

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3069 SSA SJR 22 - SJR 23 8672

SJR

22

COMMITTEE REPORT
SENATE

3/23/83

FURTHER:

Date: 4/14/83

Mr. President:

The Committee on State Affairs has had SJR 22

Relating to the establishment of the United States Academy of Peace and Conflict Resolution.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SJR 22 (SA) same title new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Tom Kelly

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Krischer do pass

CHAIRMAN

PAUL SIVLEY OF SENATOR MURKOWSKI'S STAFF IS WORKING WITH S. 254. HE SAID THE BILL WOULD ESTABLISH AN ACADEMIC INSTITUTION TO STUDY THE CAUSES OF WAR.

THE SENATE BILL WOULD AUTHORIZE 31 MILLION OVER 2 YEARS WITH 6 MILLION FOR OPERATING EXPENSES IN THE 1ST YEAR AND 10 MILLION FOR 2ND YEAR OPERATING EXPENSES. THE REMAINING 15 MILLION WOULD BE FOR A "CAPITALIZATION FUND" FOR OBTAINING OFFICE SPACE AND FOR EQUIPMENT.

THE HOUSE BILL, H.R. 1249, IS DIFFERENT IN THAT IT WOULD ESTABLISH "THE UNITED STATES ACADEMY OF PEACE AND CONFLICT RESOLUTION". IT WOULD AUTHORIZE 18 MILLION OVER 2 YEARS; 5 MILLION FOR THE 1ST YEAR, 8 MILLION THE 2ND YEAR, AND A 5 MILLION CAPITALIZATION FUND.

MORE _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 83-00007111 PRY 1 04/11/83 12:14:18 ORIG: LWOO IN= 0009 OUT= 0001
FROM: KIM / D.C. FOR GENE KENNEDY TO: REP. PESTINGER
TARGET: LJ73 SUBJ: ACADEMY OF PEACE PAGE 0002

I SPOKE WITH RIP SULLIVAN OF THE NATIONAL PEACE ACADEMY CAMPAIGN. HE SAID THAT ALTHOUGH THE ACADEMY'S OPTIONS FOR SPACE WOULD INCLUDE CONSTRUCTION, RENTING, AND LEASING SPACE, SEVERAL UNIVERSITIES HAVE OFFERED THEM SPACE FREE OF CHARGE.

RIP IS GOING TO SEND US SOME BACKGROUND MATERIAL THAT WE SHOULD BE ABLE TO FORWARD IN A DAY OR SO. UNTIL THAT ARRIVES, THE NATIONAL ACADEMY OF PEACE CAMPAIGN EXISTS SOLELY FOR THE PASSAGE OF THIS LEGISLATION. IT'S MEMBERSHIP EXTENDS TO ALL FIFTY STATES AND INCLUDES 35,000 MEMBERS. IT'S POSITION ON THE TWO BILLS INTRODUCED IS THAT THEY WOULD LIKE TO SEE PASSAGE IN BOTH HOUSES AND EXPECT THAT THE DOLLAR DIFFERENCES WILL BE RESOLVED.

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



April 14, 1983
3:00 p.m.

Butrovich Room
Capitol Bldg.

Members Present

Senator Vic Fischer, Chair
Senator Bill Ray, Vice Chair
Senator Arliss Sturgulewski
Senator Pat Rodey
Senator Tim Kelly

HB 79--Peremptory challenge of judges

Representative Fritz (prime sponsor) read a prepared statement in favor of the bill. He gave a history of peremptory challenge statute and discussed the situation in Homer where Judge Hornaday has been removed from up to 80% of his cases by defense attorneys, allegedly in response to tough drunk driving sentences handed down by Hornaday.

Senator Ray moved and asked unanimous consent that the bill be waived to the next committee of referral (Judiciary). There was no objection.

SB 220--Establishing a capital projects advisory commission

Senator Josephson (prime sponsor) testified in favor of the bill. He stated that this bill was modeled after a successful New Jersey statute. He observed that many legislators, the governor and the public have problems with the current method of allocating capital projects whereby each house of the legislature and the Governor have absolute discretion to pick projects equal to 1/3 of the revenues available. He read a letter from the Governor in support of the concept presented in the bill.

Senator Fischer commented that the time-frames in the bill did not mesh with the budget process. Senator Josephson said that he was not opposed to improving the mechanics of the legislation.

Senator Kelly was of the opinion that an appointed commission would not necessarily make better decisions than an elected 60 member legislature.

Senator Sturgulewski said that she felt that this bill was adding another patch to an already unworkable system.

Senator Ray felt that this bill is a "typical text book solution" that looks good on paper but wouldn't work in reality.

Senator Rodey said that he didn't see any other alternative for improving the present system.

Peter McDowell, Director of O.M.B. said that the Governor wholeheartedly supports this legislation in principle but that the details would have to worked out. He did not favor the creation of another Commission, however.

No action was taken on the bill.

SB 218--Disclosure of Information

Senator Kelly thinks this bill may open up legislative files for inspection. He suggested that the bill be amended to keep the existing disclosure law.

Senator Ray moved and asked unanimous consent to adopt a committee substitute which incorporated Sen. Kelly's suggestion and to move the CS with individual recommendations. There was no objection.

SB 48--Adoption of state retirement regulations

Ken Humphries, Director of the Division of Retirement and Benefits said that he thinks the bill is unnecessary since his division is promulgating regulations to address the problem, however, he doesn't object to the bill.

Senator Fischer proposed a committee substitute.

Senator Ray moved and asked unanimous consent to adopt the committee substitute and to pass the bill from committee with individual recommendations.

SJR 22--Supporting establishment of a U.S. Academy of Peace

Senator Fischer suggested that the words "and conflict resolution" be stricken from the bill to conform to the language used in the congressional legislation which this resolution supports.

A general discussion followed concerning the sponsorship of the congressional legislation. Some committee members did not want to be associated with certain well known liberal senators and other committee members did not want to be associated with certain conservative senators. It was noted that Senator Murkowski is prime sponsor of the congressional legislation.

Senator Ray moved and asked unanimous consent that a committee substitute incorporating Sen. Fischer's suggestion be adopted and passed from the committee with individual recommendations. There was no objection.

HCR 28--Establishing George A. Parks Day

Senator Ray moved and asked unanimous consent that the bill pass from committee with a do pass recommendation. There was no objection.

The meeting was adjourned at 4:30 p.m.

Introduced: 3/28/83
Referred: State Affairs

CR.

1 IN THE SENATE

BY V.FISCHER

2

SENATE JOINT RESOLUTION NO. 22

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

Relating to the establishment of the

6

United States Academy of Peace [and

7

Conflict Resolution.]

8

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

WHEREAS people throughout Alaska are concerned about the rise in
10 social and cultural hostilities, the increasing incidence of violent con-
11 flicts among nations and peoples, and the ever-present threat of nuclear
12 war; and

13

WHEREAS there is a need to promote nonviolent methods of resolving
14 human conflict; and

15

WHEREAS conflict resolution techniques have repeatedly been demon-
16 strated to provide a constructive, cost-effective means of resolving poten-
17 tially violent human conflicts; and

18

WHEREAS S.564 co-sponsored by Senator Frank Murkowski and H.R.1249,
19 now pending in Congress, would establish the United States Academy of Peace
20 [and Conflict Resolution], which would serve to advance international peace
21 through the development and implementation of programs to promote the use
22 of conflict resolution techniques in international conflicts;

23

BE IT RESOLVED by the Alaska State Legislature that the Congress of
24 the United States is urged to enact S.564 and H.R.1249 to establish a
25 United States Academy of Peace [and Conflict Resolution] to serve the people
26 and government by providing education and training programs, basic and
27 applied research opportunities, and peace information services.

28

COPIES of this resolution shall be sent to the Honorable Ronald
29 Reagan, President of the United States; the Honorable Casper Weinberger,

1 Secretary of Defense; the Honorable George Bush, Vice-President of the
2 United States and President of the U.S. Senate; the Honorable Thomas P.
3 O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the
4 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
5 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
6 tion in Congress.

ALASKA NURSES ASSOCIATION

R E S O L U T I O N

Regarding

A RESOLUTION IN SUPPORT OF
ESTABLISHING AN ACADEMY FOR PEACE

- WHEREAS, The United States has Army, Air Force and Naval Academies dedicated to the nation's defense and to teaching the strategy of war, and
- WHEREAS, A nation which speaks to the world as an advocate of peace has to date no Academy of Peace to signify its belief, and
- WHEREAS, A National Peace Academy would be dedicated to "Waging Peace", determining causes of war and would teach how to manage conflict constructively through education, training and modern techniques and would demonstrate to the world the belief that peace is attainable, and
- WHEREAS, The Congress has initiated bills for the establishment of a National Peace Academy which in 1982 had 56 sponsors in the U.S. Senate and 137 sponsors in the House of Representatives, and
- WHEREAS, Senator Frank Murkowski of Alaska co-sponsored the above legislation, and
- WHEREAS, The nurses of Alaska are dedicated to the cause of peace and have the belief that efforts toward "Waging Peace" should be invested by our government,
- THEREFORE THE ALASKA NURSES ASSOCIATION urges the Alaska State Legislature to support by resolution, the United States Congress' legislation to establish a National Peace Academy, and
- FURTHER, Urge the Alaska State Delegation to the U.S. Congress to support bills in the Congress to establish a National Academy of Peace.

