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China's Plans for Hong Kong Jeopardize Basic Civil Liberties

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BRIEF

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Israeli Interrogation Methods Legitimized by Court

by Alexandra L. Wisotsky

During 1996, the Israeli High Court of Justice (HCJ) heard several complaints by Palestinian detainees who alleged the use of physical and psychological torture during interrogations by Israel's General Security Service (GSS, also known as *Shin Bet* and *Shabak*). Three cases involving the GSS interrogation methods have been widely publicized and have caused international concern because the HCJ's decisions seem to be legitimizing the use of physical force during interrogations. The European Court of Human Rights has held in a similar case that the methods in question do not constitute torture, but a recent statement by the United Nations Committee Against Torture disagrees. This article will provide a legal analysis of the HCJ opinions and the conflicting international authorities.

The *Bilbeisi*, *Hamdan*, and *Mubarak* cases were all brought by individuals seeking interim injunctions to stop the use of the contested interrogation methods. The injunctions were granted by the Court, and the GSS then filed for annulment of these injunctions. In each case, the detainees were known by GSS intelligence to be active members of

the terrorist groups Islamic Jihad or Hamas and were believed to have information about imminent terrorist attacks. The GSS argued that its interrogation methods were necessary to obtain the essential information that would prevent these attacks and spare many lives.

During a GSS interrogation, 'Abd al-Halim Bilbeisi admitted that in January 1996 he had planned a terrorist attack at a major intersection in which twenty-one Israelis were killed. He also disclosed that he had constructed the explosives at his home, transferred them to a hiding place, and recruited three suicide bombers to carry out the attack. Upon Bilbeisi's direction, the GSS located and neutralized a bomb that had not been used by the suicide bombers. Based on this and other information gathered during interrogation, the GSS concluded that there was a "very clear probability" that Bilbeisi had vital information regarding the planning of a serious terrorist attack in the near future.

Muhammad 'Abd al-'Aziz Hamdan was first arrested in 1992, and confessed his active membership in Islamic Jihad. He was detained by the Israelis in 1995, and by the Palestinian authority in March 1996, for terrorist activities associated with the organization. In October 1996, GSS intelligence determined that Hamdan was still active within Islamic Jihad, and he was detained again. The GSS stated that based on information

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China's Plans for Hong Kong Jeopardize Basic Civil Liberties

by Gillian A. Brady

At a time when the overwhelming trend among nations is toward democratization, Hong Kong's return to the People's Republic of China (PRC) is an anomaly. The transfer, scheduled for July 1, 1997 is possibly the first time in history that a non-democratic government will peacefully gain control of a democratic society. While the hand-over itself will almost certainly be peaceful, it is unclear how the people of Hong Kong will react to the new laws which will undoubtedly restrict many of the freedoms they currently enjoy.

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Background

Hong Kong was acquired by Britain in 1842, when it was ceded in perpetuity by China as a base for Britain's trading ventures. Under the First Convention of Peking, signed in 1860, the tip of the Kowloon peninsula and Stonecutters' Island were ceded to Britain. In 1898, China granted Britain a 99-year lease for a much larger stretch of land north of Kowloon and a large number of islands, known collectively as the New Territories. The lease runs out on June 30, 1997. Thus, on July 1, 1997,

While the handover itself will almost certainly be peaceful, it is unclear how the people of Hong Kong will react to the new laws which will undoubtedly restrict many of the freedoms they currently enjoy.

Hong Kong will become a Special Administrative Region (SAR) of the PRC.

In 1984, the United Kingdom and the PRC entered into the Sino-British Declaration on the Question of Hong Kong (Joint Declaration). The Declaration stipulated that after July 1st, Hong Kong will continue to have a high degree of autonomy, except in foreign affairs and defense; Hong Kong's government and legislature will be composed of local

inhabitants; the common law legal system will be kept separate and autonomous from the mainland; and the provisions of the International Covenant on Civil and Political Rights will remain in force. In April 1990, the Seventh National People's Congress (NPC) in Beijing adopted the Basic Law of the Special Administrative Region of Hong Kong (Basic Law), that will serve as Hong Kong's constitution after the handover. The Basic Law stipulates and ensures that the PRC will implement the basic policies set out in the Joint Declaration.

Many Hong Kong citizens, particularly journalists, human rights organizations, and democratic party leaders, are concerned, however, about the steady encroachment on rights and freedoms that the PRC has already initiated. In Beijing, the Standing Committee of the NPC adopted a resolution on February 23, 1997 to repeal 16 laws governing Hong Kong in full and nine in part. On April 9th of this year, Tung Chee-Hwa, the man chosen by Beijing to be the new leader of Hong Kong, announced plans to restrict public protest and control freedom of association. He also announced measures aimed at curbing political opposition to the new leadership. Beijing has openly stated that its aim is to undermine the political parties in Hong Kong, particularly the Democratic Party, which is already divided from within over whether to work with Beijing or fight the legitimacy of China's political and legal maneuvering in Hong Kong.

