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FALUN GONG: AN ANALYSIS OF CHINA'S NATIONAL SECURITY CONCERNS

Kelly A. Thomas

Abstract: The Chinese government's brutal crackdown on the Falun Gong spiritual movement stands in marked contrast to its recent acknowledgement of its need to improve its human rights record and repeated avowals to take the legal steps necessary to conform with international human rights treaties. China's leadership has attempted to justify the crackdown, citing both historical reasons and national security concerns. Analysis of China's history demonstrates that repression of anti-government groups has only hardened their resistance. Similarly, the campaign against Falun Gong has failed to stop protests staged by the group's followers. In fact, Falun Gong's expressions of dissent have become increasingly defiant. The Chinese government's policy of repression undermines true national security. Lifting the ban will help the Chinese government achieve its stated goals of protecting both China's national security and the human rights of its citizens.

I. INTRODUCTION

Since July 1999, the Chinese government has waged an unrelenting battle against Falun Gong,¹ a quasi-religious movement that blends Buddhist and Taoist beliefs with the practice of qigong.² The Chinese government has banned the group,³ accusing group leaders of conspiring with overseas "pro-democratic" and "anti-China" forces⁴ to overthrow the Chinese

¹ The group is also known as "Falun Dafa." See Falun Dafa, *A Brief Introduction*, at http://www.falundafa.org/eng/index_en.htm (last visited Feb. 4, 2001).

² Seth Faison, *Subversion Trials Due for Leaders of Sect in China*, N.Y. TIMES, Aug. 25, 1999, at A1. Qigong is a traditional Chinese teaching that incorporates a broad range of healing techniques, martial arts, and meditation. See generally LI HONGZHI, *FALUN GONG* (1999), at http://www.falundafa.org/eng/index_en.htm (last visited Feb. 4, 2001).

³ James Miles, *China Media Attacks Falun Gong*, BBC NEWS: ASIA-PACIFIC, July 23, 1999, available at http://www.bbc.co.uk/hi/english/world/asia-pacific/newsid_401000/401678.stm.

⁴ Falun Gong founder Li Hongzhi moved to New York City in 1997, reportedly under pressure from Chinese authorities to restrict his activities. Seth Faison, *Cult's Followers Rally in Beijing*, N.Y. TIMES, Apr. 26, 1999, at A1, col. 3. China issued a warrant for Li's arrest in July 1999 and offered a reward of more than fifty thousand renminbi (about U.S. \$10,000) for information leading to his arrest. See *Wanted Order Issued by the Ministry of Public Security of the People's Republic of China*, PEOPLE'S DAILY, July 30, 1999, at 1, translated in 32 CHINESE L. & GOV'T 33 (1999); *Beijing Posts Reward for Arrest of Li Hongzhi*, WORLD J., Aug. 4, 1999, at 1, translated in 32 CHINESE L. & GOV'T 37 (1999). Interpol rejected China's request for help in apprehending Li, saying the request was politically motivated. Peter Carlson, *For Whom the Gong Tolls: Who's Behind the Biggest Threat to Chinese Rulers Since Tiananmen? An Elusive Mystery Man Who Teaches Calisthenic-Like Exercises to Old Ladies in Tennis Shoes, and Appears to be in Hiding Somewhere in the American Southwest. Unless He's in Queens.*, WASH. POST., Feb. 27, 2000, 2000 WL 2287861. The United States also turned down China's request for Li's arrest and extradition, and invited the Chinese instead "to stop what the outside world perceived as an obvious

government.⁵ The government-sponsored attack on Falun Gong has been marked by arbitrary arrests and detentions, torture, custodial deaths, show trials resulting in lengthy prison sentences,⁶ and government-imposed psychiatric commitments.⁷ In spite of its severity, the crackdown has failed to stop the near-daily protests staged by Falun Gong followers demanding official recognition as a religion.⁸

In the midst of this violent campaign against Falun Gong,⁹ China signed a United Nations ("U.N.") agreement on technical cooperation designed to help the Chinese government comply with international human rights treaties to which China is a signatory.¹⁰ However, this pledge was coupled with the caveat that China would develop only those rights that suited its historic situation.¹¹ Significantly, this caveat provides some explanation for the apparent contradiction between the Chinese government's pledge to cooperate with the U.N. in protecting human rights and the ongoing assault against Falun Gong followers. For nearly 2,000 years, Chinese rulers have suppressed "superstitious sects, secret societies, and evil religious organizations"¹² in an effort to prevent them from serving

instance of religious persecution." Massimo Introvigne, *Center for Studies on New Religions: Falun Gong 101*, at <http://www.cesnur.org/testi/falung101.htm> (last visited Oct. 28, 2000).

⁵ *Paper Calls for Educating Falun Gong Followers*, XINHUA NEWS AGENCY, Jan. 9, 2001, LEXIS, All Sources, Country Reports, China Country Files. According to a commentary in the *People's Daily*, Falun Gong founder Li Hongzhi's "anti-government face has been exposed, especially when he went abroad to collaborate with overseas pro-democracy elements, pro-Taiwan-independence elements, and anti-China forces in the West." *Id.* Xinhua is China's official government news agency; however, in practice it is under the dual leadership of both the Communist Party and the government. YUEZHI ZHAO, *MEDIA, MARKET, AND DEMOCRACY IN CHINA: BETWEEN THE PARTY LINE AND THE BOTTOM LINE* 22 (1998). It is a department under the China's cabinet (the State Council), but relies on instructions from the Party bureaucracy, including the central Propaganda Department, for its daily operations. *Id.* The *People's Daily* is the Chinese Communist Party's official newspaper. *Id.* at 18.

⁶ See *infra* note 67 and accompanying text.

⁷ Amnesty Int'l, *Torture—A Growing Scourge in China—Time for Action*, available at <http://www.amnesty.org> (last visited Feb. 20, 2001). See *infra* Part II.C. See Robin Munro, *Judicial Psychiatry in China and Its Political Abuses*, 14 COLUM. J. ASIAN L. 1 (2000), for a detailed study on government-imposed psychiatric commitments.

⁸ *World: In Brief*, WASH. POST, Jan. 12, 2001, LEXIS, News File. In China, religious organizations may not be established without approval from the Religious Affairs Department of the People's Government. See *Registration Procedures for Venues for Religious Activities* (May 1, 1994), translated in <http://www.qis.net/chinalaw/prclaw111.htm> (last modified May 1, 1998).

⁹ According to Amnesty International, 1999 has seen "the most serious and wide-ranging crackdown on peaceful dissent in China" since the 1989 Tiananmen Square democracy movement. Amnesty Int'l, *Amnesty International Report 2000: China Including Hong Kong and Macao* (2000), available at <http://www.amnesty.org>.

¹⁰ Robert J. Siaget, *U.N. Signs Human Rights Agreement with China, but Cites Violations*, AGENCE-FRANCE PRESSE, Nov. 20, 2000, LEXIS, News File.

¹¹ *Id.*

¹² See *Zhonghua Renmin Gongheguo Xingfa* [Criminal Law of the People's Republic of China] (adopted by the Second Session of the Fifth National People's Congress, July 1, 1979, amended by the Fifth

as organizational focal points for widespread dissatisfaction with government policies.¹³ Such secret religious societies have frequently played a significant role in popular anti-government rebellions, particularly during times of economic turmoil. However, China's long history of suppression of such groups failed to eradicate them. To the contrary, as the crackdown against Falun Gong demonstrates, suppression only hardened their resistance.¹⁴

China's crackdown against Falun Gong has not only failed to eradicate the group or stop its public protests, but threatens to produce the very instability and chaos that the government intended to prevent. This Comment examines the Chinese government's campaign against Falun Gong and why it has been ineffective. Part II provides background on Falun Gong, and describes the events precipitating the crackdown and the manner in which it has been executed. Part III provides an historical overview of Chinese secret societies and the government's attempts to suppress them. Part IV explains why China's history provides no justification for the ban and subsequent crackdown against Falun Gong. Part V analyzes to what extent China's laws governing the ban are implicated under the international human rights treaties to which China is a signatory. Finally, part VI concludes that China's leadership should lift its ban against Falun Gong not only to defuse the increasing tensions between the group's followers and the government, but also to reduce the potential for the movement to become an organizational focal point of widespread discontent.

Session of the Eighth National People's Congress, Mar. 14, 1997) art. 300 (P.R.C.), translated in <http://www.qis.net/chinalaw/prclaw60.htm> [hereinafter CL].