Adopted by House of Delegates
Alaska Nurses Association
18 March 1983

Copies to: Alaska Legislature
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young

98TH CONGRESS
1ST SESSION

S. 564

To establish the United States Academy of Peace, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 1983

Mr. MATSUNAGA (for himself, Mr. RANDOLPH, Mr. HATFIELD, Mr. JEPSEN, Mr. STAFFORD, Mr. BYRD, Mr. ANDREWS, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mr. BOSCHWITZ, Mr. BRADLEY, Mr. BUMPERS, Mr. BURDICK, Mr. CHAFEE, Mr. CHILES, Mr. COCHRAN, Mr. CRANSTON, Mr. DANFORTH, Mr. DECONCINI, Mr. DODD, Mr. DURENBERGER, Mr. EAGLETON, Mr. EXON, Mr. FORD, Mr. HART, Mr. HEINZ, Mr. HUDDLESTON, Mr. INOUE, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KENNEDY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LONG, Mr. MATHIAS, Mr. MELCHER, Mr. METZENBAUM, Mr. MITCHELL, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. PELL, Mr. PRESSLER, Mr. PRYOR, Mr. RIEGLE, Mr. ROTH, Mr. SARBANES, Mr. SASSER, Mr. SIMPSON, Mr. SPECTER, Mr. STENNIS, and Mr. TSONGAS) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To establish the United States Academy of Peace, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "United States Academy
- 4 of Peace Act".

1 DECLARATION OF FINDINGS AND PURPOSES

2 SEC. 2. (a) The Congress finds and declares that—

3 (1) a living institution embodying the heritage,
4 ideals, and concerns of the American people for peace
5 would be a significant response to the deep public need
6 for the Nation to develop fully a range of effective op-
7 tions, in addition to armed capacity, that can leash in-
8 ternational violence and manage international conflict;9 (2) people throughout the world are fearful of nu-
10 clear war, are divided by war and threats of war, are
11 experiencing social and cultural hostilities from rapid
12 international change and real and perceived conflicts
13 over interests, and are diverted from peace by the lack
14 of problem-solving skills for dealing with such conflicts;15 (3) many potentially destructive conflicts among
16 nations and peoples have been resolved constructively
17 and with cost efficiency at the international, national,
18 and community levels through proper use of such tech-
19 niques as negotiation, conciliation, mediation, and arbi-
20 tration;21 (4) there is a national need to examine the disci-
22 plines in the social, behavioral, and physical sciences
23 and the arts and humanities with regard to the history,
24 nature, elements, and future of peace processes, and to
25 bring together and develop new and tested techniques

1 to promote peaceful economic, political, social, and cul-
2 tural relations in the world;

3 (5) the peacemaking activities of Americans
4 throughout government, private enterprise, and volun-
5 tary associations can be strengthened by a national in-
6 stitution devoted to international peace research, edu-
7 cation and training, and information services;

8 (6) there is a need for Federal leadership to
9 expand and support the existing international peace
10 and conflict resolution efforts of the Nation and to de-
11 velop new comprehensive peace education and training
12 programs, basic and applied research projects, and pro-
13 grams providing peace information;

14 (7) the Commission on Proposals for the National
15 Academy of Peace and Conflict Resolution, created by
16 the Education Amendments of 1978, recommended es-
17 tablishing an academy as a highly desirable investment
18 to further the Nation's interest in promoting interna-
19 tional peace;

20 (8) an academy, strengthening and symbolizing
21 the fruitful relation between the world of learning and
22 the world of public affairs, would be the most efficient
23 and immediate means for the Nation to enlarge its ca-
24 pacity to promote the peaceful resolution of interna-
25 tional conflicts; and

1 (9) the establishment of an academy is an appro-
2 priate investment by the people of this Nation to ad-
3 vance the history, science, art, and practice of interna-
4 tional peace and the resolution of conflicts among na-
5 tions without the use of violence.

6 (b) It is the purpose of this Act to establish an independ-
7 ent, nonprofit, national institution to serve the people and the
8 Government through the widest possible range of education
9 and training, basic and applied research opportunities, and
10 peace information services on the means to promote interna-
11 tional peace and the resolution of conflicts among the nations
12 and peoples of the world without recourse to violence.

13 DEFINITIONS

14 SEC. 3. As used in this Act, the term—

15 (1) "Academy" means the United States Acade-
16 my of Peace established under this Act;

17 (2) "Board" means the Board of Directors of the
18 Academy; and

19 (3) "Center" means the Center for International
20 Peace of the Academy.

21 ESTABLISHMENT

22 SEC. 4. (a) There is hereby established the United
23 States Academy of Peace.

24 (b) The Academy is an independent nonprofit corpora-
25 tion and an organization as defined in section 170(c)(2)(B) of

1 the Internal Revenue Code of 1954. The Academy does not
2 have the power to issue any shares of stock or to declare or
3 pay any dividends. No part of the financial resources, income,
4 or assets of the Academy or of any legal entity established by
5 the Academy may inure to the benefit of a director, officer,
6 employee, or agent of the Academy, except as reasonable
7 compensation for service or payment for expenses.

8 (c) The Academy shall maintain its principal office in
9 the District of Columbia with a designated agent or agents to
10 accept service of process for the corporation. Notice to or
11 service upon an agent shall be deemed notice to or service
12 upon the Academy.

13 (d) The Academy may rent, lease, purchase, or receive
14 and hold in its name property for offices, schools, and other
15 facilities and to carry out activities under this Act. As deter-
16 mined by the Board, the Academy may establish offices,
17 schools, and other facilities outside the District of Columbia
18 for purposes not inconsistent with this Act.

19 (e) As determined by the Board, the Academy may es-
20 tablish, under the laws of the District of Columbia, a legal
21 entity which is capable of receiving, holding, and investing
22 public and private funds for purposes in furtherance of the
23 Academy under this Act. The Academy may designate such
24 legal entity as the "Endowment of the United States Acad-
25 emy for Peace".

1 (f) The Academy is liable for the acts of its directors,
2 officers, employees, and agents when acting within the scope
3 of their authority.

4 (g)(1) The Academy has the sole and exclusive right to
5 use and to allow or refuse others the use of the terms
6 "United States Academy of Peace", "Center for Internation-
7 al Peace", and "Endowment of the United States Academy
8 of Peace" and the use of any official United States Academy
9 of Peace emblem, badge, seal, and other mark of recognition
10 or any colorable simulation thereof. No powers or privileges
11 hereby granted shall interfere or conflict with established or
12 vested rights secured as of September 1, 1981.

13 (2) Notwithstanding any other provision of this Act, the
14 Academy may use "United States" or "U.S." or any other
15 reference to the United States Government or Nation in its
16 title or in its corporate seal, emblem, badge, or other mark of
17 recognition or colorable simulation thereof in any fiscal year
18 only if there is an authorization of appropriations for the
19 Academy for such fiscal year provided by law.

20 POWERS AND DUTIES

21 SEC. 5. (a) The Academy may exercise the powers con-
22 ferred upon a nonprofit corporation by the District of Colum-
23 bia Nonprofit Corporation Act consistent with this Act,
24 except for section 5(o) of the District of Columbia Nonprofit

1 Corporation Act (section 1705(o) of title 29 of the District of
2 Columbia Code).

3 (b) The Academy may—

4 (1) establish a Center for International Peace and
5 appoint to it for periods up to two years scholars and
6 leaders in peace from the United States and abroad to
7 pursue scholarly inquiry and other appropriate forms of
8 communication on international peace and conflict reso-
9 lution and, as appropriate, provide stipends, grants,
10 fellowships, and other support to the leaders and
11 scholars;

12 (2) establish such divisions, programs, schools, and
13 offices as the Board deems appropriate to carry out
14 this Act;

15 (3) enter into formal and informal relationships
16 with other institutions, public and private, for purposes
17 not inconsistent with this Act;

18 (4) conduct research and make studies, particular-
19 ly of an interdisciplinary or of a multidisciplinary
20 nature, into the causes of war and other international
21 conflicts and the elements of peace among the nations
22 and peoples of the world, including peace theories,
23 methods, techniques, programs, and systems, and into
24 the experiences of the United States and other nations
25 in resolving conflicts with justice and dignity and with-

1 out violence as they pertain to the advancement of in-
2 ternational peace and conflict resolution;

