, we now have so many economic connections in the world that we must pay more attention to human rights.

JCLU Publishes a Model Bill on ODA

The JCLU, making an effort to draft a basic law on ODA, finally finished the model bill in November 1990.

This bill is based on the philosophy that ODA is given for the purpose of needy people in poor countries, not for the ruling classes or for the benefit of Japanese companies who receive funds indirectly from aid programs. With this view, JCLU is trying to introduce a system to determine the needs of poor people, discuss the effectiveness of the aid programs, and examine the results. Also the model bill suggests several rules such as "The Japanese Government will terminate aid programs when a recipient county brings about massive human rights violations" or "The Japanese Government first assesses ODA aid from the viewpoint of environmental protection, before a grant is given." Moreover, considering the importance of education about international cooperation, this bill recommends that the Japanese Government and recipient governments educate its nationals or residents about the importance of international cooperation.

After that, the JCLU published a booklet titled "ODA and Human Rights" that consists of this model bill and a commentary on the bill.

In late November, Shun Hashiba, the Executive

Director of the JCLU, visited the Ministry of Foreign Affairs, the Finance Ministry, the Ministry of International Trade and Industry, and the Economic Planning Agency, which are the main government agencies involved in ODA. He presented the JCLU's booklet and asked them to reexamine Japanese ODA policy from the viewpoint of human rights.

The JCLU's booklet, which is written in Japanese, is now available at the JCLU office.

JAPANESE SUPREME COURT REMOVES BAN ON COURTROOM NOTEBOOKS

In a landmark decision rendered on March 8, 1989, the Supreme Court ordered all criminal courts throughout Japan to allow spectators to take handwritten notes during public court proceedings. The decision in the suit originally filed by JCLU attorneys in 1985 was accompanied by a directive issued to all courts on that day implementing the new rule. The opinion signed by fourteen of the fifteen justices included language allowing restrictions in cases where trial judges decided that note-taking by spectators would present a concrete danger to the orderly and fair conduct of a trial, but found that such facts were lacking in the case before the court.

The petitioner was Lawrence Repeta, an American attorney residing in Japan at the time the dispute arose. Repeta had observed the trial of a Tokyo stockbroker as part of his study of Japan's securities markets. For much of the two year period in which he observed the trial, Repeta worked under the support of a fellowship granted by the Japan Foundation, a well-known institution which sponsors the studies of numerous foreign scholars each year. The trial judge rejected his repeated requests to keep a notebook while he attended court hearings.

This treatment was typical of court administration in Japan at that time. For many years, legal scholars, free-lance journalists and other spectators were similarly denied the opportunity to keep courtroom notebooks. Exceptions to the rule were typically allowed only for members of exclusive press clubs formed by major media organizations. The prohibition had been criticized in law journals and textbooks on criminal procedure, but such criticism had been disregarded by the courts.

The March 8 decision accomplished an immediate reversal of the existing practice. By the afternoon of the decision, all signs warning that spectators must receive court approval before taking notes were removed from courtroom entrances around the country. Novelists and free lance journalists who had hitherto worked under the ban on courtroom notebooks have since reported that they are now free to do so.

Comparison With Foreign Countries

The issue does not seem to have arisen in other jurisdictions. Multinational surveys conducted by the national bar association and others had shown that spectators at public court proceedings in countries around the world are generally free to keep handwritten records of their observations. In many jurisdictions, members of the press and others are allowed to make tape recordings and take photographs and videotapes of court proceedings. Despite the Supreme Court's recent decision, these activities remain generally prohibited in Japan. (In 1987, the court did adopt a rule approving courtroom photography for a limited time prior to the commencement of court proceedings.)

Analysis

Although the petitioner, his attorneys and many others applauded the decision as a big step forward in securing better public understanding concerning the operation of Japan's courts, they have criticized the curious analysis of relevant constitutional provisions displayed in the court's opinion. On its face, the suit appeared to present a relatively simple issue: "Should spectators be freely allowed to keep handwritten records of their courtroom observations?" Both the Tokyo district and appellate courts had answered in the negative and thus upheld the prevailing practice. In deciding that the answer should be yes, the Supreme Court rendered the issue far more complex, paradoxically recognizing some degree of constitutional protection for the courtroom note-taker at the same time it denied the existence of any constitutional right.

The petitioner had argued that both Article 82 of the Constitution, which provides that "Trials shall be conducted and judgments declared in public," and Article 21, which guarantees freedom of expression, provide courtroom spectators with a right to take notes at public court proceedings. Although it rejected both of these arguments, the court nevertheless found that the trial court had acted improperly when it denied the petitioner's requests to take notes while attending a criminal tax evasion trial in Tokyo District Court.

Constitution Article 82

Regarding the petitioner's claim under Article 82 of the Constitution, the court affirmed the holdings of the lower court and the consensus view among Japanese commentators to the effect that this provision does not give rise to individual rights of any kind, whether to take notes or even to attend trial proceedings.

Constitution Article 14

Because the trial judge (and criminal courts generally) allowed members of the courthouse reporters club

to take notes while denying that privilege to the petitioner, he claimed that such treatment was a denial of equal protection of the law as guaranteed by Article 14. The court dismissed this claim by finding that there is a rational basis for differential treatment between members of the reporters club and the petitioner because the activities of the reporters serve the role of supplying important information to members of the public which better enables them to participate in the political process. The court did not provide any reasons to find that the activities of the petitioner himself did not serve the same public interest.

Although the court's treatment of Article 14 was not dispositive in this case, it does give cause for serious concern. The text of Article 21 makes no distinction between recognized members of the press and others. The ill-supported distinction between employees of large mass media organizations and others creates a potentially troublesome double tier of protection which may ultimately result in narrowing the scope of expression.

Constitution Article 21

It was the guarantee of free expression found in Article 21 which provided the source for protection of the courtroom note-taker. While formally recognizing the discretion of the trial judge to issue orders governing courtroom behavior, the court sharply limited the scope of that discretion when the issue concerns a spectator's desire to take notes.

The court distinguished the act of taking notes from "the freedom of expression directly guaranteed by Article 21 of the Constitution" and therefore held that there is no constitutional requirement that restrictions on note-taking activities meet the standard of strict scrutiny applicable to restrictions on activities directly protected by Article 21.

Nevertheless, to the extent that note-taking "assists in providing contact with and absorbing opinions, knowledge and information", the court stated that "in light of the spirit of article 21 of the Constitution" note-taking "should be respected." Accordingly, the court announced a new rule under which restrictions on note-taking by courtroom spectators are appropriate only in cases where there is concrete danger that such activity will result in a disruption to the fair and orderly conduct of a trial. The opinion goes on to say that "ordinarily it is inconceivable" that a spectator taking notes would cause such disruption and that "in the absence of special circumstances, spectators should be free to take notes." In the case of the petitioner, the court found such circumstances to be lacking.

Other issues

In a final ironic twist to the opinion, the justices de-

nied the petitioner's claim for damages under the State Redress Law and announced a rule which may strictly limit future claims for damages under that law due to unlawful actions of a judge. The Court held that although the action of the trial judge in denying the petitioner's request was improper, the degree of such impropriety was insufficient to justify payment of compensation under the law. Actions for damages under the State Redress Law are commonly used in Japan in order to challenge the validity of a wide range of government activities. Denials of recoveries under this law even though the court finds the action challenged to be unlawful may have a substantial impact on the ability of the people to challenge government activities.