¹³ China's transition from command economy to market economy has resulted in a growing gap between rich and poor due to widespread unemployment with little unemployment insurance and the disappearance of the social welfare network formerly provided by the government. JOHN KING FAIRBANK & MERLE GOLDMAN, CHINA: A NEW HISTORY 434-37 (1998). In 1997, typical top earners were managers in private and foreign-joint ventures, while families of the unemployed, retired, and transient were at the bottom. *Id.* at 436. But women and the elderly have suffered the most under China's economic reforms. *Id.* Rampant consumerism among the newly rich has fueled a deep sense of dissatisfaction and alienation among those unable to keep up. *Id.* See also Barry Naughton, *The Chinese Economy: Fifty Years Into the Transition*, in CHINA BRIEFING 2000: THE CONTINUING TRANSFORMATION 49-50 (Tyrene White ed., 2000). While most social groups gained economic ground in the 1980s, the privatization of China's state-owned enterprises resulted in massive unemployment during the 1990s. *Id.* at 50. According to the author, "If any stage of China's economic transition is likely to provoke mass discontent, this is it." *Id.*

¹⁴ Norman MacKenzie, *Introduction* to SECRET SOCIETIES 11, 19 (Norman MacKenzie ed., 1967) ("When we look at a secret group under pressure, we see that its members may choose to die rather than to break the bonds that have united them."). See *infra* Part III.

II. THE CHINESE GOVERNMENT'S BATTLE AGAINST FALUN GONG

A. *Background on the Falun Gong Movement*

Li Hongzhi founded the Falun Gong movement in 1992.¹⁵ Falun Gong is essentially a spiritual movement based loosely on Buddhism, Taoism, and Chinese qigong.¹⁶ Li teaches that human energy can be channeled to achieve supernatural powers by performing certain meditative, slow-motion exercises.¹⁷ The movement's guiding principles are "truthfulness, benevolence and forbearance," and practitioners are encouraged to "give up various bad habits and attachments like anger, anxiety, jealousy and the desire for personal fame and gain" as a means of improving "family harmony, co-operation at work and safety in neighborhoods."¹⁸ The movement has millions of followers in China,¹⁹ composed mostly of retired government officials, middle-aged women, and students, who gather "regularly in public parks to practice their mystical exercises."²⁰ The Falun Gong movement appears to be organized primarily through its three official websites.²¹ The movement recommends a nine-day introduction course and frequent contacts with local practice groups, but anyone can start practicing Falun Gong by following the instructions from one of the many books, cassettes, and websites available in a variety of languages.²²

In spite of Falun Gong's apparently benign nature, the Chinese government has condemned the group as a cult that "plots to create

¹⁵ Faison, *supra* note 2.

¹⁶ *Id.*

¹⁷ See LI HONGZHI, *supra* note 2.

¹⁸ *Id.*

¹⁹ As a result of the crackdown, the number of Falun Gong followers is impossible to estimate. Craig S. Smith, *Banned Chinese Sect is Spurred On By Exiled Leader*, N.Y. TIMES, Jan. 5, 2001, at A4. The Chinese government uses a figure of two million—down from the twenty million estimated prior to the crackdown, while Falun Gong's founder, Li Hongzhi, claims 100 million, most of them in China. *Id.*

²⁰ Erik Eckholm, *A Quiet Roar: China's Leadership Feels Threatened by a Sect Seeking Peace*, N.Y. TIMES, Nov. 4, 1999, at A10. Followers commonly meet at public parks, libraries, hospitals, or community centers to exercise, study and discuss Falun Gong's teachings. Falun Dafa, *Learning Falun Dafa*, at <http://www.falundafa.org/eng/start.htm> (last visited Jan. 1, 2001).

²¹ Falun Gong's main website is Clearwisdom.net, which posts messages from the group's founder Li Hongzhi. FalunDafa.org is an introductory site for people interested in practicing the Falun Gong meditation and exercise techniques. This site describes the basic exercises, provides information on practice sites, and offers books and tapes. FalunInfo.org is a website that provides news and information on the Chinese government's ongoing efforts to eradicate the group.

²² See Falun Dafa, *supra* note 20.

ideological chaos among the people in an attempt to topple the leadership of the CPC [Communist Party of China] and the Chinese government."²³

B. Events Precipitating the Crackdown

Although it is unclear when the Chinese government initially became aware of the Falun Gong movement, the first major confrontation between Falun Gong followers and the government occurred on April 25, 1999, when ten thousand of the movement's followers appeared without warning outside Zhongnanhai, the Chinese leadership compound in Beijing.²⁴ Falun Gong followers were protesting a recent academic journal article, warning of the dangers posed by cults in China.²⁵ During the demonstration, protestors "stayed motionless, calm and seated on the sidewalk while organizers communicated by mobile telephones."²⁶ To find out what was going on, Zhu Rongji, China's Prime Minister, sent a message to the gate of Zhongnanhai.²⁷ In response, five followers of the Falun Gong met with Zhu, at least three of whom "were reportedly very high-ranking, albeit retired, [government] officials, including one retired major general who had worked in the military intelligence section of the People's Liberation Army's General Staff Department."²⁸ After presenting their case, the protestors quietly returned to their homes.²⁹ Although the Chinese leadership must have been alarmed by the failure of its intelligence service to prevent the demonstration,³⁰ it made no arrests and characterized the sit-in as merely "wrongful conduct."³¹

²³ *Paper Calls for Educating Falun Gong Followers*, *supra* note 5.

²⁴ Joseph Fewsmith, *Historical Echoes and Chinese Politics: Can China Leave the Twentieth Century Behind?*, in CHINA BRIEFING 2000: THE CONTINUING TRANSFORMATION 11, 42 (Tyrene White ed., 2000). Under Chinese law, all assemblies, processions and demonstrations must be preauthorized from the appropriate government officials. See Regulations for the Implementation of the Law of Assembly, Procession and Demonstration of the People's Republic of China (June 1992) (P.R.C.), translated in <http://www.qis.net/chinalaw/prclaw113.htm> (last modified May 1, 1998).

²⁵ *Urgent Life and Times of Li Hongzhi*, XINHUA NEWS AGENCY, July 22, 1999, LEXIS, All Sources, Country Reports, China Country Files. On April 19, 1999, Professor He Zuoxiu, of the Chinese Academy of Sciences, published an article criticizing Falun Gong in a Tianjin Normal University magazine, and on April 23, 1999, more than 6300 Falun Gong practitioners staged a silent sit-in at the university in protest. *Id.* For the original article, see He Zuoxiu, *I Do Not Approve of Teenagers Practicing Qigong*, TEENAGER SCI. & TECH. OUTLOOK, Apr. 19, 1999, translated in 32 CHINESE L. & GOV'T 95 (1999).

²⁶ Faison, *supra* note 4.

²⁷ Fewsmith, *supra* note 24, at 42.

²⁸ *Id.*

²⁹ Falun Dafa, *Answers to Commonly Asked Questions*, at <http://www.falundafa.org/eng/faq.htm> (last visited Sept. 6, 2000).

³⁰ Introvigne, *supra* note 4.

³¹ *One Falling Leaf Heralds Autumn*, INSIDE CHINA MAINLAND, July 1, 1999, LEXIS, All Sources, Country Reports, China Country Files.

C. *The Crackdown*

In spite of its initial restraint, the Chinese leadership clearly viewed Falun Gong as a serious threat and ultimately responded with a comprehensive strategy aimed at crushing the group. The primary attack against Falun Gong has been through the legal system. The government passed various pieces of legislation in order to formally justify suppression of the group's followers. The government has also launched a massive propaganda campaign aimed at winning public approval for the ongoing crusade. Finally, the government has waged a technological assault against the group's communications network.

1. *The Legal Attack Against Falun Gong*

In its assault against Falun Gong, the Chinese leadership has used the legal system as its primary instrument of repression. The transformation of what is perceived to be a major political struggle into a legally justified assault is demonstrated by the involvement of the government's major law-making institutions.³² Although laws and regulations arguably criminalizing groups like Falun Gong existed prior to the government's crackdown,³³ the battle lines were clearly drawn with the promulgation of various pieces of special legislation specifically targeting Falun Gong.³⁴ While the 1997 Criminal Law code provided the framework for the government's attack on Falun Gong, China's major law-making institutions—the State Council, the Supreme People's Court ("SPC"), and the National People's Congress ("NPC")—provided the substance by way of administrative notices and

³² Control of the legislative process is an essential aspect of the Communist Party's role as leader of state and society; however, there are few accounts detailing how its policies are transformed into legislation. Perry Keller, *Legislation in the People's Republic of China*, 23 U.B.C. L. REV. 653, 660 (1989).

³³ These include administrative regulations for registering mass organizations, holding demonstrations, and delineating administrative penalties for disturbing public order, as well as the Criminal Law code provisions punishing "serious" regulatory violations in addition to prohibiting the organization of "superstitious sects, secret societies, or heretical organizations." See *Laws Exist for the Banning of Falun Gong*, LEGAL SYS. DAILY, July 25, 1999, translated in 32 CHINESE L. & GOV'T 43 (1999).