3 (5) develop programs to make international peace
4 and conflict resolution research, education, and training
5 more available and useful to persons in government,
6 private enterprise, and voluntary associations, includ-
7 ing the creation of handbooks and other practical
8 materials;

9 (6) provide peace education and research pro-
10 grams at graduate and postgraduate levels that lead to
11 degrees as well as to certificates and other forms of
12 recognition;

13 (7) conduct training, symposia, and continuing
14 education programs for practitioners, policymakers,
15 policy implementers, and citizens and noncitizens di-
16 rected to developing their skills in international peace
17 and conflict resolution;

18 (8) develop, for publication or other public com-
19 munication, and disseminate, the products of the Acad-
20 emy;

21 (9) establish a clearinghouse and other means for
22 disseminating information from the field of peace learn-
23 ing to the public and to government personnel;

24 (10) establish a United States Medal of Peace,
25 and any other medals or honors the Board periodically

1 may recommend, to be awarded annually with appro-
2 priate ceremony by the President of the United States,
3 upon recommendation to the President by the Board,
4 to one or more individuals or groups deserving of ex-
5 emplary recognition for personal or group contribution
6 to international peace education, training, or research.
7 A medal shall be accompanied by a cash award in an
8 amount determined by the Board to be paid in accord-
9 ance with section 10(b)(2). A person associated with
10 the Academy may receive a medal or other award; and

11 (11) secure directly and without reimbursement,
12 upon request of the president of the Academy to the
13 head of any Federal department or agency, information
14 necessary to enable the Academy to carry out the pur-
15 poses of this Act if such release of the information
16 would not unduly interfere with the proper functioning
17 of a department or agency.

18 (c) The Academy may undertake extension and outreach
19 activities under this Act by making grants and entering into
20 contracts with institutions of postsecondary, community, sec-
21 ondary, and elementary education including combinations of
22 such institutions, with public and private educational, train-
23 ing, or research institutions including libraries, and with
24 public departments and agencies including State and territori-
25 al departments of education and of commerce. No grant may

1 be made to an institution unless it is a nonprofit or official
2 public institution. A grant or contract may be made to—

3 (1) initiate, strengthen, and support basic and ap-
4 plied research on international peace and conflict reso-
5 lution;

6 (2) promote and advance the study of international
7 peace and conflict resolution by educational, training,
8 and research institutions, departments, and agencies;

9 (3) educate the Nation about and educate and
10 train individuals in peace and conflict resolution the-
11 ories, methods, techniques, programs, and systems;

12 (4) assist the Academy in its publication, clearing-
13 house, and other information services programs; and

14 (5) promote the other purposes of this Act.

15 (d) The Academy may respond to the request of a de-
16 partment or agency of the United States Government to in-
17 vestigate, examine, study, and report on any issue within the
18 Academy's competence. A research request may be refused
19 for reason of cost or of inappropriateness to the Academy's
20 purposes or independence.

21 (e) The Academy may enter into contracts for the
22 proper operation of the Academy, including maintenance of
23 its offices, schools, and other facilities.

24 (f) The Academy may appoint and fix the compensation
25 and duties of officers, employees, and agents and establish

1 such advisory committees, councils, or other bodies as the
2 efficient administration of the business and purposes of the
3 Academy may require.

4 (g) The Academy may adopt, amend, and alter bylaws,
5 not inconsistent with the laws of the United States and the
6 District of Columbia, for the management of Academy prop-
7 erty and the regulation of Academy affairs.

8 (h) The Academy may obtain grants and contracts and
9 receive gifts and contributions from government at all levels,
10 international organizations, and private agencies, organiza-
11 tions, institutions, and individuals.

12 (i) The Academy may charge and collect subscription
13 fees and develop, for publication or other public communica-
14 tion, and disseminate, periodicals and other materials.

15 (j) The Academy may charge and collect fees and other
16 participation costs from persons and institutions participating
17 in the Academy's direct activities authorized in subsection
18 (b).

19 (k) The Academy may sue and be sued, complain, and
20 defend in any court of competent jurisdiction.

21 (l) The Academy may adopt, alter, use, and display a
22 corporate seal, emblem, badge, and other mark of recognition
23 and colorable simulations thereof.

1 (m) The Academy may do any and all lawful acts and
2 things necessary or desirable to carry out the objectives and
3 purposes of this Act.

4 (n) The Academy shall not itself undertake to influence
5 the passage or defeat of any legislation by the Congress of
6 the United States or by any State or local legislative bodies,
7 or by the United Nations, except that personnel of the Acad-
8 emy may testify or make other appropriate communication
9 when formally requested to do so by a legislative body, a
10 committee, or a member thereof.

11 BOARD OF DIRECTORS

12 S.L.C. 6. (a) The powers of the Academy shall be vested
13 in a Board of Directors unless otherwise specified in this Act.

14 (b) The Board of Directors shall consist of fifteen mem-
15 bers appointed as follows:

16 (1) two Members of the Senate, one from each of
17 the major political parties, to be appointed by the
18 President pro tempore of the Senate no later than five
19 days after the confirmation of the members nominated
20 by the President;

21 (2) two Members of the House of Representatives,
22 one from each of the major political parties, to be ap-
23 pointed by the Speaker of the House of Representa-
24 tives no later than five days after the confirmation of
25 the members nominated by the President; and

1 (3) eleven persons, no more than six of whom
2 may be members of the same political party and none
3 of whom may be employees of the Federal Govern-
4 ment, appointed by the President, by and with the
5 advice and consent of the Senate. Not later than ninety
6 days after the date of enactment of this Act, the Presi-
7 dent shall nominate the eleven individuals for the ini-
8 tial Board and transmit their names and any other in-
9 formation to the Senate. If the Senate fails to confirm
10 a nominee, it shall so inform the President. The Presi-
11 dent shall submit the name of a new nominee within
12 fifteen days of notice of rejection by the Senate.

13 (c) A director shall take an oath of office administered
14 by the Vice President of the United States within two weeks
15 after appointment, if a Member of Congress, or after confir-
16 mation by the Senate, if a Presidential appointee.

17 (d) Members of the Board of Directors shall serve the
18 following terms of office:

19 (1) A Member of Congress appointed to the Board
20 shall serve for a single term of six years and only
21 while serving as a Member of Congress.

22 (2) When submitting nominations for the initial
23 Board, the President shall stipulate by name four di-
24 rectors who shall serve for five-year terms, four direc-
25 tors who shall serve for four-year terms, and three di-

1 rectors who shall serve for three-year terms. Thereaf-
2 ter, each Presidential appointee, except for a director
3 appointed to fill an unexpired term, shall serve for a
4 five-year term. No Presidential appointee may serve on
5 the Board for more than ten years.

6 (3) No person may be appointed to less than a full
7 term unless appointed to fill an unexpired term.

8 (e) Whenever a vacancy occurs on the Board before the
9 expiration of a director's term of office, the vacancy shall be
10 filled—

11 (1) if a Member of Congress, pursuant to para-
12 graph (1) or (2) of subsection (b) with the appointment
13 made to a full term no later than thirty calendar days
14 after the vacancy occurs; or

15 (2) if a Presidential appointee, by the Board sub-
16 mitting a list of nominees of no less than three and no
17 more than five names to the President no later than
18 thirty calendar days after the vacancy occurs. The
19 President shall select a nominee from the list and
20 submit the nominee's name to the Senate for confirma-
21 tion no later than thirty calendar days after receiving
22 the Board's recommendations.

23 (f) At least ninety days but no more than one hundred
24 and twenty days before the timely expiration of the term of
25 office of any Presidential appointee to the Board, the Board

1 shall submit to the President a list of no less than three and
2 no more than five recommendations for each position. The
3 President shall submit the name of the nominee for each posi-
4 tion, selected from the Board's list of recommendations, to
5 the Senate for confirmation at least forty-five calendar days
6 before expiration of the term of office to be filled.

7 (g) A director may be removed from the Board as
8 follows:

9 (1) A member of the Board appointed from the
10 Congress may be removed by the appointing authority
11 for malfeasance in office, persistent neglect of duties,
12 or inability to discharge duties.

13 (2) A member of the Board appointed by the
14 President may be removed by the President—

15 (A) in consultation with the Board, for con-
16 viction of a felony, malfeasance in office, persist-
17 ent neglect of duties, or inability to discharge
18 duties;

19 (B) upon the recommendation of ten mem-
20 bers of the Board; or

21 (C) upon the recommendation of a majority
22 of the members of the Committee on Foreign Af-
23 fairs and the Committee on Education and Labor
24 of the House of Representatives and a majority of
25 the members of the Committee on Foreign Rela-

1 tions and the Committee on Labor and Human
2 Resources of the Senate.

3 A recommendation made in accordance with clause (B)
4 may be made only pursuant to action taken at a meet-
5 ing of the Board, which may be closed pursuant to the
6 procedures of subsection (i). Only members who are
7 present may vote. A record of the vote shall be main-
8 tained. The President shall be informed immediately by
9 the Board of the recommendation. If the President re-
10 moves the member based on any of the grounds de-
11 scribed in clauses (A) through (C), the President shall
12 nominate a successor pursuant to subsection (e).