Conclusion

Despite the many shortcomings in the published opinion, the result of the suit is unequivocal. The JCLU counts the "Courtroom Notes" decision as a major victory in preserving the public's right to know about government action. The importance of the case was underscored by heavy coverage in the press and the decision of the court to make this the sole judgement rendered by the full bench of 15 justices of the Supreme Court during 1989.

JCLU'S PROTEST OF JUSTICE MINISTER KAJIYAMA'S STATEMENT

JCLU appealed to the Prime Minister, Toshiki Kaifu, and the Minister of Justice, Seiroku Kajiyama, with the following statement.

December 7, 1990

NOTE OF PROTEST

Mr. Toshiki Kaifu, Prime Minister
Mr. Seiroku Kajiyama, Minister of Justice

Japan Civil Liberties Union
Representative Kazuo Ito
Takao Yamada
Takehiro Uchida

It was reported that Justice Minister Kajiyama stated at a news conference held on September 21, 1990, that various amusement districts within Shinjuku had become an area peopled by many Southeast Asian prostitutes and continued to state as follows:

The area around Shinjuku has become such a mixed and jumbled area (with the influx of Southeast Asian foreigners) and has a negative influence on the local community and it is sort of like blacks in America driv-

ing out the whites just like bad money driving out good money.

We the Japan Civil Liberty Union (JCLU) believe that Mr. Kajiyama's statement discriminates against African-Americans. It should also be pointed out such statement arises from prejudiced views against Asians which is still deeply rooted within the Japanese society. We believe that it is particularly shameful that such a statement came from the justice minister, who should be actively promoting the abolishment of discrimination, as the highest ranking official within the government in charge of protecting fundamental human rights within Japan.

Despite a storm of protest and criticisms from many human rights groups and individuals, both within and without Japan, engendered by his statement, the responses of the Justice Minister himself and the Government of Japan to date have been muddled and totally unsatisfactory. Under this circumstance, we the JCLU request that the Minister of Justice clearly express his apology for his statement, both in words and in action. Furthermore, we request that the Government of Japan should present and proceed with a specific plan of action, whose goal will be to aggressively combat and abolish the various forms racial discrimination, which exist in Japanese society. We request that such plan of action should include the following measures:

1. The ratification of the Treaty for Abolishment of Racial Discrimination by the United Nations and the passage of domestic laws and legislation pursuant to the spirit of the Treaty.
2. The promotion of teaching in schools or local areas of histories and cultures of various minority peoples, such as African-Americans, the Ainu and Asians living in Japan.
3. The abolishment of Japanese nationality as a prerequisite condition in order to become public servants and active adoption of affirmative action programs by the national and local governments and non-profit or public corporations to allocate a certain percentage of the positions in the public sector for foreigners.
4. Encouragement of private corporations to have similar affirmative action programs as mentioned in Item 3.

EDITOR'S NOTE: *Minister Kajiyama was unceremoniously dropped when all but a few cabinet ministers were replaced by Prime Minister Kaifu on December 29, 1990. In typical fashion, the Japanese government avoided the human rights issue.*

JCLU's Appeal for the Protection of Human Rights of Foreign Migrant Workers

The Japanese Diet (parliament) voted to enact a controversial amendment to the Immigration Control and Refugee Screening Law at its 116th parliamentary session, which ended in December 1989.

While reaffirming Japan's long standing ban on unskilled foreign laborers, the amendment — for the first time in the post-war era — subjects the employers of unskilled foreign laborers to arrest and prosecution by as much as three years in prison or by a fine of two million yen. This clause will surely exacerbate the human rights problems of the laborers effected.

One of the main purposes of this amendment seems to be to close Japan's already-highly-restricted labor market even more and to deny any job opportunities to poverty-stricken unskilled laborers, who have been labelled as "illegal job holders" under the revised Immigration Law.

The illegal alien workers, who are also liable for prosecution, fall into two categories: (1) those who engage in jobs and activities which the law forbids them from holding and pursuing; and (2) those who overstay their visas in order to continue to pursue the job that is forbidden by law while they are in Japan.

The revised law with enhanced restrictive power also introduced a special identification certificate called the "Employment Qualification Certificate."

The certificate — issued only to skilled foreign labor — is apparently designed to clearly distinguish — in the eyes of potential employers and law enforcement officials — skilled foreign workers, whom both the present and revised law would qualify to work in Japan, from unskilled migrant workers who would be barred by the revised law from engaging in any jobs.

The newly-created certificate system empowers the authorities to issue certificates to skilled laborers, which states the bearer's nationality, the lawful period of work, and — most problematically — the scope of categories within which the laborer can lawfully engage depending on his or her respective visa while in Japan.

What is propelling the trend of increased flows of Asian migrant workers into cash-rich Japan is the large gap in economic and living standards and wage level between Japan and debt-ridden poorer Asian countries.

Therefore, the continuing flow of Asian migrant workers into Japan is not only foreseeable but inevitable, unless the widening of this trend is checked.

This amendment is unrealistic in that it is trying to cut the presence of these unskilled workers in Japan by enhancing legal sanctions on both workers and their employers while shrugging off the economic reality, which triggered the problem.

The amendment completely ignores the human rights of foreign workers currently working in Japan as it fails to take steps to guarantee their human rights.

Justice Ministry statistics — although much more conservative than the reality — showed the number of illegal migrant workers staying in Japan as 100,000 as of December 1988, with the great majority of such illegal laborers from Asia.

Numerous press reports and probes say many of these workers are subjected to various kinds of abuses of their human rights and dignity — non-payments of wages, forced prostitution, rape, violations by employers of rights stipulated by the Labor Standard Act, and even non-payment of compensation for workmen's accidents which took place during their regular work time.

Discouraged by the sheer lack of legal protection, the unskilled workers are being compelled to endure these wide-ranging abuses silently for fear of being deported by the immigration authorities.

They are keenly aware of the reality that they would be expelled from Japan upon reporting such abuses to the Japanese law enforcement authorities or to the Immigration Bureaus.

The amendment threatens to severely penalize relatively scrupulous employers who would have hired and provided laborers with appropriate labor conditions. At present, they are becoming increasingly reluctant and hesitant to hire foreign unskilled laborers.

The problem is made more difficult by the fact that migrant workers who come to Japan due to poverty and high jobless rates in their home countries tend to accept inhuman and degrading labor conditions offered them by unscrupulous employers intent on exploiting them.

It is easily foreseeable that many of these unskilled illegal laborers will go underground or agree to be employed by shady or unscrupulous employers. It is also highly likely that various abuses hitherto suffered by such employees will get worse and be hidden from those concerned about their human rights.

The Employment Qualification Certificate System will make it extremely difficult for unskilled foreign labor who can neither obtain a certificate nor show it to employers who will fear being prosecuted by facing up to three-year imprisonment.

The system also has the likely danger of creating even more job discrimination against hundreds and thousands of Korean residents in Japan in view of the increasingly limited job opportunities for non-holders, as those Koreans would feel compelled to obtain and submit such a certificate to potential employers.

Japan has a community of about 700,000 descendants of Koreans forcibly brought to Japan as laborers in war-time factories before and during World War II.

UNIVERSAL PRINCIPLE —*Human Rights Report From JCLU*—

They face various kinds of job and marriage discrimination even now unless they renounce their Korean citizenship and become Japanese citizens.