³⁴ The Criminal Law is as much a political text as a legal one; its drafters were concerned with providing a legal basis for state action, with little thought directed to due process. Donald C. Clarke & James V. Feinerman, *Antagonistic Contradiction: Criminal Law and Human Rights in China*, 141 CHINA Q. 138 (1995). Therefore, it primarily lists various crimes and their punishments without providing much in the way of specific definition. *Id.* at 137. Crimes are defined by means of special legislation that either specifically criminalizes a certain act or prohibits an act and provides vaguely that "where it constitutes a crime, criminal responsibility will be affixed," without providing any guidance as to under what circumstances the performance of a prohibited act would constitute a crime. *Id.* at 138.

regulations, judicial interpretations, and legislative decisions, all of which have the force of law.³⁵

The first signs of an impending crackdown came shortly after the April 24, 1999 demonstration outside Zhongnanhai, when two State Council ministries declared Falun Gong illegal and banned all of the group's activities. On April 28, the official press, Xinhua News Agency,³⁶ observed, "[t]he threatening of social stability in the name of practice of a discipline should be dealt with according to law."³⁷ On July 22, 1999, following three days of protests involving 30,000 followers of Falun Gong, in dozens of cities across China, China's Ministry of Civil Affairs announced a ban on Falun Gong in *People's Daily* (*Renmin Ribao*), the Communist Party's official newspaper.³⁸ The Ministry of Civil Affairs accused the group of engaging in "illegal activities" including propagating "superstition," inciting and creating "disturbances," and disrupting "public security."³⁹ China's Ministry of Public Security simultaneously issued a ban on all Falun Gong activities.⁴⁰ The ban prohibited assembly for meetings, the posting of signs, images, or logos, and the circulation of books, audio, and visual material, as well as "other propaganda."⁴¹ Followers were prohibited from gathering and demonstrating (including sitting demonstrations), spreading rumors that would disturb social order, and organizing activities in resistance of the government.⁴² Any violation of these rules would lead to either criminal charges or administrative punishment, depending on the severity of the violation.⁴³ Criminal sanctions are imposed formally by the courts, while administrative sanctions are imposed directly by the police.⁴⁴

³⁵ See CL, *supra* note 12; Keller, *supra* note 32, at 662 (NPC legislative decisions), 667 (SPC judicial interpretations), 669-70 (administrative notices and regulations).

³⁶ See ZHAO, *supra* note 5.

³⁷ *One Falling Leaf Heralds Autumn*, *supra* note 31. "Those familiar with CCP [Chinese Communist Party] locution are of course aware that such statements portend a crackdown." *Id.* The much-used phrase "punished according to law" means "punished according to proper legal procedure" but given a "formal punishment under the Criminal Law, not an administrative sanction." Clarke & Feinerman, *supra* note 34, at 136.

³⁸ ZHAO, *supra* note 5, at 18.

³⁹ Decision of the Ministry of Civil Affairs of the People's Republic of China Concerning the Banning of the Research Society of Falun Dafa [hereinafter MCA Ban], in *Two Documents Concerning the Banning of the Research Society of Falun Dafa*, PEOPLE'S DAILY, July 22, 1999, translated in 32 CHINESE L. & GOV'T 31 (1999).

⁴⁰ Notice of the Ministry of Public Security of the People's Republic of China, in *Two Documents Concerning the Banning of the Research Society of Falun Dafa*, *supra* note 39.

⁴¹ MCA Ban, *supra* note 39.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Donald C. Clarke, Note, *Concepts of Law in the Chinese Anti-Crime Campaign*, 98 HARV. L. REV. 1890, 1899 (1985).

The ministerial ban merely formalized a crackdown that had already begun. By July 23, 1999, at least ninety-seven Falun Gong leaders and thousands of practitioners, many of them elderly women gathering for morning exercises, were detained in cities across northeast China, Shanghai, and Guangzhou.⁴⁵ They were taken to public stadiums for “education” sessions where some were beaten with electric batons before being released.⁴⁶

In spite of mass arrests and detentions over the ensuing months, the ministerial ban failed to halt Falun Gong protests, so the Supreme People’s Court began preparing for criminal trials,⁴⁷ issuing detailed explanations (“SPC Explanations”) of the relevant criminal laws to be used in prosecuting Falun Gong leaders.⁴⁸ Shortly thereafter, China’s top legislative body formally declared war against Falun Gong. On October 30, 1999, the Standing Committee of the National People’s Congress issued a lengthy interpretation (“NPC Decision”)⁴⁹ of existing provisions contained in Article 300 of the 1997 Criminal Law banning “heretical cult organizations.”⁵⁰ The maximum penalty under Article 300 is life imprisonment.⁵¹ The NPC Decision emphasized that group leaders should be treated more harshly than ordinary practitioners.⁵² By making an example of the “leaders,” the Chinese government tried to create a climate of fear and intimidation, thereby decreasing popular support for the group.⁵³ The NPC Decision called on the courts, prosecutors, police, and administrative bodies to

⁴⁵ Amnesty Int’l, *Falungong Movement Detentions: Alienating and Potentially Destabilizing*, available at <http://www.amnesty.org> (last visited Feb. 4, 2001).

⁴⁶ *Id.*

⁴⁷ Criminal sanctions are generally more severe than administrative sanctions. Clarke, *supra* note 44. Policy dictates what type of anti-social behavior is serious enough to warrant sanctions under the often elastic provisions of the Criminal Law. *Id.*

⁴⁸ Explanations of the Supreme People’s Court and Supreme People’s Procuratorate Concerning Laws Applicable to Handling Cases of Organizing and Employing Heretical Cult Organizations to Commit Crimes (adopted at the 1079th Meeting of the Judicial Committee of the Supreme People’s Court, Oct. 9, 1999, and at the 47th Meeting of the Ninth Procuratorial Committee of the Supreme People’s Procuratorate, Oct. 8, 1999) (P.R.C.), References/Laws & Regulations, at <http://www.chinaonline.com> [hereinafter Explanations].

⁴⁹ Decision of the Standing Committee of the National People’s Congress on Banning Heretical Cult Organizations, and Preventing and Punishing Cult Activities (adopted at the 12th Session of the Standing Committee of the Ninth People’s Congress, Oct. 30, 1999) (P.R.C.), References/Laws & Regulations, at <http://www.chinaonline.com> [hereinafter NPC Decision].

⁵⁰ See CL, *supra* note 12.

⁵¹ *Id.*

⁵² See NPC Decision, *supra* note 49.

⁵³ Sophia Woodman & Yu Ping, “Killing the Chicken to Frighten the Monkeys”: *The Use of State Security in the Control of Freedom of Expression in China*, in *SECRECY AND LIBERTY: NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION* 223, 225-26 (Sandra Coliver et al. eds., 1999).

prevent and punish cult activities "in accordance with law."⁵⁴ According to the NPC Decision, "heretical cults, operating under the guise of religion, qigong or other forms" that "disturbed social order" or "jeopardized economic development" were banned "according to law" and should be punished "resolutely."⁵⁵

The government's assault against Falun Gong intensified after the promulgation of the NPC Decision.⁵⁶ By late October, more than 3,000 people were detained in Beijing, most of them in the public setting of Tiananmen Square.⁵⁷ Official sources reported that by November 4, 1999, over a hundred Falun Gong followers had been charged with crimes, but dozens more were subsequently charged.⁵⁸ Hundreds of other Falun Gong practitioners were reportedly sent to "re-education through labor" camps without charge or trial.⁵⁹

2. *The Chinese Government's Propaganda Campaign Against Falun Gong*

The Chinese government has launched a massive propaganda campaign⁶⁰ against Falun Gong in an effort to win public approval for its ongoing crusade against the group.⁶¹ Since the ban in July 1999, the official Chinese media has issued a constant barrage of criticism against Falun Gong.⁶² State-run television and radio frequently repeat the government prohibition against participating in Falun Gong protests.⁶³ Indeed, the propaganda campaign has occasionally dominated the entire news hour⁶⁴

⁵⁴ NPC Decision, *supra* note 49.

⁵⁵ *Id.*

⁵⁶ Amnesty Int'l, *supra* note 9.

⁵⁷ Eckholm, *supra* note 20.

⁵⁸ Amnesty Int'l, *supra* note 9.

⁵⁹ *Id.* Chinese law provides for criminal and administrative punishments. See Clarke, *supra* note 44, at 1899-900. "Reform through labor" is a criminal punishment administered by the courts and carries a minimum sentence of six months. Clarke & Feinerman, *supra* note 34, at 142. "Re-education through labor" ("RETL") is an administrative punishment administered by the police. *Id.* at 141-42. Persons can spend up to four years in RETL and, under certain circumstances, an RETL sentence can result in internal exile for life. *Id.* at 142-43. RETL sentences are subject to almost no oversight or review. *Id.*

⁶⁰ ZHAO, *supra* note 5, at 26. The Chinese government uses media propaganda to transmit social and political values in an attempt to persuade people about the correctness of a policy in the hope of affecting their thinking, emotions, and behavior. *Id.*

⁶¹ Miles, *supra* note 3. See also Phil Cunningham, *Falungong Crackdown—Invisible Arrests of Invisible Protestors in Tiananmen Square*, PAC. NEWS SERV.: PAC. PULSE, Nov. 3, 1999, at <http://www.pacificnews.org/jinn/stories/5.22/991103-square.html>.

⁶² Miles, *supra* note 3.