13 (h) No member of the Board may participate in any de-
14 cision, action, or recommendation with respect to any matter
15 which directly and financially benefits the member or pertains
16 specifically to any public body or any private or nonprofit
17 firm or organization with which the member is then formally
18 associated or has been formally associated within a period of
19 two years.

20 (i) Meetings of the Board shall be conducted as follows:

21 (1) The President shall stipulate by name the
22 nominee who shall be the first Chairman of the Board.
23 The first Chairman shall serve for a term of three
24 years. Thereafter, the Board shall elect a Chairman
25 every three years from among the directors appointed

1 subsection (c) of section 552b of title 5, United States
2 Code.

3 (j) A director appointed by the President shall be enti-
4 tled to receive the daily equivalent of the annual rate of basic
5 pay in effect for grade GS-18 of the General Schedule in
6 section 5332 of title 5, United States Code, for each day
7 during which the director is engaged in the performance of
8 duties as a member of the Board.

(k) While away from his home or regular place of busi-
10 ness in the performance of duties for the Academy, a director
11 shall be allowed travel expenses, including a per diem in lieu
12 of subsistence, not to exceed the expenses allowed persons
13 employed intermittently in Government service under section
14 5703(b) of title 5, United States Code.

15 OFFICERS AND EMPLOYEES OF THE ACADEMY

16 SEC. 7. (a) The Board shall appoint the president of the
17 Academy and such other officers as the Board determines to
18 be necessary. The president shall be a nonvoting ex officio
19 member of the Board. All officers shall serve at the pleasure
20 of the Board. The president shall be appointed for an explicit
21 term of years. Notwithstanding any other provision of law
22 limiting the payment of compensation, the president and
23 other officers appointed by the Board shall be compensated at
24 rates determined by the Board, but no greater than those

1 provided for by level I of the Executive Schedule of chapter
2 53 of title 5, United States Code.

3 (b) The Board shall authorize the president and any
4 other officials or employees it designates to receive and dis-
5 burse public and private moneys, obtain and make grants,
6 enter into contracts, establish and collect fees, issue certifi-
7 cates and other honorifics, and undertake all other activities
8 necessary for the efficient and proper functioning of the
9 Academy.

10 (c) The president, subject to Academy bylaws and gen-
11 eral policies established by the Board, may appoint, fix the
12 compensation of, and remove such employees of the Academy
13 as the president determines necessary to carry out the pur-
14 poses of the Academy. In determining employee rates of
15 compensation, the president shall be guided by the provisions
16 of title 5, United States Code, relating to classification and
17 General Schedule pay rates.

18 (d) The president may request the assignment of any
19 Federal officer or employee to the Academy by an appropri-
20 ate department, agency, or congressional official or Member
21 of Congress and may enter into agreement for such assign-
22 ment, if the affected officer or employee agrees to such as-
23 signment and such assignment causes no prejudice to the
24 salary, benefits, status, or advancement within the de-

1 partment, agency, or congressional staff of such officer or
2 employee.

3 (e) No officer or full-time employee of the Academy may
4 receive any salary or other compensation for services from
5 any source other than the Academy during the officer's or
6 employee's period of employment by the Academy, except as
7 authorized by the Board.

8 (f) Officers and employees of the Academy shall not be
9 considered officers and employees of the Federal Government
10 except for purposes of the provisions of title 28, United
11 States Code, which relate to Federal tort claims liability, and
12 the following provisions of title 5 of the United States Code:
13 subchapter I of chapter 81 (relating to compensation for work
14 injuries); chapter 83 (relating to civil service retirement);
15 chapter 87 (relating to life insurance); and chapter 89 (relat-
16 ing to health insurance). The Academy shall make contribu-
17 tions at the same rates applicable to agencies of the Federal
18 Government under the provisions of title 5 referred to in this
19 section.

20 (g) No part of the income or assets of the Academy or of
21 any legal entity created by the Academy shall inure to any
22 agent, employee, officer, or director or be distributable to any
23 such person during the life of the corporation or upon dissolu-
24 tion or final liquidation. Nothing in this section may be con-
25 strued to prevent the payment of reasonable compensation for

1 services or expenses to the directors, officers, employees, and
2 agents of the Academy in amounts approved in accordance
3 with the provisions of this Act.

4 (h) The Academy shall not make loans to its directors,
5 officers, employees, or agents, or to any legal entity created
6 by the Academy. A director, officer, employee, or agent who
7 votes for or assents to the making of a loan or who partici-
8 pates in the making of a loan shall be jointly and severally
9 liable to the Academy for the amount of the loan until repay-
10 ment thereof.

11 PROCEEDURES AND RECORDS

12 SEC. 8. (a) The Academy shall monitor and evaluate
13 and provide for independent evaluation if necessary of pro-
14 grams supported in whole or in part under this Act to ensure
15 that the provisions of this Act and the bylaws, rules, regula-
16 tions, and guidelines promulgated pursuant to this Act are
17 adhered to.

18 (b) The Academy shall prescribe procedures to ensure
19 that grants, contracts, and financial support under this Act
20 are not suspended unless the grantee, contractor, or person
21 or entity receiving financial support has been given reason-
22 able notice and opportunity to show cause why the action
23 should not be taken.

24 (c) In selecting persons to participate in Academy activ-
25 ities, the Academy may consider a person's practical experi-

1 ence or equivalency in peace study and activity as well as
2 other formal requirements.

3 (d) The Academy shall keep correct and complete books
4 and records of account, including separate and distinct ac-
5 counts of receipts and disbursements of Federal funds and of
6 non-Federal funds. The Academy's annual financial report
7 shall identify the use of each source of funding and shall pre-
8 sent a clear description of the full financial situation of the
9 Academy. Nothing in this section prevents the Academy from
10 using Federal and non-Federal funds together in any grant,
11 contract, program, or other expenditure of the Academy con-
12 sistent with this Act.

13 (e) The Academy shall keep minutes of the proceedings
14 of its Board and of any committees having authority under
15 the Board.

16 (f) The Academy shall keep at its principal office a
17 record of the names and addresses of its Board members;
18 copies of this Act, of any other Acts relating to the Academy,
19 and of all Academy bylaws, rules, regulations, and guide-
20 lines; required minutes of proceedings; a record of all applica-
21 tions and proposals and issued or received contracts and
22 grants; and financial records of the Academy. All items re-
23 quired by this subsection may be inspected by any Board
24 member or the member's agent or attorney for any proper
25 purpose at any reasonable time.

1 (g) The accounts of the Academy shall be audited annu-
2 ally in accordance with generally accepted auditing standards
3 by independent certified public accountants or independent
4 licensed public accountants, certified or licensed by a regula-
5 tory authority of a State or other political subdivision of the
6 United States. The audit shall be conducted at the place or
7 places where the accounts of the Academy are normally kept.
8 All books, accounts, financial records, files, and other papers,
9 things, and property belonging to or in use by the Academy
10 and necessary to facilitate the audit shall be made available
11 to the person or persons conducting the audit, and full facili-
12 ties for verifying transactions with the balances or securities
13 held by depositories, fiscal agents, and custodians shall be
14 afforded to such person or persons.

15 (h) The Academy shall provide a report of the audit to
16 the President of the United States and to each House of Con-
17 gress no later than six months following the close of the fiscal
18 year for which the audit is made. The report shall set forth
19 the scope of the audit and include such statements, together
20 with the independent auditor's opinion of those statements, as
21 are necessary to present fairly the Academy's assets and li-
22 abilities, surplus or deficit, with reasonable detail, including a
23 statement of the Academy's income and expenses during the
24 year including a schedule of all contracts and grants requiring
25 payments in excess of \$5,000 and any payments of compen-

1 sation, salaries, or fees at a rate in excess of \$5,000 per
2 annum. The report shall be produced in sufficient copies for
3 the public.

4 (i) The Academy and its directors, officers, employees,
5 and agents shall be subject to the provisions of section
6 552 of title 5, United States Code (relating to freedom of
7 information).

8 INDEPENDENCE AND LIMITATIONS

9 SEC. 9. (a) Except as otherwise provided in this Act,
10 the Academy shall not be considered a department, agency,
11 or instrumentality of the Federal Government. Nothing in
12 this Act may be construed as limiting the authority of the
13 Office of Management and Budget to review and submit com-
14 ments on the Academy's budget request at the time it is
15 transmitted to the Congress.

16 (b) No political test or political qualification may be used
17 in selecting, appointing, promoting, or taking any other per-
18 sonnel action with respect to any officer, employee, agent, or
19 recipient of Academy funds or services or in selecting or
20 monitoring any grantee, contractor, person, or entity receiv-
21 ing financial assistance under this Act.