The Japan Civil Liberties Union (JCLU) feels obliged — based on our consciences as lawyers — to protest the enactment of the amendment mandating punishment for employers, and to oppose the introduction of the certificate system.

We urge the government to grant an amnesty to these illegal laborers and acknowledge their universal human rights to stay and work in Japan, and to ease overly strict standards by having the Justice Minister grant special stay permits to illegal entrants and foreign workers and refugees.

We appeal to the government to act quickly to protect the human rights of foreign laborers who are all too often subjected to abuses by dishonest, crooked employers and underground crime syndicates, which take advantage of the illegal residential status of such workers.

We urge the government to establish a system complying with the various clauses guaranteeing human rights of the United Nations' and other international human rights conventions and treaties protecting the human rights of migrant workers and foreign laborers.

POLICY STATEMENTS ISSUED BY JCLU

1. Regarding reports of the illness of Emperor Showa (Hirohito):

On September 19, 1988, a public announcement was made about the serious condition of Emperor Showa. The mass media should avoid casting the emperor in any role beyond that of a symbol. It should not report about him as if he were divine, nor should it give him excessive coverage.

Oct. 31, 1988

2. Regarding reports of the Massacre at Tiananmen Square:

The Chinese Government's indiscriminate and arbitrary firing of weapons at unarmed citizens and students in Tiananmen Square, who gathered for the purpose of advocating freedom and democracy, is a clear infringement of their human rights and should not be tolerated.

June 8, 1989.

3. Regarding freedom of speech:

On January 16, 1990, the Mayor of Nagasaki was shot because he criticized the late Emperor by saying, "I believe that Emperor Showa is to blame for the war." This

shooting represents a violent assault on freedom of speech in Japan and a direct attack on the exercise of Japanese democracy.

Jan. 24, 1990.

4. Regarding separation of church and state in Japan:

The day of the enthronement ceremony of Emperor Heisei (Akihito) on November 12, 1990 will be a public holiday in Japan, and the "Daijo-sai", or the rite of the emperor becoming a god, will be carried out by the Imperial Family with the use of public funds on November 22 and 23 1990. This is a clear infringement of the principle of separation of church and state according to Article 20 of the Japanese constitution.

October 23, 1990.

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ABOUT THE JCLU

The Japan Civil Liberties Union was organized in 1947, the year of the promulgation of the new Constitution of Japan. The American Civil Liberties Union played an important role in its birth. From its beginning, the sole purpose of the JCLU has been to maintain and expand human rights for all person without regard to belief, religion or political position.

Membership in the JCLU is open to anyone who is in agreement with this principle. The JCLU now has more than 600 members, 60% of whom are lawyers engaged in private practice. The JCLU is financed by membership fees and unconditional donations from the members and other persons in sympathy with its goal. An annual business plan is determined by a meeting of all members. Day-to-day matters are left to the board of directors, which is composed of 39 members. The JCLU is represented externally by three representative directors. There are currently more than ten active committees in the JCLU that pursue its various activities.

The JCLU issues numerous opinions, memoranda and advice in specific cases in relation to activities of the national and local governments, the Diet and the courts. The JCLU has also acted as a leader in movements for new legislation. Member attorneys are active in a broad range of civil rights litigation involving police abuse, environmental pollution, well-known criminal cases and other matters.

JCLU Officers: Kazuo Ito, Representative Director; Takao Yamada, Representative Director; Takehiro Uchida, Representative Director; Shun Hashiba, Executive Director

Committees: Freedom of Information Committee; International Covenants of Human Rights Committee; Mental Patients' Rights Committee; Women's Rights Committee; Asian Human Rights Committee; Foreigner's Rights Committee; Supreme Court Study Committee; Criminal Procedures Committee; Taxpayers' Rights Committee; Mass Media Committee; Yasukuni Shrine (Separation of State and Religion) Committee; Membership Promotion Committee; AIDS and Infected People's Rights Committee; Human Rights Consulting Committee; Anti Apartheid Committee; **Jinken Shinbun** Committee (**Human Rights Newspaper; JCLU Membership Newsletter**); Universal Principle Committee (Human Rights Report in English)

Universal Principle is a human rights report in English edited by Universal Principle Committee and published by JCLU at 306 Atagoyama Bengoshi Bldg., 1-6-7 Atago, Minato-ku, Tokyo, Japan. Telephone (03) 3437-5466. Free of charge.



This publication is sponsored by the Unno Memorial Fund

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Universal Principle Supplement

HUMAN RIGHTS VIOLATIONS IN JAPAN

— Two Cases —

THE POLITICAL ASYLUM CASE OF ZHANG ZHENHAI
AND
THE JAPANESE GOVERNMENT'S INHUMANE TREATMENT
OF CHINESE STUDENTS IN JAPAN

Report Submitted To
UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL
COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Updated
10 August 1990

By

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Human Rights Violations in Japan...

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(August 10, 1990)

REPORT OF THE CASE OF ZHANG ZHENHAI - Hijacking to Seek Political Asylum -

This report was prepared to introduce the case of Zhang Zhenhai, a Chinese pro-democracy dissident who hijacked a China Air airliner in order to escape imminent persecution and seek political asylum, in order to make his case widely known to the world for the purpose of saving the lives of Zhang Zhenhai and his wife and son, and to appeal to the members of the "Sub-Committee on Prevention of Discrimination and Protection of Minorities" and all the NGOs throughout the world to take actions to ensure their safety.

I. Introduction

This is a case that could cost the life of a man. As you may be aware, a Chinese dissident named Zhang Zhenhai hijacked a China Air airliner for the purpose of seeking political asylum on December 16, 1989, and the airplane landed at the Fukuoka airport in Japan. Both Japan and China have jurisdiction over the act of hijacking by Mr. Zhang. The Japanese government and judiciary denied our assertions that "although the act of hijacking by Mr. Zhang should be judged under the law, he should not be extradited to China; rather, he should be tried by a Japanese court." Mr. Zhang had been deeply involved in the pro-democracy, anti-tyranny movements in China since 1979 including the Tiananmen Square Incident of June, 1989.

The Japanese government extradited Mr. Zhang to China on April 28, 1990.

In the face of imminent arrest and the security dragnet threatening to descend upon him and his family, and after having made several attempts to escape China by other means, he made a desperate last attempt to escape persecution by hijacking a China Air airliner in order to flee China and seek political asylum.

The Japanese government has taken a stance consistently from the time of hijacking that "even if Mr. Zhang Zhenhai was involved in political activities in China, he should be extradited to China because he committed a serious crime of hijacking." However, this stance is clearly against the "Principle of Non-Extradition of Political Offenders" which is broadly recognized throughout the world. Such stance contravenes the prohibition of inhuman treatment stipulated in the International Covenant on Civil and Political Rights because tortures and execution without due process, especially of persons involved in political activities, are prevalent in China now. We want you to understand that punishing the act of hijacking could be done without extraditing the hijacker to China. We are of the opinion that "the act of hijacking must be

tried not in China but in Japan." Notwithstanding our appeals and many demands from various kinds of organizations in the world, including Amnesty International, Asia Watch and the Congressional Human Rights Caucus (U.S.A.), the Japanese government extradited Mr. Zhang to China. At that time, four lawsuits to prevent his extradition, including an action for Habeas Corpus and for the official recognition of his refugee status, were still underway. Also, all courts avoided examining the case based upon the International Covenant on Civil and Political Rights which was ratified by Japan in 1978.