⁶³ *Id.*

⁶⁴ Cunningham, *supra* note 61.

with viewers frequently subjected to pictures of mutilated corpses (allegedly Falun Gong-inspired suicides), tearful denunciations, and dramatic accounts of mental disturbances blamed on the group.⁶⁵ The *People's Daily* has given saturation coverage to its justification of the ban against Falun Gong, describing the campaign as “a serious struggle that would have a bearing on the future of the Communist Party and the state.”⁶⁶

In an effort to deter further Falun Gong protests, as well as to punish individuals, “key members” were given show trials where they were convicted and sentenced to as much as eighteen years in prison.⁶⁷ The first publicly reported trial took place in Hainan Province in November 1999.⁶⁸ Four of the group’s “key members” were convicted by the Intermediate People’s Court in Haikou for organizing “illegal” gatherings of Falun Gong cult members and going to other cities to “spread the Falun Gong cult doctrine,”⁶⁹ receiving prison sentences ranging from two to thirteen years.⁷⁰ In December 1999, four more “principal organizers” were convicted by Beijing’s No. 1 Intermediate People’s Court with sentences ranging from sixteen to eighteen years—among the harshest given to political or religious dissenters in over a decade.⁷¹ The defendants were all Communist Party members and influential in government and business, underscoring Falun Gong’s reach and the government’s difficulties in suppressing the movement.⁷²

⁶⁵ *Id.*

⁶⁶ Miles, *supra* note 3.

⁶⁷ In criminal cases, guilt or innocence is determined prior to trial. Clarke & Feinerman, *supra* note 34. If there were any doubt about the guilt of the suspect, the trial would not take place, as trials are mainly propaganda efforts, intended to deter others from engaging in the proscribed activity. *Id.* According to Amnesty International, the convictions of alleged Falun Gong leaders were a foregone conclusion as the law was used retroactively to secure convictions and defense lawyers were prevented from pleading not guilty. Amnesty Int’l, *China’s Clamp Down on “Heretical Organizations”* (Mar. 22, 2000), at <http://www.amnesty.org>.

⁶⁸ *Imprisonment for Four Falun Gong Cult Members*, XINHUA NEWS AGENCY, Nov. 12, 1999, LEXIS, All Sources, Country Reports, China Country Files. The four Falun Gong members convicted were Song Yuesheng, Chen Yuan, Jiang Shilong, and Liang Yulin. *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Sect Four Get Jail Terms of Up to 18 Years*, HONG KONG STANDARD, Dec. 27, 1999, LEXIS, All Sources, Country Reports, China Country Files. The four Falun Gong members convicted were Li Chang, Wang Zhiwen, Ji Liewu, and Yao Jie. *Id.*

⁷² *Id.*

3. *Attack on Falun Gong's Communications Network*

Chinese authorities have also attempted to dismantle Falun Gong's organization by shutting down its communications network.⁷³ Early in the crackdown, Chinese authorities managed to block access to Falun Gong's website,⁷⁴ and the Ministry of Public Security issued a public notice prohibiting dissemination of information regarding the group.⁷⁵ In August 1999, shortly after the group was banned, the Canadian press reported that two government-funded academic institutions in China were behind the hacking of two Canadian Internet service providers because they were hosting Falun Gong websites.⁷⁶ However, the Chinese government has not been able to completely block access to Falun Gong websites, and Falun Gong activists abroad continue to reach people inside China via an ever-expanding network of Internet sites that are able to circumvent the Chinese government's efforts.⁷⁷

D. *The Chinese Government's Failure to Quiet Falun Gong*

In spite of the government's relentless efforts to crush Falun Gong and periodic claims of victory over the movement, the crackdown has failed. In July 2000, the official press reported that "Falun Gong has come to the end of its tether and is putting up a deathbed struggle."⁷⁸ The next month the government claimed that ninety-eight percent of Falun Gong followers had been converted to "normal" life after "persuasion and education" and that it had been necessary to prosecute only a "tiny fraction" of Falun Gong practitioners.⁷⁹ However, in spite of the government's proclamations of victory, Falun Gong protests continue unabated. Nearly 1,000 protesters

⁷³ Hans Lombardo, *China Sect Crackdown Hits Web*, INTERNET.COM, ASIA INTERNETNEWS, July 26, 1999, at <http://asia.internet.com/1999/7/2605-sect.html>.

⁷⁴ *Id.* See also *China Fetes Falun Gong Day with Slow Bandwidth*, CHINAONLINE, May 15, 2000, at <http://www.chinaonline.com>.

⁷⁵ *China Prohibits Pro-Falun Gong Activities*, XINHUA NEWS AGENCY, July 22, 1999, LEXIS, All Sources, Country Reports, China Country Files.

⁷⁶ *China Engages in Cyberwar, Say Canadian ISPs*, INTERNET.COM, ASIA RUMBLINGS, Aug. 2, 1999, at <http://asia.internet.com/Rumblings/0801.html>. The hackers penetrated the systems and flooded the servers with incomplete data requests. *Id.*

⁷⁷ Further, the overseas Falun Gong group tried to send daily Chinese-language broadcasts into China, but they were jammed shortly after they started. Craig S. Smith, *Persistent Protestors From Banned Sect Keep Beijing Police on Edge*, N.Y. TIMES, July 21, 2000, at A3.

⁷⁸ *Xinhua Hails Decisive Victories in Anti-Falun Gong Drive*, XINHUA ENGLISH NEWSWIRE, July 21, 2000, 2000 WL 24852321.

⁷⁹ *China Convicts 151 Falun Gong-Related Criminals*, XINHUA ENGLISH NEWSWIRE, Aug. 23, 2000, 2000 WL 25637011.

gathered in Tiananmen Square on October 1, 2000, China's National Day,⁸⁰ and in the two weeks prior to National Day, over 600 Falun Gong followers attempting to enter Beijing were detained by police in nearby provinces.⁸¹ Many of the protestors who reached the square, mostly women, were kicked, punched, and pushed into buses by police.⁸² The scene was repeated a few days later when officers pummeled and shoved protestors into police vans.⁸³ In the first week of 2001, hundreds of Falun Gong followers staged scattered protests in Tiananmen Square, their brief attempts to unfurl banners quickly overwhelmed by the huge plainclothes police force.⁸⁴

Falun Gong's peaceful protests against government repression have resulted in harsh repercussions for many of the group's followers. As of early 2001, some 150 Falun Gong followers have reportedly received prison sentences up to eighteen years, more than 600 have been forcibly committed to mental hospitals, 10,000 have been sent for re-education through labor without trial,⁸⁵ and another 50,000 held in temporary detention centers.⁸⁶ Once detained, protestors risk torture and even death.⁸⁷ Human rights monitors report widespread beatings and torture of detained Falun Gong followers, resulting in nearly a hundred confirmed deaths.⁸⁸ Authorities

⁸⁰ *Massive Falun Gong Protest in China: Hundreds of Followers Beaten, Detained in Tiananmen Square*, MSNBC NEWS/INT'L NEWS, Oct. 1, 2000, at <http://www.msnbc.com/msn/470636.asp>.

⁸¹ *Id.* Thirty-eight followers were detained after police ordered passengers on one train to curse Falun Gong or show proof they were not members. *Id.*

⁸² *One Thousand Falun Gong Members Rounded Up in Beijing Protest*, LOOKSMART.COM, Oct. 1, 2000, at <http://www.looksmart.com>. One woman carrying a small child was hit by police, while a plainclothes policeman was seen beating another protestor with a broom, and several children were arrested. *Id.*

⁸³ Martin Fackler, *Falun Gong Protest in Beijing Square*, AFP, Oct. 26, 2000, available at http://www.cesnur.org/testi/falun_072.htm. One man was kicked in the stomach and head until blood ran from his mouth after being thrown to the ground by police, while an elderly woman was dragged by her hair for several yards as bystanders pleaded with police to stop. *Id.*

⁸⁴ Smith, *supra* note 19.

⁸⁵ See *supra* note 59, for a brief description of re-education through labor.

⁸⁶ Falun Dafa InfoCenter, *Crackdown Facts and Figures* (Feb. 14, 2001), at http://www.faluninfo.net/persecution_frame.asp. According to Robin Munro, a senior research fellow at the Law Department and Center of Chinese Studies at the University of London, "These various reports [from overseas Falun Gong support groups] have not yet been independently confirmed by international human rights groups or similar organizations, and instances of factual error or misreporting may eventually come to light; however, there is presently no reason or evidence for doubting their overall veracity." Munro, *supra* note 7, at 108.

⁸⁷ Torture and mistreatment of detainees are reportedly due, in part, to the government's hostile attitude towards political prisoners, the pressure to extract confessions, the absence of a presumption of innocence in Chinese law, the lack of effective judicial supervision over the police, and the lack of proper procedures for redress of complaints of torture. Clarke & Feinerman, *supra* note 34.