22 FUNDING

23 SEC. 10. (a) For the purpose of purchasing, leasing,
24 renting, or otherwise acquiring and improving a suitable site
25 for a principal office for the Academy, the Center for Interna-

1 tional Peace, and for the legal entity authorized to be estab-
2 lished under section 4 of this Act, in or within easy reach of
3 the District of Columbia, there are authorized to be appropri-
4 ated on or after October 1, 1983, to the Academy a capital-
5 ization fund of \$15,000,000 which shall remain available to
6 the Academy without regard to fiscal year limitations.

7 (b)(1) For the purpose of establishing the programs and
8 administering the affairs of the Academy as authorized by
9 this Act (except for paragraph (10) of section 5(b)), there are
10 authorized to be appropriated for the fiscal year 1984,
11 \$6,000,000 and for the fiscal year 1985, \$10,000,000.
12 Monies appropriated for the fiscal year 1984 shall remain
13 available to the Academy through the fiscal year 1985.

14 (2) Any necessary expenses incurred by the Academy in
15 establishing or awarding a United States Medal of Peace or
16 in making a cash award in connection with the awarding of
17 such medal under paragraph (10) of section 5(b) shall be paid
18 out of the private funds of the legal entity established under
19 section 4(e).

20 (c) The Board of Directors may transfer to the legal
21 entity authorized to be established under section 4(e) any
22 funds not obligated or expended from appropriations to the
23 Academy for a fiscal year, and such funds shall remain avail-
24 able for obligation or expenditure for the purposes of such
25 legal entity without regard to fiscal year limitations. Any use

1 by such legal entity of appropriated funds shall be reported to
2 each House of the Congress and to the President of the
3 United States.

4 (d) Any authority provided by this Act to make con-
5 tracts shall be effective for a fiscal year only to such extent or
6 in such amounts as are provided in appropriation Acts.

7 DISSOLUTION OR LIQUIDATION

8 SEC. 11. Upon dissolution or final liquidation of the
9 Academy or of any legal entity created pursuant to this Act,
10 all income and assets of the corporation or other legal entity
11 shall revert to the Treasury of the United States.

12 REPORTING REQUIREMENT AND REQUIREMENT TO HOLD

13 HEARINGS

14 SEC. 12. Beginning two years after the date of enact-
15 ment of this Act, and at intervals of two years thereafter, the
16 Chairman of the Board of Directors of the Academy shall
17 prepare and transmit to the Congress and the President a
18 report detailing the progress the Academy has made in carry-
19 ing out the purposes of this Act during the preceding two-
20 year period. The President shall prepare and transmit to the
21 Congress within a reasonable time after the receipt of such
22 report the written comments and recommendations of the ap-
23 propriate agencies of the United States with respect to the
24 contents of such report and their recommendations with re-
25 spect to any legislation which may be required concerning

1 the Academy. After receipt of such report by the Congress,
2 the Committee on Foreign Affairs and the Committee on
3 Education and Labor of the House of Representatives and
4 the Committee on Foreign Relations and the Committee on
5 Labor and Human Resources of the Senate shall hold hear-
6 ings to review the findings and recommendations of such
7 report and the written comments received from the Presi-
8 dent.

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S J R

2 3

Kim Moore 624-5873 DC. LIO,

Kevin Coyner, Merkowski

Jim Lexo, Young

We contacted Steveris, Murkowski & Young.

Stevens contacted the State Department. They stressed that they have no control over a state wanting to establish a sister state relationship with Taiwan, but they wanted to extend a serious warning to us.

It is imperative that the language in the resolution in no way be provocative toward China. Sara Ann Smith from the State Department (202-632-7710), said that Taiwan has approached many U.S. states to solicit resolutions of this kind and that they attempt to have those states refer to them as "The Republic of China" or "RSC." This reference is highly inflammatory language and may create difficulties with U.S. relations toward China. They suggested that the resolution refer to them as "The People of Taiwan" or "The Province of Taiwan."

Further, that the resolution emphasizes people to people contact, cultural exchange and general goodwill. The resolution should avoid any political references.

The states of Virginia, Miss., Illinois, Arkansas, S. Carolina, Colorado, Kentucky and Hawaii have these resolutions. They highly suggest that you use these for models.

Although the State Department will not officially try to influence you, they continue to stress the problem with these resolutions inhibiting a formal U.S. relationship with China.

Sen. Stevens has sent a telegram to this office also warning of this.

*This top memo is from
House State Affairs staff!*

Summary of U.S.State Dept. 1982 report to Senate & House Foreign Relations Committees on Human Rights Practices in Taiwan

Political history since 1949 - the political power and most positions of power in the government remain with the Nationalist Party, the Kuomintang, who were elected on mainland China before 1945. Native Taiwanese - about 85% of population - do not have significant power, and are structurally prevented from gaining it.

What is referred to in the report as the "taiwanese independence movement" is a loose movement to return control of the government to elected Taiwanese. This movement is considered sedition.

Martial Law - Martial law was imposed in 1949 and operated ever since. It is the means by which the Nationalist Party retains control and is the crucial fact for human rights in Taiwan. Martial law means that political crimes and other major crimes can and are tried in military, rather than civilian, courts. Cases in these categories are then reviewable only by the Ministry of Defense.

These are the observations on human rights conditions as listed in the State Dept. report:

Political murders - murders of a mother and twin daughters of an opposition figure and of a U.S. born Taiwanese professor in 1980 and 1981 "are believed to have been politically motivated".

Torture - Just last May, five policemen were tried and convicted for illegal arrest and causing bodily harm to a taxi driver beaten and then drowned while under arrest. "Physical violence...(is) a practice many believe police resort to frequently."

Arrest and warrants - Arrest is without warrant in many cases. Individuals may be held up to seven months and possibly more at prosecutor's request. Recently, attorneys were allowed to be present for interrogation of their clients, but that may only mean sitting behind a soundproof window - watching, but not hearing. There is no protection against self-incrimination.

For many minor crimes police not only arrest, but also prosecute and punish. Police are now trying to get the power to put certain of those detained in military prisons for "educational punishment" for crimes against "social peace" - all without trial.

"Monitoring of telephone calls(is)widely believed to exist", and in a recent case there was evidence of monitoring of international calls.

Political prisoners - There are, by government admission and the count of international organizations, approximately 100 political prisoners in Taiwan. 20 of them have been imprisoned over 30 years. Sedition, which is defined as any opposition to basic government policy, especially the contention that the present government represents all of mainland China, is punishable in military courts under martial law. Native Taiwanese who say that their island should be self-governing are committing sedition and are commonly and frequently tried as such. Political candidates are known to be routinely monitored for such sentiments.

COPY

International security surveillance- Although authorities deny it, it is widely accepted that activities of students in the U.S. and other countries' universities who are Taiwanese are followed by the security service.

Censorship - Police may legally seize, ban and/or suspend publication licenses of publishers of printed material they think "confuses public opinion and affects the morale of the public and armed forces." This practice is very common. Major U.S. magazines such as Newsweek have been banned in recent past. Foreign correspondents' credentials have been revoked for reporting the wrong things.

Public assembly - Public assembly for political purposes is banned, except in recent years 15 day election periods have been created in which rallies are allowed but closely monitored.

Religious freedom - Churches have been warned against involvement in opposition political groups or groups which discuss Taiwanese independence. Authorities have made it clear that they intend to take control of religious educational institutions. In 1980 a confrontation with the Presbyterian church came to a head with the conviction of the church's general secretary and others in the church for their harboring a sedition defendant who sought help.

Travel freedom - Permission to leave the country for a trip or to study may be delayed or withheld for security reasons or because the person has criticized the political establishment. 20,000 people (about 2% of applicants) were denied travel permits in 1980 - over 300 for security reasons alone.

TAIWAN

More than thirty years of dynamic economic development contrasts sharply with the pace of political development in Taiwan, where the ruling authorities have emphasized stability rather than change. Nonetheless, the authorities have created an array of democratic institutions from village to province level, with candidates inside and outside the dominant Nationalist Party. Actual power, however, remains in the hands of the small leadership group elected in mainland China before 1945, which came to Taiwan after World War II and controls the Nationalist Party (Kuomintang), the military, and the executive bureaucracy. A high degree of political control is exercised through the security apparatus, which operates under martial law provisions enacted in 1949 and which the authorities justify by the threat of military action or subversion from mainland China.

The enhancement of human rights is publicly endorsed by the authorities but remains incompletely realized in Taiwan. Although individuals may run for elective office, coordinated opposition activity is greatly restricted. The publication of opposition political views is closely controlled and the activities of outspoken oppositionists are monitored, both at home and, apparently, abroad. Native Taiwanese, descendants of Chinese who migrated from the mainland mostly in the eighteenth century and who now constitute 85 percent of the population, dominate the economy but are under-represented within the ruling elite. Recent evidence suggests that torture and other forms of physical intimidation are still occasionally used by police, but probably are not officially condoned.