A Chinese Court in Beijing on July 18, 1990 handed down a ruling sentencing Mr. Zhang to eight-year imprisonment and two-year deprivation of all political rights on the charge of having placed a public vehicle in a dangerous situation.

We are still very seriously concerned about the fate and safety of Mr. Zhang and his wife and son.

II. Facts

Mr. Zhang Zhenhai actively participated in pro-democracy, anti-tyranny movements in China since 1979 and in the Tiananmen Square Incident in June, 1989. Mr. Zhang was hunted down and arrested by the Chinese Public Security Bureau and interrogated about his involvement in the Tiananmen Square Incident while under arrest for a different charge in October 1989. After he was released by paying huge amounts of bribes, he tried to flee the country for exile three times, traveling by land, but failed to do so because the border traffic was strictly controlled. Consequently, he felt that he had no choice but to hijack an airplane as a means to seek political asylum. He hijacked the China Air airplane bound for New York through Shanghai and San Francisco from Beijing on December 16, 1989. (The route from Beijing to Shanghai was used as a domestic flight.) In the airplane, he handed over a piece of Chinese paper money to a stewardess on which he had written down the following demands: "Please go to South Korea. If my request is not accepted within three minutes, I will blow up the airplane." That was all that he did in the airplane. He remained in his seat all the time. He had no weapons and did not use any violence. He was accompanied by his wife and thirteen-year-old son. Because South Korea rejected the request to land, the airplane headed for and landed at the Fukuoka airport in Japan.

Immediately after the airplane landed at the Fukuoka airport, Mr. Zhang was guided to the rear side door of the airplane by a flight attendant, and when he was looking outside through the opened door, he was thrust out of the plane down to a ramp, over five meters below the door. He was seriously injured with a comprehensive fracture of his hipbone and other injuries and

was hospitalized on the same day.

Nobody, including the Japanese police, other than officials of the Chinese government and the China Air airline personnel, was allowed to enter the airplane for over four hours after the landing and therefore, we still have no idea what happened in the plane during those hours. The hijacked airplane flew back to China with Mr. Zhang's wife and son aboard, eleven hours after the plane landed at Fukuoka airport. The Japanese government did not object to his wife and son being sent back to China. On the contrary, on December 16, 1989, the same day of the hijacking, the Japanese government announced its policy to extradite Mr. Zhang to China. In addition, the Japanese government confirmed this policy and expressed its opinion officially again in January of this year. Mr. Zhang was transferred from the hospital in Fukuoka to the Fukuoka Prison and then further transferred to the Tokyo Detention House on January 11, 1990. He was detained there from that time until he was extradited to China on April 28, 1990.

Although various legal procedures were taken, as stated in the Attachment, he was extradited to China on April 28, 1990, before these four legal steps necessary to prevent extradition could be completed. After the extradition, the Chinese Court in Beijing on July 18, 1990 sentenced Mr. Zhang to eight-year imprisonment and two-year deprivation of all political rights.

III. Issues

The fundamental issues of this case are (1) whether or not Mr. Zhang Zhenhai participated in pro-democracy, dissident movements in China including the Tiananmen Square Incident last June, and (2) if he participated in them, whether or not his extradition impinged upon the "Principle of Non-Extradition of Political Offenders" and/or contravened the International Covenant on Civil and Political Rights which prohibits torture and cruel, inhuman and degrading treatment or punishment in view of the likelihood that he might be executed since China has failed to honor the rule of law on human rights particularly after the Tiananmen Square Incident.

In connection with the above issue (1), Mr. Zhang himself testified in detail about his involvement in political activities in China at the hearing sessions held on March 23 and April 2 of this year. Also, on April 4, Mr. Yue Wu, who was one of the workers' leaders in China and is presently recognized as a refugee in France, testified in detail at the Tokyo High Court about the situation in which he had met and spoke with Mr. Zhang in Tiananmen Square during the Tiananmen Square Incident. We believe through the above testimony and a number of our interviews with Mr. Zhang at the Fukuoka Prison and the Tokyo Detention House

that Mr. Zhang was deeply involved in pro-democracy dissident movements in China including the Tiananmen Square Incident.

With reference to the above issue (2), the present human rights situation in China is well known to the world. It is a situation in which the rule of law on human rights is malfunctioning and a system involving the use of torture and/or execution is being used. Therefore, it is highly likely that Mr. Zhang would be not only tortured but also executed now that he has been extradited to China.

IV. Stance of the Japanese Government in This Case

It is regrettable that the Japanese government did not at all consider the human rights of Mr. Zhang. In particular, we want to stress the following:

1. The Japanese government officially expressed its opinion on December 16, 1989, on the day when the hijacking happened, to the effect that Mr. Zhang should be extradited to China, despite the fact that a legal examination in the Tokyo High Court had not yet taken place. The Japanese government also confirmed this opinion in January of this year. In addition, the Japanese government did not make any attempt to prevent Mr. Zhang's wife and son from being sent back to China.
2. There were serious procedural defects in the government's rejection of the application for recognition of refugee status. Some of them are as follows (Please refer to item B of the Attachment "Legal Procedures Taken in this Case"):
 - (1) The government (the Ministry of Justice) refused to allow the defense lawyers to file the application on behalf of Mr. Zhang. In other words, they made him write it out himself, a process that took many hours, while he was in the presence of a "refugee inquirer" (an officer of the Immigration Office) and without the advice of a lawyer. In addition, the refugee inquirer refused to deliver to the defense lawyers a copy of the application prepared by Mr. Zhang until after the Ministry of Justice rejected his application.
 - (2) The application was rejected in only two weeks, ignoring the fact that the defense lawyers informed the refugee inquirer of evidential materials that were scheduled to be submitted.
 - (3) The length of time of the defense lawyers' contacts with Mr. Zhang was limited to ten minutes only, and the defense lawyers had to meet with him in the presence of an official of the Tokyo Detention House.

- (4) Considering the fact that it normally takes six months to one year to render a final determination on an application for refugee status, it must be concluded that the case was not examined in full at all because it took only two weeks to reach the final decision.
 - (5) The decision was made on February 27, only two weeks after the application, when the organization of a new cabinet of Prime Minister Kaifu was in process after the General Election. The Minister of Justice, who announced the rejection of the application resigned from his post just a few hours after the announcement because of the above-mentioned cabinet reshuffle.
3. The Japanese government ignored the pending four lawsuits in the courts and extradited Mr. Zhang. In particular, they totally ignored the pending of actions for application for recognition of refugee status and for Habeas Corpus.
 4. The Japanese government ignored many appeals and warnings from various kinds of human rights and other organizations and individuals from the international community.

In addition to the above, the defense lawyers had contacts with many human rights organizations and citizens' groups. Also, it is reported that some governments in Europe tried to intervene in this case to prevent the extradition.

V. Stance of the Japanese Courts in this Case

(Please refer to the Attachment "Legal Procedures Taken in This Case")

The Japanese courts, especially the Tokyo High Court which examined the extradition requirements, did not examine the case thoroughly and seriously and avoided examining the case based upon the International Covenant on Civil and Political Rights. (Please refer to item A 1(a) of the Attachment). In particular, we want to stress the following:

1. The Tokyo High Court, which examined the extradition requirements, stated that although there are problems in terms of human rights in China, it is not the court's role (rather, it is the obligation of the Minister of Justice) to decide whether or not to extradite Mr. Zhang in view of such human rights situation. Additionally, the Court did not review the case for its applicability to Article 7 of the International Covenant on Civil and Political Rights. Indeed, it avoided doing so. (Please refer to item A 1(a) (4.20) of the Attachment.) On the other hand, the Tokyo District Court, which handled the action

for suspension of the extradition order, said that it was the role of the Tokyo High Court, which examined the extradition requirements, to review the case in view of the human rights situation in China and such review should have been done already. Thus, the Tokyo District Court also avoided reviewing the case in view of the human rights situation in China. (Please refer to item A 2(b) (4.25) of the Attachment).