⁸⁸ See Letter from Liu Qing, Chairman, and Xiao Qiang, Executive Director, Human Rights In China, to Kofi Annan, Secretary-General, United Nations (Jan. 18, 2001), available at <http://www.hrichina.org/pr/english/011801.htm>. See also Erik Eckholm, *The World: Losing by Winning: A Crackdown Burns Itself*, N.Y. TIMES, Feb. 4, 2001, LEXIS, News File. The Hong Kong-based Information Center for Human Rights & Democracy reported that a forty-six-year-old man died in a labor camp after

have acknowledged several custodial deaths, claiming, however, that most of them resulted from suicide or illness.⁸⁹ Despite the harsh treatment Falun Gong followers receive, it is estimated that millions of faithful followers remain in China and several thousand reside abroad.⁹⁰

In reaction to this treatment, Falun Gong's message has become more overtly politicized and even radical. In September 2000, Falun Gong's official website began attacking China's president Jiang Zemin as the man personally responsible for Falun Gong's persecution.⁹¹ In January 2001, the group's founder Li Hongzhi warned that followers facing persecution need not adhere to the movement's principle of forbearance.⁹² Indeed, later that month five people believed to be members of the Falun Gong doused themselves with gasoline and set themselves on fire in the middle of Tiananmen Square.⁹³ Moreover, in a stepped-up effort to rally support, Falun Gong followers began covertly posting the group's leaflets in subway stations and slipping them under apartment doors,⁹⁴ as well as placing fliers on the dormitory doors and bicycles of students at Beijing University, the traditional wellhead of political activism in China.⁹⁵

The crackdown on Falun Gong seems disproportionate given that the group professes no political aims and seeks only the freedom to practice its meditation exercises. Moreover, it violates China's constitutional provisions nominally guaranteeing freedom of religion and expression in the form of speech, assembly, association, and demonstration,⁹⁶ all of which are

suffering for two months with severe diarrhea and other illnesses. Amnesty International has reported many accounts of torture, including the use of electric shock batons and a device known as the "Di Lao," in which victims' wrists and feet are shackled and linked together with crossed steel chains making it nearly impossible to walk or sit down. Amnesty Int'l Media Advisory: China, *New Report on Torture and Ill-Treatment of Falun Gong Followers* (Oct. 22, 1999), at <http://www.amnesty.org>. Jeremy Page, *Falun Gong Demonstrates in Tiananmen Square*, REUTERS, Oct. 27, 2000, available at http://www.cesnur.org/testi/falun_072.htm. He was denied medical treatment until a week before he died. *Id.* One woman died after being forced into a mental hospital where she was regularly denied food and given unspecified injections. *Id.*

⁸⁹ Page, *supra* note 88.

⁹⁰ Introvigne, *supra* note 4. The exact number is in dispute. *Id.*

⁹¹ Li Hongzhi, *Why Do We Shine the Light Directly on Jiang Zemin?* (Sept. 9, 2000), at <http://www.clearwisdom.net> (calling Jiang Zemin "the highest representative of the evil force in the human world").

⁹² Li Hongzhi, *Beyond the Limits of Forbearance* (Jan. 2, 2001), at <http://www.clearwisdom.net>. The three principles of Falun Gong are truthfulness, benevolence, and forbearance. See Falun Dafa, *supra* note 20.

⁹³ Elisabeth Rosenthal, *Five Linked to Banned Sect in China Set Themselves on Fire in Protests*, N.Y. TIMES, Jan. 24, 2001, at A1. One woman died while the other four were taken into police custody. *Id.*

⁹⁴ *Id.*

⁹⁵ Smith, *supra* note 19.

⁹⁶ ZHONGHUA RENMIN GONGHEGUO XIANFA [CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA] (adopted May 5, 1982, amended 1999) art. 35 (P.R.C.), translated in <http://www.qis.net/chinalaw/prcon.htm>.

considered fundamental rights in many countries.⁹⁷ Perhaps more significant is the fact that despite the brutal suppression of the Falun Gong movement, the Chinese government has failed to stop the near-daily and increasingly defiant protests staged by the group's followers.

III. THE HISTORY OF SECRET SOCIETIES IN CHINA: A FRAMEWORK FOR UNDERSTANDING THE CHINESE GOVERNMENT'S REACTION TO FALUN GONG

A. *Background*

The Chinese government's prohibition against secret societies is rooted in China's 2,000-year history of popular rebellions against corrupt imperial dynasties, which were either instigated or significantly fueled by secret societies.⁹⁸ Traditional Chinese secret societies were generally informal, popular organizations founded to provide its members with mutual aid and protection,⁹⁹ whether religious, social, physical, or economic.¹⁰⁰ The oppositional nature of the secret societies, together with the quasi-religious indoctrination of their members, often resulted in the belief that the laws of the secret society superseded the ordinary laws of the land¹⁰¹—an unacceptable proposition for the ruling government.¹⁰² Therefore, the government severely punished individuals for any activity connected with secret societies, including membership.¹⁰³

In spite of government suppression, secret societies proved to be quite successful in mobilizing forces of secular discontent around religious beliefs, especially in times of social and economic stress.¹⁰⁴ Indeed, the first known secret society rebellion that ultimately toppled the Qin Dynasty in 206 B.C began as a tax revolt.¹⁰⁵ Similarly, in A.D. 9, the Red Eyebrows, a secret society named after its battle makeup, sparked a rebellion against

⁹⁷ See, e.g., U.S. CONST., amend. I.

⁹⁸ See generally FEI-LING DAVIS, *PRIMITIVE REVOLUTIONARIES OF CHINA: A STUDY OF SECRET SOCIETIES IN THE LATE NINETEENTH CENTURY* 154, 178-80 (1971).

⁹⁹ DAVID OWNBY, *BROTHERHOODS AND SECRET SOCIETIES IN EARLY AND MID-QING CHINA: THE FORMATION OF A TRADITION 2* (1996).

¹⁰⁰ See generally JEAN CHESNEAUX, *SECRET SOCIETIES IN CHINA* 55-79 (1971).

¹⁰¹ See DAVIS, *supra* note 98, at 3 ("The officials draw their power from the law; the people from the secret societies." (Chinese saying)).

¹⁰² Leon Comber, *Foreword* to JEAN CHESNEAUX, *SECRET SOCIETIES IN CHINA* vi (1971).

¹⁰³ CHESNEAUX, *supra* note 100, at 75.

¹⁰⁴ Jacques deLisle, *Who's Afraid of Falun Gong?*, CHINAONLINE, Apr. 19, 2000, at <http://www.chinaonline.com>.

¹⁰⁵ DAVIS, *supra* note 98, at 178. The Qin Dynasty lasted from 255 B.C. to 206 B.C. BARBARA E. WARD, *SECRET SOCIETIES* 215 (Norman MacKenzie ed., 1967).

Wang Mang, who had provoked considerable popular antagonism by introducing radical reforms in taxation, usury, commerce, and the ownership of land.¹⁰⁶

B. Organizations Fighting for Religious Freedom

Many secret societies were primarily religious organizations driven underground as a direct result of government persecution. In A.D. 843, the Tang government banned alien religions, including Buddhism, in an attempt to gain control over their growing influence and to raise revenues.¹⁰⁷ The government felt threatened by the Buddhist Church because of its growing power and its accumulation of wealth from its refusing to pay taxes.¹⁰⁸ Despite several officially inspired persecutions, Buddhist culture blossomed during this period.¹⁰⁹ Underground Buddhist organizations developed, and from this time forward, secret religious sects became particularly prevalent in China.¹¹⁰ One of these underground Buddhist sects, the White Lotus, was severely persecuted during the Tang period, a significant factor in its later emergence as a political movement.¹¹¹ The White Lotus endured for over a thousand years¹¹² and sparked rebellions that eventually succeeded in overthrowing both the Yuan¹¹³ and the Ming Dynasties.¹¹⁴

¹⁰⁶ WARD, *supra* note 105, at 214.

¹⁰⁷ WOLFRAM EBERHARD, A HISTORY OF CHINA 192 (1977). Over 4000 Buddhist temples and 40,000 shrines and monasteries were secularized and became taxable. *Id.* At the same time, millions of acres of land belonging to the temples also became taxable. *Id.*

¹⁰⁸ See FAIRBANK & GOLDMARK, *supra* note 13, at 79.

¹⁰⁹ WARD, *supra* note 105, at 218. The Tang Dynasty lasted from A.D. 618 to A.D. 907. *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 219.

¹¹² *Id.* The White Lotus was founded in A.D. 376 and was active at least up until the 1796 rebellion. See FAIRBANK & GOLDMARK, *supra* note 13, at 190.

¹¹³ WARD, *supra* note 105, at 219-20. The Mongol Empire (the Yuan Dynasty) in China was the culmination of a millennium of the mounted archer's military prowess all across Eurasia. FAIRBANK & GOLDMARK, *supra* note 13, at 119. The Mongol Empire lasted from A.D. 1279 until A.D. 1368. *Id.* After Ghengis Khan and his Mongol hordes erupted in all directions in 1206, his sons and grandsons ruled four khanates in Persia, South Russia, Central Asia, and China. *Id.* Because of their illiteracy, the Mongols could not administer the government or police local communities. *Id.* at 121-23.