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Political Structure

An issue that has been hotly debated is the selection process for the new legislature that will run Hong Kong after July 1st. The current legislature is the result of the first democratic election in Hong Kong, held in 1995, in which the Democratic Party and pro-democratic independents won 29 of 60 seats.

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China denounced the election, claiming it was a ploy to undermine the transition to Chinese rule. Beijing officials fear Hong Kong's recent shift to democracy will threaten political and economic stability. As a result, China appointed a Preparatory Committee in December 1995 to establish the government that will take control of Hong Kong as of July 1, 1997. This Preparatory Committee is composed of 57 mainland Chinese and 93 Hong Kong residents. The Democratic Party on the current Legislature has voted to condemn the "unrepresentative composition" of the Preparatory Committee. The United Kingdom and human rights groups have also questioned the lack of democracy in the selection of Committee members.

One of the controversial actions the Preparatory Committee has taken is the

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Photo Courtesy of China News Digest

Supporters of Hong Kong join in student march for democracy. Banner reads "Hong Kong compatriots wholeheartedly support you."

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creation of an appointed Provisional Legislature which will replace the current Legislature at midnight on June 30th. The Democratic party protested the legitimacy of this Provisional Legislature by refusing to serve on it should any member be chosen. They oppose the method of appointing seats as undemocratic, and fear the process will be open to corruption due to a lack of transparency in Beijing's selection criteria. When the new legislature takes its place, a large number of lawsuits will be filed by the Democrats and members of the Hong Kong legal community in general, claiming that the China-appointed legislature violates the Basic Law.

Rights and Freedoms

Beyond their fear of losing political independence, many Hong Kong citizens also worry about losing their personal rights and liberties. Martin Lee Chu-ming, one of Hong Kong's foremost barristers and the Democratic Par-

The changes in the laws that will govern the SAR appear to restrict precisely those freedoms associated with a free and democratic society.

ty's leader, is fighting for both. "If Hong Kong loses our elected legislature, if our rule of law is eroded, it will affect everyone, not just members of the Legislative Council or people who demonstrate. If any one of us in Hong Kong loses our freedoms, we will all ultimately suffer." Mr. Lee had joined the committee to draft Hong Kong's new constitution, the Basic Law, but resigned

immediately after the Tiananmen Square massacre in 1989. Since that time he has pushed for nothing less than full democracy for Hong Kong.

Unfortunately, the changes in the laws that will govern the SAR appear to restrict precisely those freedoms associated with a free and democratic society, namely, the right to protest, the right of assembly, freedom of association, freedom of speech, freedom of expression, and voting rights. The resolution adopted by the Standing Committee of the NPC to repeal and amend many of Hong Kong's laws could jeopardize these freedoms. The laws affected are Hong Kong's Bill of Rights, the Societies Ordinance, the Public Order Ordinance, and legislation relating to electoral reforms.

Article 8 of the Basic Law states in part that the laws previously in effect in

The NPC's decisions regarding changes in the law are based on its belief that the People's Republic of China has the right to overturn any law that was changed after the 1984 Sino-British Joint Declaration.

Hong Kong shall be maintained "except for any that contravene this Law." Article 160 of the Basic Law mandates that any laws found to be in contravention of the Basic Law shall be amended or abolished when the Hong Kong SAR is established. The NPC's decisions regarding changes in the law are based on its belief that the People's Republic of China has the right to overturn any law that was changed after the 1984 Sino-British Joint Declaration. The United Kingdom and many international human rights groups have pointed out that China has not provided any substantive explanation as to how the 24 targeted laws violate Article 160 of the Basic Law. China's only response has been a statement that the legal amendments are justified by the need for stability. Tung Che-Hwa has described the changes in the law as "a balance between civil liberties and social stability." Human rights experts agree that national security should only be invoked when there is a threat of force against a nation's territory or inde-

pendence, not merely to prevent isolated threats to social stability.

According to Christine Loh, an independent lawmaker currently serving on the elected Legislature, there is no one in Hong Kong who is genuinely worried about social stability. The real worries, she says, are corruption and the future of every civic, community, and non-gov-

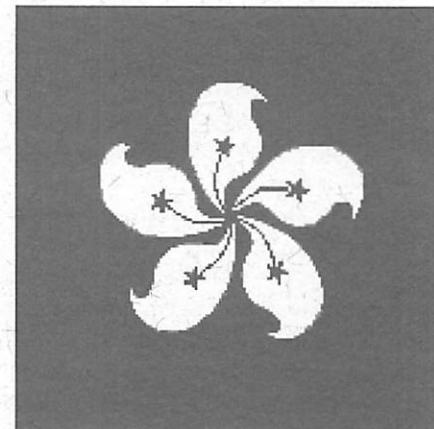
Local as well as global human rights groups are now active in Hong Kong and will undoubtedly play a crucial role in monitoring the human rights situation after the transfer takes place.

ernmental organization in Hong Kong. These groups have played a greater role since the late 1980s, most notably after the Tiananmen Square massacre took place. Many feel the grass roots movement that took place in Hong Kong was in response to the public's increasing anxiety over the reversion to Chinese control. Local as well as global human rights groups are now active in Hong Kong and will undoubtedly play a crucial role in monitoring the human rights situation after the transfer takes place.