2. The number of lawyers who could officially handle the case was limited to three under the Extradition Law. Consequently, all of the official procedures at the court and interviews with Mr. Zhang at the Tokyo Detention House had to be conducted by these three lawyers alone.
3. The Tokyo High Court refused to extend its deadline of April 22 when the final decision was scheduled to be rendered. Although it is stipulated in the Extradition Law of Japan that the Tokyo High Court shall render its decision within two months from the request for examination of this case by the prosecutors' office, which was made on February 23, 1990, this rule is regarded as a guideline and will not strictly bind the judges. Because of the rigid stance of the court, a lot of work had to be done within an extremely short span of time.

We believe that the courts should have taken enough time to review this case carefully because 1) the case might cost the life of a man; and 2) of the time factor and international significance including the fact of the attention of many international human rights organizations to this case, arrangements for witnesses from foreign countries which had to be made, and voluminous translation works and trips to foreign countries to contact relevant witnesses which had to be carried out.

4. It is doubtful that the Japanese court intended to and/or could review this case carefully and seriously because of the following circumstances. That is, we received copies of hundreds of documents from the Prosecutor's Office at the end of February of this year for the first time. These documents were submitted by the Chinese government through the Prosecutor's Office to the court. But, surprisingly, when we had an unofficial conference with judges and prosecutors to discuss how to proceed with this case on March 5, the court proposed a hearing session on March 6, in which Mr. Zhang, according to the proposal, would be allowed to express his opinion for thirty minutes, the defense lawyers for one hour, and the Prosecutors for thirty minutes, including the time for interpretation. It was really abnormal that the court did not give us enough time to review the documents and to translate the important documents into Chinese language in order to

help Mr. Zhang understand the contents of the documents submitted by the Chinese government. It was also abnormal that the court tried to end the hearing session in only two hours.

Only after we strongly protested against the court proposal to have a hearing session of only two hours in the very near future, three hearings were actually held on March 23, April 2 and April 4 as mentioned in the Attachment.

5. We requested that the court examine three witnesses in the courtroom but the court accepted only one witness and, in turn, requested that both parties submit all of their evidence by April 6. This is an extremely tight deadline from the time of the hijacking, considering the many complicated factors of this case.

VI. The Present Situation of Mr. Zhang Zhenhai

As mentioned above, on July 18, 1990 the dissident Zhang went on trial at a Chinese court in Beijing, which, after a mere two-hour hearing and debate, handed down a ruling sentencing Mr. Zhang to eight-year imprisonment and two-year deprivation of all of his political rights. The anticipated worst scenario of Mr. Zhang's receiving a death sentence on charges of counter-revolutionary activities due to his decade-old pro-democracy dissident career did not materialize. But, still, the human rights situation surrounding Mr. Zhang is extremely grim and no one can deny the possibility that his life itself may be affected and eventually snuffed out in view of the following facts and situation:

1. Firstly, Mr. Zhang, whose movements and appearance at the Chinese court on July 18, 1990 were videotaped and televised, was witnessed to have become incapable of walking without the physical support of court guards accompanying him, despite the fact that he could walk easily and steadily when he was taken to the Narita International Airport, south of Tokyo, by security guards from a detention house in Tokyo immediately before being extradited to China. Judging from this clear change in his appearance, no one can deny the possibility that he was subjected to torture while being kept in custody in a Chinese detention center. Given the current human rights abuses in China, we can't help expressing grave concern about his future safety, especially about what may happen to jeopardize his safety during the eight-year prison term.
2. Secondly, no foreign correspondents and lawyers could obtain any information about the whereabouts and safety of Mr. Zhang's wife and son. Therefore, we cannot help feeling grave concern about the way in which Mr. Zhang's eight-year

prison term will be served and carried out, and especially with regard to his safety, as well as the safety of his family.

VII. What We Are Seeking

It is our greatest concern to secure the safety of Mr. Zhang and his wife and son in the future. Consequently,

1. We do hope that the Sub-Commission and the Non-Governmental Organizations (NGOs) will continue to be concerned about the fate of Mr. Zhang and his wife and son in the future.
2. We do hope that the Chinese government will respect any request by the Sub-Commission and the Non-Governmental Organizations (NGOs) to meet Mr. Zhang in China.
3. The Japanese government which ignored the human rights of Mr. Zhang and extradited him to China should be responsible for ensuring the lives of Mr. Zhang and his wife and son. We humbly request the Japanese government to take specific action, such as sending of a diplomatic visitor to meet Mr. Zhang in prison in order to confirm his safety as well as that of his wife and son.

(Attachment)

Legal Procedures Taken in this Case

Various kinds of legal procedures were taken in this case. The main procedures can be classified as follows:
A. Extradition Requirements Examination Procedures
B. Application for Recognition of Refugee Status
C. Action for Habeas Corpus

A. The Extradition Requirements Examination Procedures

1. Examination in the Tokyo High Court and Special Appeal to the Supreme Court

(a) Examination in the Tokyo High Court

(1990)

- 2.23 The Tokyo High Prosecutors' Office requested the Tokyo High Court, based upon the request made on February 22 by the Chinese government to have Mr. Zhang extradited, to examine whether or not Mr. Zhang should be extradited to China

- 3.23 The first hearing session was held. Defense lawyers, prosecutors and Mr. Zhang himself expressed their opinions.

- 4.2 The second hearing session was held. Mr. Zhang testified about his involvement in pro-democracy, dissident movements including

his role in the Tiananmen Square Incident in June of 1989.

4.4 The third hearing session was held. Mr. Yue Wu, one of the leaders of workers in China and is presently recognized as a refugee in France, appeared in court and testified to the effect that he had seen Mr. Zhang during the pro-democracy movement in Tiananmen Square in June of 1989.

4.19 Defense lawyers and prosecutors submitted a lot of evidence to the court.

4.20 The Tokyo High Court ruled that the case did not fall within the exception clauses of the Extradition Law, which enumerates certain conditions under which extradition of certain criminals should be prohibited, and that the Japanese government could extradite Mr. Zhang to China under the Law. The Court also pointed out that there are problems in terms of human rights in China including those involving criminal law procedures, but it is not the court's role (rather, it is the Minister of Justice's obligation) to decide whether or not to extradite Mr. Zhang in view of such human rights situation.

Immediately after the Court rendered a final decision, the Japanese government disclosed its plan to extradite Mr. Zhang as scheduled before. (The government did not seem to consider the judicial defects in the human rights situation in China as pointed out by the Tokyo High Court).

(b) Special Appeal

4.20 Mr. Zhang submitted a special appeal to the Supreme Court requesting the reversal of the decision by the Tokyo High Court.

4.24 The Supreme Court dismissed the special appeal for the reason that such appeal is not specifically stipulated in the Extradition Law and therefore it is not allowed under the Law.