Nineteen eighty-two saw the continuation of a slow trend toward improvement in the human rights situation in Taiwan. Publication and public expression of oppositionist sentiment have become gradually freer, although there are still strict limits to what is acceptable. The authorities continue to recruit qualified Taiwanese to fill important economic and political, military, and security posts, a process which will contribute to an increased share of political power by the Taiwanese. With the rise of a prosperous middle class, popular concern about human rights is increasing. Despite Taiwan's diplomatic isolation and concern about the island's future after the passing of the current President, Chiang Ching-kuo, the outlook for continued improvement in human rights appears favorable.

1. Respect for the Integrity of the Person, Including Freedom from:

a. Killing

No killings for political reasons have been substantiated in Taiwan in 1982, or indeed in recent years. However, the murder in February 1980 of the mother and twin daughters of jailed oppositionist Lin Yi-hsiung and the suspected murder in July 1981 of a Taiwan-born US resident, Professor Chen Wen-cheng, are widely believed to have been politically motivated.

b. Disappearance

In recent years, there have been no credible reports of persons being abducted or secretly arrested by the security services. There are no known terrorist organizations operating on the island.

Under martial law, which has been in effect in Taiwan since 1949, civilians who commit certain offenses, including sedition, may be tried in military court. Opposition to basic policy (such as expressing views contrary to the authorities' claim to represent all of China, or supporting an independent legal status for Taiwan) is considered seditious and thus punishable under martial law.

The authorities occasionally transfer "important" civilian cases (involving such crimes as homicide, kidnapping, and armed robbery) to the military courts. The authorities state that the military courts' swifter and generally more severe justice acts as a deterrent to potential criminals. Sentences are reviewed only within the Ministry of National Defense. In May 1982, the case of Li Shin-ko, who confessed to carrying out Taiwan's first armed bank robbery and murdering a policeman, was referred to the military courts for action. Li's trial on May 18 lasted less than two hours and the sentence, death, was carried out eight days later.

Neither civil nor martial law provides the defendant with protection from self-incrimination. Following the July 1982 revision of the criminal procedures code, suspects may for the first time have a lawyer present during interrogation. However, the authorities have indicated that the lawyer's role is to protect his client from mistreatment, rather than to provide legal counsel during questioning. In some cases, windows have been installed in police station interrogation rooms in order that lawyers (or family members) may see the suspect without hearing the questioning.

g. Invasion of the Home

Physical invasion of the home without a warrant is not a common practice in Taiwan, but does occur on occasion. The Code of Criminal Procedure requires that searches be authorized by warrants, signed by a prosecutor or, during a trial, by a judge. However, exceptions to this rule, previously few in number, were substantially increased by the revision of the code in July 1982. When making warrantless arrests, police may also make necessary searches of person or property without prior authority. Other types of violations of the home, such as monitoring telephone calls, are widely believed to exist.

2. Respect for Civil and Political Rights, Including:

a. Freedom of Speech and Press

The Constitution guarantees freedom of speech and the press. These rights are limited, however, by the enforcement of martial law restrictions. Individuals are not free publicly to question the regime's basic political policy of anti-communism and claim to sovereignty over all of China. Persons who speak favorably of communism or the People's Republic of China, or persons (usually native Taiwanese) who question the legitimacy of Taiwan's mainland authorities by suggesting support for Taiwan independence or self-determination, can expect to be charged with sedition and tried in a military court.

Information brought to light during the investigation of the death of Professor Chen Wen-cheng in 1981 suggests that the security authorities closely monitor political expression, both at home and overseas. During questioning by the security

c. Torture

Taiwan law specifically prohibits the use of torture. The Code of Criminal Procedure states that an accused shall be "frankly" examined, but that no violence, threat, inducement, fraud, or other improper means shall be used. This language is repeated in the Military Trial Law.

The death in police custody of a Taipei taxi driver, Wang Ying-hsien, in May 1982 focused public attention on the use of physical violence by police in interrogating criminal suspects, a practice many believe police resort to frequently. Wang was picked up on suspicion of robbing a bank and died while in police custody. The actual robber was captured a few hours later and Wang's daughter challenged the police account of Wang's death. The autopsy report, released on August 20, confirmed that Wang was beaten but ruled that his death was caused by drowning in the Esintien River. Although his death was officially declared a suicide, five policemen were tried and convicted for illegally arresting Wang and causing him bodily harm.

d. Cruel, Inhuman, or Degrading Treatment or Punishment

Imprisonment is the usual form of punishment for both political and nonpolitical offenders. According to the authorities, nine executions were carried out in 1981, seven of convicted murderers, and two of persons convicted of robbery.

Taiwan's civilian prisons are severely overcrowded. In April 1982 the press reported that civilian prisons, built to accommodate 11,261 prisoners, were then holding 17,182 or 5,901 over capacity. Prisoners are forced to share cramped living quarters and have fewer opportunities for work, exercise, and family visits. Overcrowding was partially responsible for severe rioting which broke out in the juvenile section of Msinthu Prison in March 1982.

Conditions in the military prisons administered by the security police, where political prisoners are confined, are reportedly less crowded. Prisoners receive the same food as soldiers and have work and recreation opportunities. Although conditions for the Kaohsiung-incident prisoners have reportedly improved since their arrest in 1980, six non-Nationalist Party legislators charged in July 1982 that these prisoners continue to be denied access to regular work programs and recreational activities, are prohibited certain amenities accorded other prisoners, and are subject to special rules which keep them separate from one another. A few of the Kaohsiung-incident prisoners are alleged to still suffer from the effects of pretrial mistreatment.

There is no known discrimination in the treatment of prisoners because of class, race, sex, or religion.

e. Arbitrary Arrest and Imprisonment

Taiwan's law of habeas corpus requires that, following an individual's arrest, the arresting authorities notify in writing the individual and his designated relative or friend within 24 hours of the reason for his arrest or detention. The Code of Criminal Procedure specifies that the authorities may detain an accused for up to two months during investigation prior to the filing of the formal indictment, and for up to three months during trial. During the investigation phase,

however, the prosecuting officer may apply to the court for one extension or two months. The period of detention may also be extended during the time the accused is on trial. In recent cases, including the Kaohsiung incident, the authorities generally have followed the requirements of the above provisions, with exceptions occurring more frequently in the military system.

Major changes in the Code of Criminal Procedure, affecting the rights of criminal suspects, were enacted by the Legislative Yuan in July 1982. Suspects were granted the right to legal counsel during the investigation phase, including the right to have a lawyer present during interrogation by police. This was viewed by legal experts as a positive step in the protection of arrestees' rights. However, despite the opposition of the legal establishment, the press, and many legislators, the authorities also forced passage of changes which allow police to arrest without a warrant anyone they suspect of committing a crime for which the punishment would be five years or more in prison. Police power was further augmented to allow police to call in suspects or witnesses for questioning without a formal summons. The authorities justified the new police powers by insisting that the revisions would only legalize long-standing police practices.

The authorities deny holding political prisoners. They have stated that at the end of 1975 there were 254 persons in prison on sedition charges. Some persons have been released and others arrested since that time, but this is the most recent figure made public by the authorities. In December 1982 the authorities disclosed that 92 prisoners convicted of sedition and related offenses are currently being held in the Green Island military prison, compared with 115 reported to be there by Amnesty International in February 1980. Nearly 20 of these, originally arrested for communist activities, have been imprisoned for more than 30 years and were excluded from a general amnesty in 1975. Many of these prisoners, all in their fifties and sixties, are reported to be in poor health.

Many minor crimes in Taiwan are handled under a statute which empowers the police not only to arrest but also to prosecute and punish offenders. This law sometimes has been used against political activists. A substitute law, long sought by legal reformers, was put forward by the authorities in October 1981 but quickly withdrawn after being publicly criticized by lawyers and legislators. Critics complained that the law was even harsher than the one it was meant to replace, particularly provisions for "educational punishment" in military prisons for those accused by police of disturbing "social peace." In March 1982 the authorities reintroduced the "educational punishment" provisions as a separate "hoodlums" law. Although they withdrew it again in the face of heavy criticism, the authorities have indicated that they still intend to enact a police powers law incorporating "educational punishment."

f. Denial of Fair Public Trial

Taiwan's legal system is based on European and Japanese models which do not incorporate trial by jury. Under a 1980 judicial reorganization, district and high courts were shifted from the control of the Executive Yuan to the Judicial Yuan, for the first time formally separating the courts from the prosecution function. It is generally held in Taiwan legal circles that the change has given the judiciary greater independence of action.

tions and enter three-year senior high and vocational school programs. Entry into Taiwan's extensive system of higher education is also based on competitive exams, and departures from a strict merit system are almost nonexistent. In 1982, more than 20 percent of college-age youth were enrolled as undergraduate or graduate students.