Their survival is by no means guaranteed, however. Human rights groups in the SAR will face both legal and extra-legal obstacles. Article 23 of the Basic Law has language broad enough to prohibit any act that could be construed as subversive to the interests of the region. It is this type of vague statute that Beijing has used for years to silence or arrest dissidents in the PRC.

The Basic Law also prohibits "political organizations" from conducting

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"political acts" in Hong Kong and further prohibits these organizations from establishing ties with foreign political bodies. Under this definition, a group such as the Hong Kong Human Rights Monitor would be considered a political organization because it advocates changes in the laws. Thus it would effectively be banned from taking any action in Hong Kong and would furthermore be prohibited from having any contacts with groups in Europe or the United States such as Amnesty International or even the United Nations.

The overly broad language in the Basic Law and other legal ordinances has many people worried. They fear the future legislature will be able to interpret the laws to suit their own needs. With voting rights in question, there also is a strong likelihood that the future legislature will be oblivious to public pressure and essentially controlled through the back door by officials in Beijing.

In addition to concerns over the language of the new laws, the decision to abolish current laws may result in a legal vacuum or a constitutional crisis. This is

because the NPC Standing Committee's decision to abolish a law does not mean the former version of that law will automatically be brought back into force. Thus new laws must be drafted to replace those abolished. If the Provisional Legislature meets and acts on legislation before July 1st, however, the current elected Legislature will file suit in Hong Kong's court.

The right of movement to and from Hong Kong also was ensured in the Joint Declaration, but China's willingness to uphold its end of the agreement is now in question. Recently, two members of Hong Kong's Democratic Party who were traveling to Beijing to submit petitions against the provisional legislature were denied entry. This led many to believe that China has a "blacklist" of Hong Kong politicians. Among the Chinese immigrants in Hong Kong is political dissident Han Dongfang, who has been denied entry into China since he was expelled in August 1993.

Conclusion

Whether or not the PRC will use its influence to change the fundamental face of Hong Kong is uncertain, but recent events indicate this is likely.

Although the Basic Law appears to threaten basic civil liberties, there may be some protection for human rights if the rule of law is protected. According to the Joint Declaration, Hong Kong will continue to operate under its existing legal system, the British common law. Whether or not the judicial system will effectively protect human rights in Hong Kong remains to be seen.

If anything has the power to protect Hong Kong, it is money. Human rights groups would have little to worry about if human rights were being protected as zealously as trade and investment have been. After July 1st, Hong Kong's capitalist system and free trade policies will remain intact for at least 50 years. Hong Kong will keep its status as a free port and separate customs territory. It will keep its own monetary and financial policies without paying taxes to China. The Hong Kong dollar will remain freely convertible, and property rights and foreign investment will be protected. Often the assumption is made that human rights and economic prosperity go hand in hand. The future situation in Hong Kong, soon to belong to the People's Republic of China, may test that theory. ☉

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human rights groups have criticized these prosecutions, in particular the fact that several of the defendants who have been found guilty and sentenced to death have had no defense lawyers. It is estimated that close to 100,000 of the less prominent individuals involved in the 1994 genocide are currently awaiting trial in Rwanda, while only 16 defense lawyers are currently practicing in that country.

Witness Protection

The death of witnesses in the Akayesu trial highlighted the need for

greater security. On January 5, 1997, an unnamed woman who had testified in the Akayesu trial was killed, along with her husband and their seven children. On December 23, 1996, gunmen killed a Taba store owner, Emanuel Rudasingwa, as well as his 12-year-old daughter and ten others. Rudasingwa was also scheduled to testify in the Akayesu trial. As a result, several witnesses have withdrawn.

On March 6, 1997, the ICTR requested assistance from the UN High Commissioner for Refugees, humanitarian organizations, and the countries

concerned, in locating and protecting defense witnesses who fled camps in eastern Zaire during the first week of March.

Budget Matters

The ICTR budget assumes that 12 to 20 trials will take place in 1997. The budget provides only \$750,000 for ICTR investigators' travel. (Belgium pays for air travel between Kigali and Arusha.) Funds for ICTR security have been increased to \$3.7 million, which will enable the ICTR to hire 75 security guards. Some of these guards would accompany investigators traveling in Rwanda. ☉

For more information on the International War Crimes Tribunals, see the following articles in past issues of *The Brief*.

A Permanent International Criminal Court: Soon to Be a Reality
Sexual Assault Issues Before the International Tribunal
News from the International War Crimes Tribunals
Point/Counterpoint on Trials in Absentia in the Former Yugoslavia
War Crimes Tribunal Discusses Jurisdictional Challenge
Center Hosts Conference on War Crimes Tribunal
Prosecutor Goldstone Offers Views on War Crimes Tribunal
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