2. Request for Cancellation and Suspension of the Order of Extradition by the Minister of Justice

4.23 The Ministry of Justice issued an order to extradite Mr. Zhang to China by delivering (1) a written order to the Chief of the Tokyo High Prosecutors' Office and (2) a written permission to the Chinese government, allowing the Chinese government to receive

Mr. Zhang through the Ministry of Foreign Affairs of Japan.

(a) Request for Cancellation of Extradition Order

4.23 Mr. Zhang filed an action with the Tokyo District Court requesting the cancellation of the order of the Minister of Justice made on the same day.

(This case is still pending as of the date of this Report.)

(b) Request for Suspension of Extradition Order

4.23 Mr. Zhang also filed an action with the same court to seek the suspension of enforcement of the extradition order made on the same day.

4.25 The Tokyo District Court ruled that there were no reasons to suspend the order. The Court said that it was the role of the Tokyo High Court, which examined the extradition matter and rendered the decision in the prosecutors' favour, to review the case in view of the human rights situation in China (NOTE: This statement is clearly contradictory to the statement of the Tokyo High Court on April 20 as mentioned above.)

(c) Appeal

4.25 Mr. Zhang appealed to the Tokyo High Court requesting the reversal of the above judgment of the Tokyo District Court.

4.27 The Tokyo High Court dismissed the appeal.

(d) Special Appeal

4.28 Mr. Zhang submitted a special appeal to the Supreme Court requesting the reversal of the decision of the Tokyo High Court.

5.1 The Supreme Court dismissed the special appeal.

B. Application for Recognition of Refugee Status

2.13 Mr. Zhang filed an application for recognition of refugee status with the Ministry of Justice.

2.27 The Ministry of Justice denied refugee sta-

tus for Mr. Zhang.

- 3.1 Mr. Zhang filed an appeal with the Ministry of Justice.
- 4.16 Mr. Zhang filed an action with the Tokyo District Court requesting cancellation of the decision rendered by the Ministry of Justice on February 27.
- 4.23 The Ministry of Justice dismissed the appeal filed on March 1.

(The action filed on April 16 is still pending as of the date of this Report.)

C. Action for Habeas Corpus

- 4.26 Mr. Zhang filed an action for Habeas Corpus with the Tokyo High Court.
- 4.28 The Tokyo High Court dismissed the action two hours after Mr. Zhang was extradited to China.

(August 10, 1990)

INHUMANE TREATMENT OF CHINESE STUDENTS BY THE JAPANESE GOVERNMENT

I. Introduction

Following the Tiananmen Square military crackdown of June 4, 1989, countries all over the world implemented policies to protect Chinese students (including scholars and researchers) residing within their borders.

The Chinese government has treated those who participated in the pro-democracy movement without mercy, carrying out on the spot orders for arrest, detention and torture. It is clear that participants in pro-democracy activities in other countries will be met with the same fate upon returning to China.

Because of this potential for oppression, it is the duty of democratic states to protect those students who do not wish to return to their country by guaranteeing their basic freedom and human rights and preventing their forcible repatriation.

Nevertheless, there is one country which has not fulfilled its responsibility to them, although that country asserts it is observing democratic principles. The country is Japan.

According to Justice Ministry statistics, there are more Chinese students in Japan than in any other countries outside of China. At this time, the total number is 63,000.

Of the total, 15,000 are students of 4-year universities and 2-year technical colleges, and the remaining 48,000 are students of Japanese schools.

After the military crackdown, it is believed that among those Chinese students in Japan, at least one-third participated in the pro-democracy movement and protest activities. And, the Chinese Embassy in Japan has obtained information about their activities in pictures and videos and also through the use of "informers".

As for those students who participated in the pro-democracy movement and who would be subject to persecution in China, the Japanese government has refused to give them extensions on their visas, and, in addition, it has ordered pro-democracy student leaders back to China. The Japanese government is prepared to throw these Chinese dissidents "back to the lions", leaving them little hope for any optimistic outcome.

II. Promise made at the Paris Summit

Following the Tiananmen Square Incident, because of the oppressive measures, persecution and brutal violation of human rights by the Chinese government against pro-democracy participants, on July 15th, 1989, at the Paris Summit, a political declaration was prepared with regard to expatriate Chinese students. The seven participating countries (including Japan) made a universal agreement to "... extend the stays of those Chinese students who so desire."

According to this promise, each country has adopted policies to protect their Chinese students.

For example, in the United States, President Bush has implemented an executive order including the following: 1) for Chinese nationals and their families residing in the United States, procedures for their enforced departure from the country will be put off until January 1, 1994; 2) also with regard to Chinese citizens in the U.S., their freedom to depart from and re-enter into the country will be guaranteed; and 3) for those who have Chinese citizenship, their right to be employed will be ensured.

And in France, the government has announced, in order to assist its Chinese students, the following orders. These are 1) orders that the students' visas will be extended unconditionally; 2) orders to extend the period of receipt of scholarship for scholarship recipients; 3) orders to ensure that all Chinese students are able to make use of university cooperatives, and also to simplify the process of university registration; and 4) orders to quicken the application process for those requesting political asylum as well as the examination

process of this.

These measures are indispensable to guarantee the human rights of those Chinese students.

Japan is also signatory to the Paris Summit declaration to "extend the stays of those Chinese students who so desire...". However, there have been no measures implemented by Japan to protect her Chinese students. In addition, a high-ranking official of the Ministry of Justice has declared that the determination of whether or not to approve the extension of stays of Chinese students will be made on a case-by-case basis.

The promise made at the Paris Summit states that any student "who so desire[s]" will be granted an extension of stay. However, the policy indicated by the above-mentioned Ministry of Justice official is nothing more than a "case-by-case" screening, in other words, an admission that the Japanese government might not grant extensions of stay even if they are so desired by the Chinese students.

And beginning with this point, the Japanese government has broken its promise at the Paris summit.

The reality is even more severe. The Japanese government has not approved extensions of stay even for those who are having problems getting visa-extensions and who would be persecuted by Chinese authorities for their pro-democracy activities. In actuality, the Japanese government has not treated the granting of extensions of stay on a case-by-case basis, but rather it is continuing a policy of refusing them, even if they are "so desire[d]". The Japanese government officials have broken and are now completely ignoring their promise made at the 1989 Paris Summit.

III. Violation of International Law

By pressing for their return to China and refusing to take action to ease the students' fears of persecution, not only has the Japanese government broken its commitment to the Paris Summit, but it has also violated the International Covenant on Civil and Political Rights, as well as the 1951 Convention Relating to the Status of Refugees, both of which have been ratified by Japan.

In the International Covenant on Civil and Political Rights, article 7, "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," is prescribed. Nevertheless, for those Chinese students for whom there is great fear of persecution should they return to China, this Japanese refusal to approve their extensions of stay and its pressing for their return to China fall under the category of "inhuman treatment".

Furthermore, the 1951 Convention Relating to the Status of Refugees prescribes a refugee to be a person who, "...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and unable or, owing to such fear, is unwilling to avail himself of the protection of that country...". And, in the same convention, article number 33, paragraph 1, "[n]o Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." (the Principle of "Non refoulement") is prescribed.

However, the Japanese government, by refusing extensions of stay to those Chinese students who participated in the Chinese pro-democracy movement and whose lives and freedoms will be threatened should they return to China, is now violating this treaty on the protection of refugees.