*Bev
for
files*

TO: DAVID DYE
C/O HONORABLE VIC FISCHER
FROM: BILL PHILLIPS
RE: SENATOR'S TELEGRAM TO
MITCH ABOOD ABOUT SISTER
RELATIONSHIP WITH TAIWAN

SENT BY _____
NO. _____
JUN _____
PER _____
DATE: 5/26/83
Marie



amnesty international news release

International Secretariat, 10 Southampton Street, London WC2E 7HF, England
Telephone: 01-836 7788 Telegrams: Amnesty London Telex: 28502



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5 AUGUST 1981

AMNESTY INTERNATIONAL URGES TAIWAN TO FREE

HUMAN RIGHTS DEMONSTRATORS AND REVIEW LONG-TERM CASES

Authorities in Taiwan should free 34 people jailed following a major human rights demonstration and should review the cases of other political prisoners held for over 30 years, Amnesty International urged in a memorandum published today (5 August 1981).

The 34 were convicted in a series of trials last year on charges ranging from sedition to inciting violence after a Human Rights Day demonstration in 1979 in the provincial city of Kaoshiung ended in violent clashes with police.

No evidence other than the defendants' confessions, which they withdrew, was submitted to support charges that they had advocated violence or the illegal overthrow of the government, the human rights organization said.

Most of the accused were associated with a legally published opposition magazine, Formosa. They included writers, lawyers and members of parliament.

Eight of them, described by the government as "ringleaders" of the Kaoshiung incident, were tried by military court. There were complaints that their confessions had been obtained after sleep deprivation, coercion, inducement, threats and beatings.

The Amnesty International memorandum includes the findings of two

.../2

missions to Taiwan in February and March 1980, to observe one of the sedition trials and to discuss other human rights questions with the government.

Amnesty International also expressed concern at the fate of long-term prisoners held in Green Island prison, some of them for more than 30 years. A delegation was allowed to visit the prison, off the south east coast of Taiwan, in February 1980.

Prison officials told them that the 115 inmates included 20 who had been there since the early 1950s. Most of these, Amnesty International said in its 20-page memorandum, had been given summary trials with severely restricted rights of defence.

It said it had received reports that one of three prisoners interviewed, in the presence of prison officers, had afterwards been shackled in his cell for two months for telling the Amnesty International delegates about a petition sent by 25 of the inmates to President Chiang Ching-kuo.

In a six-page reply the government denies that any of the prisoners interviewed by Amnesty International was punished.

The government describes the Amnesty International recommendations as "gross interference" in the internal affairs of the state. It says the violence at Kaoshiung was planned in advance by eight of the prisoners, all of whom had been presumed innocent by the courts until proved guilty, and that allegations of ill-treatment had been investigated by the courts and found to be groundless.

In its memorandum Amnesty International submitted 14 recommendations. It called on the government to:

- abolish provisions under which people can be imprisoned for the non-violent exercise of their rights to freedom of expression and association;
- establish a precise legal definition of the offence of sedition;
- end incommunicado detention and other conditions that increase the risk of ill-treatment of suspects in custody;
- introduce procedures to investigate complaints of ill-treatment and compensate victims.

Nick Rizza

Amnesty International, San Francisco
office

ph. (415) 563-3733

Wash D.C. Office (202) 544-0200

Estralita Jones

Pa. Wrenzel

long term detention of prisoners
of conscience (120 total
20 for more than 30 yrs)
(nonviolent expression
of political beliefs)

one trade unionist imprisoned
since 1950, still in jail

another "communist" imprisoned since
1949-50 for tacking up a poster.
Recently released

also concerned about executions

EXTERNAL (for general distribution)

AI Index: ASA 38/03/81
Distr: NS

Amnesty International
International Secretariat
10 Southampton Street
London WC2E 7HF
England

MEMORANDUM SUBMITTED TO

THE GOVERNMENT OF THE REPUBLIC OF CHINA

BY AMNESTY INTERNATIONAL

(including the government's reply
and Amnesty International's response)

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PREFACE

This Amnesty International report consists of three documents: the text of a memorandum which Amnesty International submitted to the Government of the Republic of China on 27 February 1981, the government's comments on the memorandum which were forwarded to Amnesty International by the Government Information Office of the Republic of China on 13 May 1981 and the text of a letter sent by Amnesty International to the government on 1 July 1981 in response to the government's comments.

In February 1980, Amnesty International sent a mission to Taiwan to gather information about matters of concern to it and to discuss them with government officials. Among the subjects taken up by the mission was the arrest of a number of people following a demonstration organized by an opposition magazine, Formosa, on 10 December 1979 in Kaohsiung which ended in violent clashes with the police. In March 1980, Amnesty International sent an observer to the trial by a military court of eight of those arrested who had been charged with "sedition".

In its memorandum, Amnesty International makes recommendations arising from the observations of its delegates to Taiwan and from its concern about subsequent legal developments in those cases. Amnesty International concluded that the eight convicted in the trial in question are prisoners of conscience. It concluded also that a number of other people arrested in connection with the Kaohsiung incident and convicted in separate trials are in prison for the non-violent exercise of their right to freedom of expression and association. Its recommendations are intended to achieve the release of all prisoners of conscience in Taiwan and prevent other violations of human rights.

MEMORANDUM SUBMITTED TO
THE GOVERNMENT OF THE REPUBLIC OF CHINA
BY AMNESTY INTERNATIONAL

INTRODUCTION

An Amnesty International delegation consisting of Professor C.F. Rüter, Professor of Criminal Law at the University of Amsterdam (The Netherlands), and Françoise Vandale, a member of the Asia Research Department of Amnesty International's International Secretariat, visited the Republic of China (Taiwan) from 16 to 26 February 1980.

The visit took place after an exchange of communications between Amnesty International and the Republic of China authorities. In December 1979 and January 1980 Amnesty International expressed concern about the arrest of a number of independent politicians and members of Formosa, the opposition magazine, who were detained after taking part in a human rights rally, known as the Kaohsiung Incident, in Kaohsiung on 10 December 1979. This rally ended in violent confrontation with the police. Amnesty International urged the authorities to release all those against whom there was no evidence that they had used or advocated violence and who were therefore being detained in violation of their right to freedom of expression and association. In addition it urged that reports of ill-treatment of prisoners during interrogation be investigated and that the prisoners' names, the charges against them and the dates of their trials be made public.

On 10 January 1980 the military authorities (the Taiwan Garrison Command) announced that 152 people had been arrested and interrogated in connection with the Kaohsiung Incident and, in early February, it released the names of the 59 suspects still in its custody. On 5 February 1980 Amnesty International received a telex from Dr James Soong, Director of the Government Information Office of the Republic of China, saying that no prisoners had been ill-treated during interrogation and that the prisoners were able to write to their families. Dr James Soong urged Amnesty International to "ascertain the facts" in these cases and inform its members accordingly.

In view of the willingness of the authorities of the Republic of China to allow it to investigate the recent arrests, Amnesty International decided to send a mission to Taiwan to discuss matters of concern to it in the country with the authorities and to gather information, particularly on:

1. the Kaohsiung Incident, so as to be able to assess whether people arrested for their participation in the incident were prisoners of conscience;
2. the conditions of prisoners recently arrested and the protection given by the laws of the Republic of China to political prisoners;

3. the conditions of detention and the situation of prisoners of conscience in Taiwan, especially of long-term political detainees in Green Island Prison;
4. the use of the death penalty.

During their stay, the delegates spoke to government officials and other interested parties, including:

Tsiang Yien-si, Secretary General of the Kuomintang (Nationalist Party); Li Yuan-zu, Minister of Justice; General Wang Chin-hsi, Commander of the Taiwan Garrison; Dr James Soong, Director of the Government Information Office; General Chang Teh-hsiu, Commander of the Southern District Taiwan Garrison, and his deputy, General Cher Kuang-yu; Colonel Pao Yu-shan, Head of Military Police, Kaohsiung City; Chen Mao-lin, Head of the Kaohsiung Municipal Police; Colonel Chao Wen-kuang, Director of Green Island Prison; Liu Ching-chi, Governor of Taitung District, and other officials.

They also met prisoners' families, some of the lawyers chosen by the defendants, legal and political experts, various journalists, a number of released suspects, more than 10 eyewitnesses of the Kaohsiung Incident, Presbyterian Church officials in Taipei and in Tainan and members of the Legislative Assembly. In addition they met Dr Han Lih-wu, Director of the Chinese Association for Human Rights, and his assistant, Hsu Pei-tze, who helped them to arrange meetings with government officials.

They visited Kaohsiung City and Green Island Prison. In Kaohsiung, they talked to Taiwan Garrison Southern District Command officers and visited the Garrison prison where some suspects were reported to have been ill-treated. During their visit to Green Island Prison, they talked to three political prisoners, two of whose cases had been taken up by Amnesty International adoption groups.

Although they asked to, the delegates were not allowed to meet the eight defendants arrested after the Kaohsiung Incident, believed to be detained in Hsin-tien military prison, who had been charged with "sedition" on 20 February 1980. They were therefore unable to verify at first-hand reports that these suspects had been ill-treated during a two-month period of incommunicado interrogation.