¹¹⁴ WARD, *supra* note 105, at 219-20. The White Lotus rebellion against the Mongols began in A.D. 1344. *Id.* The White Lotus and other rebel groups combined under the leadership of a former Buddhist monk, Chu Yuan-Chang, who became emperor following the defeat of the Mongols in A.D. 1368. *Id.* at 220. The White Lotus gave the new empire its name, Ming, after two messianic figures, Big and Little Ming Wang, who were thought to have been sent by Buddha Maitreya to restore peace and order to the world. *Id.* The White Lotus later took part in uprisings against the Ming Dynasty after it had become weak and corrupt, and foreign armies were threatening China's borders. *Id.* Severely weakened as a result of these uprisings, the Ming Dynasty fell to the Manchus in the early 1600s. *Id.*

C. *Political Uprisings*

China's history of conflict between the government and the secret societies reached its climax during the Qing Dynasty¹¹⁵ under the Manchus. Aggravated by the Manchus' extremely cruel methods of suppression, the number of secret societies and secret society rebellions increased dramatically during this period.¹¹⁶ Under Qing law, "all persons who without being related or connected by intermarriage, establish a brotherhood or association among themselves, by the ceremonial of tasting blood, and burning incense shall be guilty of an intent to commit the crime of rebellion."¹¹⁷ The law prohibited gatherings of more than twenty able-bodied males and forty elderly males.¹¹⁸ Qing law required that the leaders of secret societies be subject to death by strangulation, while requiring that accessories be subject to lesser punishments.¹¹⁹ The law required the dismissal and prosecution of government officials who failed to suppress known secret societies.¹²⁰ Qing law singled out for particularly harsh treatment secret societies whose members were known to "commit robberies and other acts of violence."¹²¹ This harsh treatment included the beheading of leaders and the strangulation of regular members.¹²² The law also prohibited processions, beating gongs and drums, and chanting sutras and spells in public in order to maintain peace and order.¹²³ According to conservative estimates, on average, the government under the Qing Dynasty either executed or exiled more than ten secret society members each month over the twelve-year period between 1788 and 1800.¹²⁴ The government carried out the majority of these executions on the spot, in the marketplaces of the areas in which the society members lived.¹²⁵

In spite of severe penalties against secret societies, rebellions led by secret societies during the period from 1788-1800 intensified as popular antagonism toward the government spread.¹²⁶ Indeed, three of the largest

¹¹⁵ See CHESNEAUX, *supra* note 100, at 75. The Qing Dynasty last from A.D. 1644 to A.D. 1911. *Id.*

¹¹⁶ WARD, *supra* note 105, at 220.

¹¹⁷ CHESNEAUX, *supra* note 100, at 75. Secret society members were often bound together by blood oaths. OWNBY, *supra* note 99, at 3.

¹¹⁸ DAVIS, *supra* note 98, at 12-13. The government did not restrict the number of females. *Id.*

¹¹⁹ CHESNEAUX, *supra* note 100, at 75.

¹²⁰ *Id.* at 76.

¹²¹ *Id.*

¹²² *Id.*

¹²³ DAVIS, *supra* note 98, at 13.

¹²⁴ OWNBY, *supra* note 99, at 126.

¹²⁵ *Id.*

¹²⁶ *Id.*

and most damaging secret society rebellions in Chinese history occurred during the Qing period: the White Lotus Rebellion, the Taiping Rebellion, and the Boxer Rebellion.

The White Lotus rebellion against the Qing in 1796 began as a protest against excessive taxation.¹²⁷ The group had been mobilizing adherents from among the poor peasants in the countryside for some time by promising the advent of the Buddha Maitreya who would restore the former Ming Dynasty and put an end to disaster, disease, and personal suffering.¹²⁸ As a result, the society spread widely over China and developed its own internal organization and leaders.¹²⁹ The rebellion lasted nearly eight years and was finally suppressed only by a very large military operation, at a cost to the government of nearly 200 million ounces of silver (five years of revenue).¹³⁰

Even more devastating than the White Lotus Rebellion was the Taiping Rebellion of 1850. The Taiping Rebellion was an anti-Manchu, quasi-Christian messianic, social protest movement aimed at freeing the peasants from oppressive landowners.¹³¹ Although the Taipings were not part of a secret society, their rebellion was significantly aided by secret societies, most notably the Triads.¹³² Before being crushed by the Manchu government, this ten-year uprising resulted in the capture of nearly half of China¹³³ and cost millions of lives.¹³⁴

Perhaps the most infamous secret society revolt was the Boxer Rebellion of 1900.¹³⁵ The Boxers followed the qigong tradition and practiced extremely fast-moving and violent martial arts, including spirit boxing, from which the group took its name,¹³⁶ literally "the Fists of Righteous Harmony."¹³⁷ The Boxers relied on supernatural forces for invulnerability in battle.¹³⁸ Originally an anti-Manchu movement, it was

¹²⁷ FAIRBANK & GOLDMARK, *supra* note 13, at 190.

¹²⁸ *Id.* at 189-90.

¹²⁹ EBERHARD, *supra* note 107, at 296.

¹³⁰ FAIRBANK & GOLDMARK, *supra* note 13, at 190.

¹³¹ The Taiping leader, Hung Hsiu-Ch'üan, was proclaimed emperor under the name of T'ien-wang (Heavenly King) and declared himself Jesus Christ's younger brother. CHESNEAUX, *supra* note 100, at 90. The sacred books of the new dynasty drew extensively on the Bible. *Id.*

¹³² WARD, *supra* note 105, at 226. See also C. A. Curwen, *Taiping Relations with Secret Societies and Other Rebels*, in POPULAR MOVEMENTS AND SECRET SOCIETIES IN CHINA: 1840-1950 65 (Jean Chesneaux ed., 1972).

¹³³ WARD, *supra* note 105, at 226.

¹³⁴ EBERHARD, *supra* note 107, at 285.

¹³⁵ Comber, *supra* note 102, at vii.

¹³⁶ Prasenjit Duara, *After 100 Years, Myths of Boxer Rebellion Live On*, CHINAONLINE, June 21, 2000, at <http://www.chinaonline.com>.

¹³⁷ WARD, *supra* note 105, at 227.

¹³⁸ Duara, *supra* note 136.

transformed by the Qing Empress into a movement against Western powers and Japan.¹³⁹ The movement was eventually stopped only with the intervention of British, Russian, American, and French forces.¹⁴⁰

D. The Role of Secret Societies in the Communist Party's Rise to Power

Secret societies also played a significant role in the Communist Party's rise to power during the Chinese Revolution. The Chinese Revolution began with the successful overthrow in 1911 of the Qing Dynasty by Sun Yat-sen's Republican Party.¹⁴¹ Not only were the Republicans aided by secret societies,¹⁴² but Sun Yat-sen was himself a member of two secret societies, the Elder Brothers and the Triads.¹⁴³ By 1927, Sun Yat-sen's Republican government had collapsed,¹⁴⁴ and Chiang Kai-shek's Nationalist Party had gained control of the cities with the help of two Shanghai secret societies, the Green Band and the Red Band.¹⁴⁵ Meanwhile, the Communists had moved into the countryside in an effort to enlist the peasantry in revolution.¹⁴⁶ The Communists were well aware of the strong influence secret societies exercised over the peasantry and thus attempted to recruit at least two secret societies, the Red Spears¹⁴⁷ and the Elder Brothers.¹⁴⁸ Indeed, the Communist leader Mao Zedong¹⁴⁹ himself made direct appeals to the Elder Brothers to join the resistance against the Japanese invasions in North China.¹⁵⁰

¹³⁹ Comber, *supra* note 102, at vii.

¹⁴⁰ WARD, *supra* note 105, at 210.

¹⁴¹ *Id.* at 228.

¹⁴² *Id.*

¹⁴³ Sun Yat-sen was a member of the Triads. WARD, *supra* note 105, at 233. He was also a member of the Chi Kung Tang, an overseas Chinese secret society first formed in the United States. Comber, *supra* note 102, at viii. When Sun Yat-sen was elected president of the new republic, he celebrated in a solemn quasi-religious service to salute the spirits of the great Ming emperors who had expelled the Mongols. CHESNEAUX, *supra* note 100, at 159. His contemporaries interpreted this ceremony as an homage to the secret societies' 250 years of struggle against the foreign Qing Dynasty. *Id.*

¹⁴⁴ See generally EBERHARD, *supra* note 107, at 315-18.

¹⁴⁵ CHESNEAUX, *supra* note 100, at 164. These societies were primarily criminal organizations involved in slave running, opium trafficking, kidnapping, blackmailing, gambling, gun-running, protecting rackets and even murder. *Id.*

¹⁴⁶ *Id.* at 177-79.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 182.

¹⁴⁹ Mao Zedong assumed leadership of the Communist Party in 1935. FAIRBANK & GOLDMARK, *supra* note 13, at 307.