IV. The situation for those Chinese students whose extensions of stay have not been approved

Chinese students who have given, as reason for their desire to remain in Japan, their fear of political persecution in China, fall into the following three (3) categories.

- 1) The student who has applied for extension of stay, but who has not received permission for that extension, and whose visa application is *shinseichū*, or "under examination". This student is in an extremely unstable situation as he does not know when he may receive a denial from the Immigration Bureau and be ordered to depart from the country.

Also, as those students do not have a "secure" status, they are, by law, actually banned from employment. Furthermore, many difficulties arise with regard to the continuation of their studies when under this status of *shinseichū*. School authorities refuse to accept any student who does not possess a "secure" certificate of residence to proceed with his or her entrance into the school.

- 2) The student whose application for extension of stay has been refused by Immigration authorities, and who has been ordered to return to China by an officially prescribed deadline. Such students have been denied residence in Japan, placing them in a dangerous situation.
- 3) The student who, due to official refusal to ex

tend his or her visa or other troubles with immigration authorities, has already overstayed his visa and is forced to remain in Japan illegally. This person is trapped into a serious situation as at any time he could lawfully be deported back to China, where persecution is awaiting him.

As for the members of the FDC, twenty-three (23) fall in the first category, one (1) into the second, and five (5) in the third.

According to a partial count based on a country-wide enquiry launched last July about the situation of Chinese students in Japan, there are at least eleven (11) students who had made public the details of their political activities, and who were ordered by the Immigration Bureau to leave the country despite their fears of persecution in China. Most of these students were able to stay in Japan because of the volunteer effort of a few interested lawyers. But there is at least one case of a Chinese student who was unable to obtain legal help and who is presently residing in Japan without a visa. Also, there are two cases of Chinese nationals who have already received deportation orders, despite their claims that they participated in the pro-democracy movement of May-June, 1989.

In addition, it is highly probable that there are many Chinese students who have been ordered to leave Japan but were unable to get legal help. While this cannot be estimated properly, if we consider the large numbers of Chinese students in Japan and the fact that about one-third did participate actively in the pro-democracy movement, the number of those who have been compelled to go back to China or who must stay illegally in Japan should be fairly high. If the present stand of the Japanese government remains unchecked, the number of those who may fall under the above three categories over the next six months may rise to at least one hundred.

Another obstacle to making an accurate count of the number of students who have political reasons for staying in Japan is that many students who are active in the pro-democracy movement disheartened by the Immigration Bureau, and its uncooperative attitude are very often reluctant to disclose their involvement in pro-democracy dissident activities when applying for visa-extensions.

For all Chinese students, whether or not they have participated in the pro-democracy movement, when their prescribed period of study has ended and they graduate from their educational programs, they will be forced to confront the reality of their visa-extensions being refused. For those who have participated in pro-democracy dissident activities, they must be faced with the decision of whether or not to plea for political asylum. And those who do will join the ranks of those who

face the dilemma described above.

V. Possibility that information about Chinese students is reaching Chinese authorities

For the student who has participated in the Chinese pro-democracy movement, when applying for approval of an extension of stay at the front counter of the Immigration Bureau, he must decide whether or not he will give details about his dissident activities and the reason for his fears of persecution should he return to China. Some students can receive visa-extensions just by claiming the need to continue their studies in Japan. However, in cases where this is refused, they must report that they cannot return to China for fear of the persecution that awaits them due to their involvement in the democracy movement.

For a student to prove that he would be persecuted upon returning to China, the student must explain in detail his pro-democracy activities. However, by making this public, he may endanger his family or put himself in a position to be persecuted by the Chinese public security authorities (*gong'anbu*) should his visa be refused, and he sent back to China.

In addition, there are suspicions from the students that if they report why they will face oppression upon returning to China, the contents of their reports will be leaked to the Chinese Embassy in Japan or the Chinese government in China.

VI. Japan's refusal to grant any request for visa-extension

Chinese students who request visa extensions in Japan and who have fears that they will face persecution upon returning to China must respond to requests by the Immigration Bureau that they report their history of involvement in pro-democracy activities. Regardless, however, all applications are eventually turned down. Even if they report that they will face a dangerous situation upon returning to China, and make known their previous pro-democracy activities, not a single one of these is granted. There is no question that this is an exceedingly unusual situation.

For example, a certain Chinese student studying at a Japanese language school in Japan who, in early 1989, had returned to China temporarily, happened to participate in the pro-democracy movement in Tiananmen Square. He helped by carrying the wounded students to hospitals. Immediately after that, he was arrested, but, managing to evade the interrogations by the Chinese Public Security Bureau, he was released and then escaped from China to Japan. When he contacted his family, he was told, "Of three (3) who participated with you in the Tiananmen Square

demonstrations, two (2) were sent to prison and the whereabouts of the other is unknown. You must not return home, or you will be arrested."

This student requested an extension of stay but was refused, and at present, is illegally residing in Japan. Because of his visa situation, the Japanese government is pressing for forced repatriation, and he is in an extremely anxious situation.

And even among the executive staff of the Japanese branch of The Federation for a Democratic China (FDC) there have recently been many cases of applications for visa-extension, being turned down by the Immigration Bureau. (The Federation for a Democratic China was established by Wu'er Kaixi and other pro-democracy activists and has its main office in Paris, France.)

The FDC has been criticized by The Peoples' Daily (the official Chinese government mouthpiece) as an anti-revolutionary body, and the Chinese Embassy has declared that members of the FDC will absolutely not be forgiven. If the members of this same organization are returned to China, it is clear that they will be treated inhumanely.

Thus, even the students who will most certainly be persecuted for their activities should they be returned to China have been refused extensions of stay and have been ordered to return to China.

VII. The Japanese government's refusal to approve applications for Recognition of Refugee Status

The attitude of the Japanese government, in which not a single visa-extension has been granted even for those students who will face persecution upon their return to China, is clearly reflected in the problem of official recognition of refugee status.

Following the Tiananmen Square Incident, fearing the consequences upon their return to China, five (5) Chinese nationals applied for official recognition of their political refugee status. However, not even one has been recognized as a political refugee.

Among those is included Zhang Zhenhai who, to flee political persecution in China, resorted to a desperate last attempt to escape by hijacking a China Air airliner to Japan. The Japanese government refused Zhang's application for recognition of political refugee status without even giving it a satisfactory examination. And while the court proceedings regarding his refugee status application case were still in progress, the Japanese government extradited him back to China.

In another case, the Immigration Bureau refused to

initiate legal procedures to examine an application from a Chinese dissident researcher for recognition of his refugee status. And accordingly, this student was not even given the chance to be examined for whether or not he might qualify for political refugee status.

And in yet another case, that of a 23-year old Chinese dissident who fled China by mixing with other boat people also from China, the day after she applied for political refugee status, an order for her compulsory deportation was put into force. At present she is being detained at the Immigration Bureau in order that she may be forcibly extradited to China.

The remaining two (2) are waiting for the results of the examination of their applications for political refugee status, but they have no reason to expect that they will be recognized as political refugees, given the current stance of the Justice Ministry.

There are two very important reasons why there are so few people who apply for recognition of refugee status, and they are 1) because of the time restriction with regard to when a person qualifies for recognition of refugee status; and 2) because of the recognition of the futility of applying and the difficulty of obtaining information regarding the process itself.

Regarding the first, Japanese law rules that applications for recognition of refugee status must be made within sixty (60) days after the applicant enters the country or knows he/she is in danger. Most Chinese students who were refused visa extensions and risked being returned to China met with this problem after the sixty (60) day limit.