¹⁵⁰ CHESNEAUX, *supra* note 100, at 182. Some of the secret societies were openly pro-Japanese, including the Way of Fundamental Unity and some of the Triads. *Id.* at 185.

In summary, a combination of religious and political disaffection appeared repeatedly throughout Chinese history,¹⁵¹ and from its earliest days, China's Communist Party recognized that groups invoking mystical forces have historically played a significant role in toppling weak authorities during transitional periods in China. Thus, while the Communist party attempted to utilize the revolutionary potential of secret societies during its climb to power, it also issued a ban against secret societies even before the People's Republic was officially established.¹⁵² While it is unclear to what extent the secret societies may have actually aided the Communists in defeating the Nationalists, the Communists' ambivalence toward the secret societies was quite clear.

IV. IS FALUN GONG A REVOLUTIONARY SECRET SOCIETY?

Certainly, Falun Gong does bear some resemblance to traditional Chinese secret societies that have contributed to China's history of popular rebellions. This includes its organization around various religious and supernatural beliefs;¹⁵³ its appeal to those who have not fared well during China's transition from a command economy to a market-based society;¹⁵⁴ its ability to mobilize so many of its followers into individual, as well as coordinated action; and its ability to withstand persecution. Moreover, the unusually harsh crackdown on Falun Gong reveals the government's belief that the group has the revolutionary potential of other secret societies.¹⁵⁵

However, this analysis ignores compelling evidence that Falun Gong is nothing more than what it claims to be—an inherently peaceful group merely seeking the right to practice its meditation exercises free from government harassment. Falun Gong existed in China for seven years before the group gained attention for its peaceful sit-in at Zhongnanhai in April 1999. Moreover, the group has remained peaceful, even if resistant, in spite of the government's violent assault against its followers. In addition, China's long history of secret society rebellions sheds little light on Falun Gong's capacity for inspiring widespread rebellion. While past Chinese

¹⁵¹ WARD, *supra* note 105, at 216.

¹⁵² Lev Deliusin, *The I-Kuan Tao Society*, in POPULAR MOVEMENTS AND SECRET SOCIETIES IN CHINA: 1840-1950, *supra* note 132, at 22.

¹⁵³ DeLisle, *supra* note 104.

¹⁵⁴ *Id.* See also FAIRBANK & GOLDMARK, *supra* note 13, at 434-36.

¹⁵⁵ Regarding the law's treatment of secret societies, the NPC Decision interpreting Article 300 of the Criminal Law makes explicit that "[h]eretical cult organizations shall be resolutely banned according to the law, and all of their criminal activities shall be dealt with severely." NPC Decision, *supra* note 49. See also CL, *supra* note 12.

secret societies have participated in popular anti-government rebellions, history reveals that the secret societies were primarily reactionary groups whose activities were in response to chaotic societal conditions, whether economic, political, or both.

In short, Falun Gong appears to be an inherently peaceful group; however, the government's continued repression of Falun Gong only increases the risk of transforming it from a harmless group into a revolutionary force. Just as China's history demonstrates that government hostility toward secret societies served only to increase their resistance to government authority, the current crackdown on Falun Gong has demonstrably radicalized the group's followers, which may only fuel the fire of resistance.

V. THE LAWS IMPLEMENTING CHINA'S BAN AGAINST FALUN GONG ARE INCONSISTENT WITH INTERNATIONAL HUMAN RIGHTS STANDARDS AND ENDANGER CHINA'S INTERNAL STABILITY

The sources of law governing China's ban against Falun Gong conflict with international human rights standards. These include the standards promulgated under the following: (1) the Universal Declaration of Human Rights ("UDHR");¹⁵⁶ (2) the International Covenant on Civil and Political Rights ("ICCPR");¹⁵⁷ (3) the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights ("Siracusa Principles");¹⁵⁸ and (4) the Johannesburg Principles on National Security, Freedom of Expression and Access to Information ("Johannesburg Principles").¹⁵⁹

A. *International Human Rights Law and the National Security Exception*

Bans against anti-government groups for national security reasons are not unique to China, and the international community has developed a framework for balancing a state's national security interests with the human

¹⁵⁶ Universal Declaration of Human Rights, Dec. 10, 1948, arts. 18, 19, available at <http://www.un.org/rights/> [hereinafter UDHR].

¹⁵⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, arts. 18, 19, available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].

¹⁵⁸ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, arts. 29-32, reprinted in *SECRECY AND LIBERTY: NAT'L SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION*, *supra* note 53, at 18-19 [hereinafter Siracusa Principles].

¹⁵⁹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, reprinted in *SECRECY AND LIBERTY: NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION*, *supra* note 53, at 1-10 [hereinafter Johannesburg Principles].

rights of its people. Nearly every government throughout history has viewed anti-government dissent as a threat to national security, a threat that increases when dissident ideas are held by an organized group.¹⁶⁰ The non-intervention rule represented the traditional notion of national sovereignty that each government was free to treat its citizens in whatever way it chose without interference from other nations.¹⁶¹ As international law developed, however, human rights became the one exception to the non-intervention rule.¹⁶² Under modern international law, a government has an obligation to protect the human rights of its citizens.¹⁶³ Even so, modern international law also recognizes that certain expression-related rights may be permissibly restricted where "national security" is at stake.¹⁶⁴ "National security" is generally understood to refer to a government's ability to defend itself from violent overthrow by domestic subversion or external aggression.¹⁶⁵ Governments often ban groups considered to be a threat to national security.¹⁶⁶ However, there is a growing recognition among the international community that repression of basic human rights increases the risk of rebellion.¹⁶⁷ For this reason, an international framework for balancing the interests of the state against those of its citizens has gradually evolved, and the UDHR and the ICCPR are primary components of that framework.

B. *The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*

The laws governing China's ban against Falun Gong conflict with the international human rights standards to which China has pledged compliance. As a member of the United Nations, China has pledged to promote "universal respect for and observance of human rights and fundamental freedoms" as enumerated in the UDHR.¹⁶⁸ The UDHR asserts without qualification that everyone has the right to freedom of religion,

¹⁶⁰ *Exaggerated Fears for the National Security: Some Experience to Date*, 85 HARV. L. REV. 1134, 1135 (1972).

¹⁶¹ L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE*, VOL. I—PEACE 312 (H. Lauterpacht ed., 8th ed. 1955).

¹⁶² *Id.*

¹⁶³ *Id.* at 312-13.

¹⁶⁴ ICCPR, *supra* note 157, art. 19(3) ("national security," "public order").

¹⁶⁵ *Developments in the Law—The National Security Interest and Civil Liberties, Introduction*, 85 HARV. L. REV. 1133, 1133 (1972).

¹⁶⁶ *Exaggerated Fears for the National Security: Some Experience to Date*, *supra* note 160, at 1135.

¹⁶⁷ Johannesburg Principles, *supra* note 159, at 1. "Convinced that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." *Id.*

¹⁶⁸ UDHR, *supra* note 156, pmbl.

expression, association, and assembly.¹⁶⁹ These protections are codified and elaborated upon in Articles 18 and 19 of the ICCPR.¹⁷⁰ China became a signatory to the ICCPR in 1997, although it has not yet ratified the treaty.¹⁷¹ In November 2000, China's Vice Foreign Minister Wang Guangya and U.N. High Commissioner for Human Rights Mary Robinson signed a memorandum of understanding on technical cooperation.¹⁷² A central goal of this agreement is to assist China in bringing its laws in line with these treaties.¹⁷³ While human rights abuses perpetrated under the guise of protecting national security will not necessarily end merely by a change in the law, the Chinese leadership has acknowledged its need to improve its human rights record,¹⁷⁴ and there is no doubt that China takes seriously the proceedings in the U.N. Human Rights Commission¹⁷⁵ and responds vigorously to attacks on its human rights practices.¹⁷⁶ In short, China will need to modify its laws before it can ratify the ICCPR.

C. *The Siracusa and the Johannesburg Principles*

The international community has developed a framework to protect the fundamental rights of individuals in expression-related activities. Some

¹⁶⁹ *Id.* arts. 18-20.

¹⁷⁰ ICCPR, *supra* note 157, arts. 18, 19.

¹⁷¹ The ICCPR was signed by China's ambassador to the U.N. on Oct. 27, 1997. LAWYERS COMMITTEE FOR HUMAN RIGHTS, WRONGS AND RIGHTS: A HUMAN RIGHTS ANALYSIS OF CHINA'S REVISED CRIMINAL LAW 25, n.63 (1998). However, the government made it clear that it would not be implemented until ratified through specific legislation. *Id.*

¹⁷² Siaget, *supra* note 10.

¹⁷³ Erik Eckholm, *China Signs U.N. Pact on Rights and Rule of Law*, N.Y. TIMES, Nov. 21, 2000, at A4.

¹⁷⁴ Roy Gutman, *China's Concession/Admits It Can Improve Human Rights After Talks*, NEWSDAY, Jan. 16, 1999, 1999 WL 8154429. Following a two-day exchange on human rights between U.S. and Chinese officials, the Associated Press quoted the Chinese Foreign Ministry spokesman Sun Yuxi as saying, "For historical reasons, there is still some room for us to improve with respect to human rights." *Id.*

¹⁷⁵ The Commission is essentially a monitoring body with three procedures available for responding to violations of human rights. A.M. Weisburd, *Implications of International Relations Theory for the Int'l Law of Human Rights*, 38 COLUM. J. TRANSNAT'L L. 45, 49-50 (1999). These procedures are the following: (1) examining communications from sources outside the U.N. alleging gross violations of human rights by U.N. members; (2) appointing a working group or special rapporteur to investigate the human rights situation in a particular state, which can lead to resolutions addressing the actions of the state investigated and detailed reports describing the actions of the governments concerned; and (3) appointing a special rapporteur to focus on particular categories of human rights violations rather than focusing on all types of human rights violations within a particular state. *Id.*

¹⁷⁶ For example, on April 18, 2000, at the fifty-sixth meeting of the U.N. Commission for Human Rights, China blocked a U.S. resolution censuring its human rights record. *Spokesman Thanks Countries for Vetoing U.S. Motion on Human Rights*, BBC, Apr. 20, 2000, LEXIS, News File. This defeat was China's ninth escape from censure since its assault on unarmed pro-democracy protesters near Tiananmen Square in 1989. *Id.*

of the worst human rights violations over the past fifty years have resulted from government suppression of expression-related activities on national security and related grounds.¹⁷⁷ In response, two sets of international guidelines have been developed that offer a framework for determining the proper balance between a government's legitimate concerns for peace and security and the fundamental rights of its citizens: the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights ("Siracusa Principles"),¹⁷⁸ and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information ("Johannesburg Principles").¹⁷⁹ Both the Siracusa Principles and the Johannesburg Principles reflect the trend in international law toward shielding expression-related offenses from criminal sanctions except where violence is threatened.¹⁸⁰ The United Nations has endorsed both the Siracusa Principles and the Johannesburg Principles as valuable guides to interpreting standards concerning these fundamental freedoms under the ICCPR.¹⁸¹

1. *The Siracusa Principles*

The Siracusa Principles were drafted in 1985, in Siracusa, Sicily, by a group of international law experts in an effort to achieve an effective implementation of the ICCPR.¹⁸² The Siracusa Principles set forth the general criteria for justifying human rights limitations as well as criteria relating to specific areas.¹⁸³ Provisions 29 through 32 address national security:

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation in its territorial integrity or political independence against force or threat of force;

¹⁷⁷ Sandra Coliver, *Commentary to SECRECY AND LIBERTY: NAT'L SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION*, *supra* note 53, at 11.

¹⁷⁸ Siracusa Principles, *supra* note 158.

¹⁷⁹ Johannesburg Principles, *supra* note 159.

¹⁸⁰ Coliver, *supra* note 177, at 80.

¹⁸¹ *Id.* at 18 n.30, 80-81.

¹⁸² Kuk Cho, *Tension Between the National Security Law and Constitutionalism in South Korea: Security for What?*, 15 B.U. INT'L L. J. 125, 164 (1997). The meeting was convened by the International Commission of Jurists, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the International Institute of Higher Studies in Criminal Sciences. *Id.*

¹⁸³ *Id.*

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order;
31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse; and
32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or perpetrating repressive practices against its population.¹⁸⁴

Under Principles 29 and 30, any restriction justified on national security grounds must be in response to a threat to the country as a whole and cannot be merely to the ruling party.¹⁸⁵

2. *The Johannesburg Principles*

The Johannesburg Principles were drafted in 1995 by international law experts and human rights experts at a conference at Witwatersrand University, in Johannesburg, South Africa, to provide more specific principles that would adequately safeguard the right to freedom of expression, as well as the prerogative of governments to restrict this freedom when necessary to protect legitimate national security interests.¹⁸⁶ Under the Johannesburg Principles, restrictions may not be overbroad or ambiguous such that they provide the legal basis for the imposition of heavy penalties on people who have expressed opinions but have not resorted to or advocated violence.¹⁸⁷ Terms generally regarded as overbroad or ambiguous include "hostile propaganda," "agitation," "subversion," "disinformation," and "false rumors."¹⁸⁸ The Johannesburg Principles also requires that sanctions cannot be arbitrary, meaning that they cannot be based on laws that are vague, imprecise or formulated with a clear intent to provide a

¹⁸⁴ Siracusa Principles, *supra* note 158.

¹⁸⁵ Coliver, *supra* note 177, at 19.

¹⁸⁶ *Id.* at 13.

¹⁸⁷ *Id.* at 25.

¹⁸⁸ *Id.*

“legal” basis for silencing people.¹⁸⁹ An example of a vaguely stated ground for limiting expression would be one that imposes a restriction against an expression that “in any way damages or compromises the economic stability of the nation.”¹⁹⁰ The Johannesburg Principles limit legitimate national security interests to the prevention of violence aimed at changing a country’s government, institutions, or borders; the prevention of espionage; and the protection of genuine military secrets, such as the movement of troops and details of weapons design.¹⁹¹ Furthermore, governments must respect and may not punish expression—however challenging to the regime in power—that falls short of incitement to violence.¹⁹²

D. China’s Laws Governing the Ban Against Falun Gong are Inconsistent with International Human Rights Standards

China’s laws governing the ban against Falun Gong do not conform to either the Siracusa Principles or the Johannesburg Principles because they provide criminal penalties for the peaceful exercise of expression-related activities by imposing vague and arbitrary limitations. According to the SPC Explanations issued prior to the NPC Decision banning Falun Gong, Articles 300, 103, 105, and 113 of China’s Criminal Law code are to be used in combination against any individual deemed a member of a “heretical cult.”¹⁹³ Article 300 is a general provision outlawing cults and prohibiting the “crime of disrupting public order.”¹⁹⁴ Articles 103 and 105 define “crimes of endangering national security,” making it illegal for anyone to “organize, plot, or act” to “split the country or undermine national unification,”¹⁹⁵ or to “subvert the political power of the state and overthrow the socialist system.”¹⁹⁶ Under Article 113, anyone committing a crime “endangering national security” that is deemed “serious” or “particularly

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 21.

¹⁹² Johannesburg Principles, *supra* note 159, princ. 7(b).

¹⁹³ Explanations, *supra* note 48.

¹⁹⁴ CL, *supra* note 12, ch. VI, sec. 1. Article 300 was originally labeled a “crime endangering national security” before the Criminal Law code was revised in 1997. See Human Rights in China, *China: Social Groups Seek Independence in a Regulatory Cage* (Sept. 1997), available at <http://www.hrichina.org/reports/freedom.html>. Measures to protect public order overlap with national security measures when civil disorder escalates beyond a local temporary affair to become a threat to the country. Elizabeth Evatt, *The International Covenant on Civil and Political Rights: Freedom of Expression and State Security*, in *SECURITY AND LIBERTY: NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION* *supra* note 53, at 83-84.

¹⁹⁵ CL, *supra* note 12, art. 103.

¹⁹⁶ *Id.* art. 105.

vile” may be sentenced to death.¹⁹⁷ According to the explanations, “especially serious” violations of Article 300 include setting up organizations or recruiting members across provinces and collaborating with overseas agencies, organizations, or individuals.¹⁹⁸ Neither the Siracusa Principles nor the Johannesburg Principles would prevent China from promulgating laws providing criminal sanctions for violent acts; however, the Chinese government has routinely used its laws to punish expression that falls far short of incitement to violence. Indeed, as the crackdown on Falun Gong demonstrates, China’s systematic violation of human rights undermines true national security.

Therefore, China should bring its laws into compliance with international human rights standards. In doing so, China can make significant progress toward achieving its stated goal of eventual ratification of the ICCPR. This would also bring China closer to conforming with its own constitutional guarantees of freedom of religion and expression in the form of speech, assembly, association, and demonstration.

VI. CONCLUSION

China should lift its ban against Falun Gong and halt its campaign to crush the group. This would defuse the increasing tensions between Falun Gong followers and the government, thus reducing the potential for widespread unrest. History has shown that repression of anti-government groups increases rather than decreases the risk of large-scale rebellion. Falun Gong’s continuing protests in spite of the government crackdown provides clear evidence of the futility of attempts to ban expression-related activities. Just as imperial crackdowns provoked rebellion from the White Lotus, Taiping, and other sects, the crackdown on Falun Gong increases the potential for the movement to become an organizational focal point for the widespread (but still-diffuse) resentment that many Chinese feel about corruption, favoritism, taxes, fees, and a host of other issues of economics and unfairness.¹⁹⁹ Lifting the ban on Falun Gong eliminates the reason for the group’s continued protests against the government. Without any reason to oppose the government, there is no reason for other dissident groups to form alliances with Falun Gong.

¹⁹⁷ *Id.* art. 113.

¹⁹⁸ Explanations, *supra* note 48.

¹⁹⁹ deLisle, *supra* note 104.