With regard to the second, there is a general understanding among students that even if they apply for the recognition of refugee status the Japanese Government will not grant it.

When a Chinese dissident asks for a visa extension for fear of political persecution in China, Immigration Bureau officials will never inform him/her of the existence of such a procedure. And usually, by the time he/she has access to legal advice, the sixty (60) day limit has often already expired.

This is further promoted by the fact that Immigration Bureau officials try the most to prevent Chinese students from making such applications. There is even a case of someone to whom the Immigration Bureau refused to give the necessary application forms to ask for recognition of refugee status.

VIII. The attitude of Immigration officials toward the Chinese students

Immigration officials treat Chinese students in a to-

tally unacceptable manner. It is normal for the officials to act coercively, treating them in a threatening manner and using violent language, and then attempting to force them to go against their own "thought and creed". What follows is a sampling of some of the actual responses of the Immigration officials toward the Chinese students.

- 1) (... response to assertions by Chinese students that they will be executed upon returning to China...) "the Japanese government has nothing to do with whether or not you are executed. That is China's problem"
- 2) (...in response to the same plea given above...) "Just submit a letter of apology for your dissident activities to the Chinese government and you'll be fine."
- 3) (...in response to the student's plea to extend his or her visa in order to avoid the inevitable persecution upon returning to China...) "You are ruining friendly relations between Japan and China."
- 4) (...in response to the same plea...) "It is absolutely unacceptable for you to try to seek help from the Japanese government. Stop acting like such a baby."
- 5) (...and towards the same plea...) "Chinese Embassy officials have said that you will not be at a disadvantage just because you have participated in demonstrations. I got this directly from the source."
- 6) (...with regard to a Chinese student registered in a regional university...) "We know all about your political activities. How many members belong to the FDC branch in this area? Who's the FDC head of this region? What kind of activities do you carry on?"

(...when the student refused to answer...) "Your request for visa-renewal is going to be extremely difficult to accept. If we don't give you an approval of your request, what are you going to do?"

IX. The Japanese government's negligent behavior with regard to threatening acts made by Chinese officials against Chinese students in Japan

In addition to the threats by the Immigration Bureau, Chinese Embassy officials in Japan have been questioning the Chinese students about whether or not they support or participate in the Chinese pro-democracy movement, and are continuing in their manipulative activities to persuade students to withdraw from the movement.

It was recently disclosed by the Kyodo News Service that the Chinese Embassy in Tokyo has been dispatching its security officials to interrogate Chinese students at Kyoto, Nagoya and other national universities. As was reported by one Nagoya University student, embassy officials summoned pro-democracy students one-by-one to a hotel room where they stayed for several days, or to empty rooms at the dormitory of Nagoya University.

The students testified that the embassy officials demanded that they hand over donations given by Japanese citizens, which were to be sent to the bereaved families of the victims of the military crackdown at Tiananmen Square. The officials also demanded that the students give the names of active participants and leaders in the student pro-democracy movement. The interrogation session of one Chinese student at Nagoya University was secretly recorded and later made public through TV Asahi and AP news. He was told by his Chinese interrogator, "We will penalize those who stubbornly continue the protest movement against the Chinese government, and we will absolutely not forgive members of the Federation for Democracy in China."

Nagoya University, upon hearing of those activities, protested that the actions of the embassy officials violated university autonomy. Also, they declared those actions to be in violation of the students' constitutionally-guaranteed freedom of expression and freedom of conscience.

Chinese embassy officials pretended they went to Nagoya to help the students with their visa and study procedures, but admitted they had also dispatched officials to other universities.

The Japanese Ministry of Foreign Affairs was contacted after that incident became public and a high-ranking official there was quoted as saying that they had no intention of protesting those actions of the Chinese Embassy. The Japanese government's lack of reaction can only aggravate the infringements upon Chinese students' human rights.

X. Background to the Japanese government's inhumane treatment of Chinese dissident students

The Japanese government has refused visa extensions to Chinese dissident students who have voiced fears that they will be persecuted if sent back to China. And, it has ordered those students back to China, and in addition, it has refused political refuge to the few students who have risked exposing themselves as dissidents.

What has motivated the Japanese government to take such an inhumane stand towards Chinese dissident stu-

dents in Japan is, first, its tendency to give precedence to immediate economic pursuits over humanitarian concerns. Pressured by international condemnation of the Tiananmen Square military crackdown, Japan initially froze its already-promised economic assistance to China, an action which was not-welcomed by its business community and political leaders.

The Japanese government is keen on normalizing its economic relations with China in order to profit from Chinese economic expansion. According to the Chinese students, the Japanese government wants to eliminate any factor, including the pro-democracy dissidents, which might be an obstacle to this normalization of economic relations with China.

Secondly, the Japanese government regards China's treatment of those students as an internal Chinese political matter. It is not to be a concern of the Japanese government. And even though, more and more voices can be heard expressing anxiety about the refusal of visa-extensions to Chinese pro-democracy activists, and pressing the Japanese government for greater consideration of human rights with regard to Chinese students (including members of the Japanese Diet, Japanese bar associations, human rights groups, workers unions and so on). Until this time, no interest can be seen within the government to seek an adequate solution by concrete and immediate measures.

The Japanese government declared before the Houston Summit in June of this year that it supported democratization in Asia. However, if we turn to a list of Japanese government policy options, there is clearly a strong position for "pursuits of trade and investment profits", but, there does not appear to be any policy emphasizing the protection of human rights.

XI. What we are seeking

Chinese students in Japan have been forced into a dangerous position by the Japanese government. Those students who fear persecution by the Chinese government should they go back absolutely must not be returned to China.

However, considering the possibility that information submitted by Chinese students might reach the ears of the Chinese government, there is a great fear that forcing the student to explain the reason why he will be persecuted and to substantiate this with evidence will place their families still in China and themselves in a dangerous position.

And thus, it will be essential to assure those Chinese students long-term extensions of their visas in Japan "for those who so desire"— without requiring an explanation of their reasons.

In order to help Chinese students in Japan, we are requesting the following:

- 1) It is our deepest desire that each government of the six (6) other signatories to the July 1989 Paris Summit Political Declarations, that is to say the United States, England, Canada, France, West Germany and Italy, will require the Japanese government to respect the commitment it made to "...extend the stays of those Chinese students who so desire."
- 2) It is our deepest desire also that this Sub-commission and each Non-Governmental Organization (NGO) concerned will take an interest in the serious situation facing Chinese students in Japan and will have a deep concern for guaranteeing their human rights.
- 3) We ask the Japanese government to take measures similar to those taken for example by the American and the French government to protect Chinese students. Those measures should include the following:
 - a) To extend the stays of those Chinese students who so desire, and give them some kind of secure status, without requesting that they detail their reasons, or whether or not they hold a valid passport. No Chinese student should be returned to China against his/her will until international human rights organizations, such as Amnesty International and Asia Watch, have verified that pro-democracy activists will be safe there, and until all pro-democracy activists presently detained are released.
 - b) That the Japanese government, in order to ensure that Chinese students in Japan are able to support a normal lifestyle, will expand the scholarship system, and will ensure employment opportunities to the extent necessary for normal living expenses.
- 4) We sincerely hope that every NGO will send a delegation to Japan in order to investigate this grave situation facing Chinese students in Japan.