Upon their return, the delegates recommended that an Amnesty International observer be sent to the forthcoming open trial of these eight defendants, who were facing a possible death sentence. The eight defendants were Huang Hsin-chieh, aged 52, member of the Legislative Assembly and publisher of Formosa; Shih Ming-teh, aged 39, General Manager of Formosa; Yao Chia-wen, aged 42, lawyer and Circulation Manager of Formosa; Chang Chun-hung, aged 42, member of the Taiwan Provincial Assembly and Editor-in-Chief of Formosa; Lin Yi-hsiung, aged 39, member of Taiwan Provincial Assembly and Circulation Manager of Formosa; Lin Hung-nuan, aged 38, administrator of the Kaohsiung office of Formosa; Lu Hsiu-lien, aged 36, Deputy Director of Formosa; Chen Chu, aged 30, Deputy Director of the Kaohsiung office of Formosa.

Dr Michael Sandor, lecturer in law at Hong Kong University, observed the trial on Amnesty International's behalf. It took place before the Military Court of the Taiwan Garrison Command from 18 to 28 March 1980. Dr Sandor was able to discuss legal issues arising in the trial with General Wang Chin-hsi and with defence lawyers. The presiding judge and the prosecutor answered other questions of his by letter after the trial was over.

Amnesty International appreciates the willingness of the officials who received its delegates to discuss matters of concern to the organization. This memorandum presents the latter's recommendations to the Government of the Republic of China arising from the observations of its delegates of the subsequent developments in the cases of those arrested in December 1979 after the Kaohsiung Incident.

Amnesty International respectfully urges the Government of the Republic of China to give consideration to the recommendations that follow in order to secure the release of prisoners of conscience and end other violations of human rights.

I. AMNESTY INTERNATIONAL'S CONCERNS

Amnesty International is a worldwide movement which is independent of any government, political grouping, ideology, economic interest or religious creed. It seeks the release of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence.

It calls for fair and prompt trials for all political prisoners and works on behalf of such people detained without charge or trial. It opposes the death penalty and torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without reservation.

The organization has for a long time been asking the authorities in the Republic of China about the political prisoners it knows of and has urged the immediate and unconditional release of those it has adopted. It therefore welcomed the nationwide reduction of prisoners' sentences ordered in August 1975 by the then Prime Minister, Chiang Ching-kuo, in memory of his late father, President Chiang Kai-shek -- even though certain political prisoners, including some adopted by Amnesty International, were ruled "not eligible" to have their sentences commuted. Over the past 10 years, a number of Amnesty International delegates have visited Taiwan to gather information about the situation of political prisoners and prisoners of conscience, observe military trials and express Amnesty International's concern to the Republic of China authorities.

Amnesty International's long-standing concerns in Taiwan are:

1. the arrest and detention of suspected political opponents on charges of sedition under the provisions of martial law drawn up after the state of siege was declared in 1949;
2. the permanent abrogation under these laws of the civil rights provisions of the 1946 constitution;
3. the conducting of trials and appeal reviews by military tribunals and the inadequacy of basic legal safeguards;
4. torture and ill-treatment during interrogation;
5. the use of the death penalty as punishment for certain criminal and political offences.

II. RECOMMENDATIONS

1. Legislation Facilitating Imprisonment for Non-Violent Exercise of Rights to Freedom of Expression and Association

Amnesty International believes that there is legislation in the Republic of China which prescribes imprisonment for the non-violent exercise of the rights to freedom of expression and association.

These rights are guaranteed by the 1946 Constitution of the Republic of China, which states that "The people shall have freedom of speech, teaching, writing and publication" (Article 11) and that "The people shall have freedom of assembly and of association" (Article 14).

However, Taiwan has been under martial law since May 1949 and some of the provisions of martial law legislation severely restrict the exercise of these rights. The imprisonment of political offenders in Taiwan is mainly regulated by the Statute for the Punishment of Sedition, 1949, and the Statute Governing the Prosecution and Elimination of Communist Spies During the Period of Suppression of Rebellion, 1950. These statutes specify a number of offences against the internal security of the state: committing acts with intent illegally to overthrow the government or an attempt to commit this offence (Article 2, Statute for the Punishment of Sedition); disclosure of a political document to a seditious person (Article 4.2, Statute for the Punishment of Sedition); recruitment of a seditious person (Article 4.3, Statute for the Punishment of Sedition); purchase or transport of material for a seditious person (Article 4.4, Statute for the Punishment of Sedition); giving money or material to a seditious person (Article 4.6, Statute for the Punishment of Sedition); protecting or concealing a seditious person (Article 4.7, Statute for the Punishment of Sedition); inciting a strike or disturbance of public order which helps a seditious person (Article 4.10, Statute for

the Punishment of Sedition); spreading rumours or groundless information liable to disturb public order or morale (Article 6, Statute for the Punishment of Sedition); making propaganda which helps a seditious person (Article 7, Statute for the Punishment of Sedition); failing to inform the authorities of the identity of a communist spy or seditious person or harbouring such a person (Article 9, Statute Governing the Prosecution and Elimination of Communist Spies During the Period of Suppression of Rebellion).

These statutes do not in any way define the terms "sedition" or "seditious person". This legislation has often been used to imprison people who had exercised their right to freedom of expression in ways disapproved of by the authorities — for example, by advocating change in the country's system of government or criticizing the government's external policy. The legislation has also frequently been applied to people who have established or participated in political organizations other than those controlled by the Nationalist Party.

Amnesty International was allowed to observe the trial of eight of the 41 people charged with participating in the Kaohsiung Incident. Seven of them had been active in the Independent Candidates' Coalition set up during the November-December 1978 electoral campaign and all of them were prominent staff members on Formosa.

They were charged with and convicted of "sedition". According to the indictment, their offence consisted of "instigating the Kaohsiung Incident in an attempt gradually to escalate illegal mass violence in order to subvert the government". As far as Amnesty International is aware, their political program did not involve the use or advocacy of violence, nor was any convincing evidence that it had produced at their trial. Moreover, in convicting them of "sedition" and sentencing them to terms of imprisonment ranging from 12 years' to life, the court stated that for a conviction of sedition "to overthrow the government through illegal means is not limited to violence".

- (i) Amnesty International respectfully recommends that the legislation of the Republic of China, and particularly the above-mentioned two statutes, be amended so as to remove all provisions permitting the conviction and imprisonment of people for the non-violent exercise of their rights to freedom of expression and freedom of association.

To that end, the terms "sedition" and "seditious person" should be defined clearly so as to prevent their indiscriminate use in relation to acts consisting solely of the non-violent exercise of human rights.

2. Detention for Purposes of Interrogation

During the recent military and civilian trials of defendants charged with participating in the Kaohsiung Incident, many claimed that they had been improperly questioned. Allegations made in court by the defendants

themselves included:

1. Exhaustive questioning -- a number of defendants claimed that they had been continuously questioned for prolonged periods, in some cases for up to four or five days.
2. Inducement -- some defendants claimed that they were told that they would be released if they signed a statement; in some cases, a self-incriminating "confession"; in others, a testimony against another defendant. Two defendants claimed they were told that "the others will be released if you confess".
3. Threats -- two defendants told the Military Court that they had been threatened with death sentences and execution if they did not confess. A defendant tried on civil charges informed the court that he had been told his father would be arrested if he did not confess. Another claimed he was threatened with ill-treatment similar to that inflicted in his presence on another suspect.
4. Beatings -- several defendants, mainly in the group tried on criminal charges, claimed that they had been beaten.
5. Other types of ill-treatment -- several defendants complained that they were fed with salty rice or salt water. Some of them said in court that they "confessed" in exchange for an end to this treatment.

The Amnesty International delegates who went to Taiwan in 1980 met a number of people who had been interrogated either by the local police or by the military authorities about their participation in the Kaohsiung Incident, and had subsequently been released. Some of those interviewed said they had been interrogated continuously throughout their detention -- in some cases, for less than 10 hours; in others, for as long as seven days and nights. They had all been released after signing a statement.

The delegates were also told about the following types of ill-treatment meted out during incommunicado interrogation to some of the 33 people who were later tried for their participation in the Kaohsiung Incident. They were told that Tsai Ching-wen, Hsu Chi-tan, Liu Hua-ming (whose professions are not known) and Liu Tai-he, a staff member at the Pingtung office of Formosa, had been tortured; and that Chen Fu-lai (whose profession is not known) had been beaten with a leather belt and given electric shocks. The delegates were told too that most of the suspects who were interrogated by the Southern District of the Taiwan Garrison Command were made to wear fetters and iron balls, some at night, others all the time. The weight of these restraining devices was said to vary between five, 10 and 20 pounds. Some suspects were reportedly forced to squat in front of electric fans until they caught cold. All the above-mentioned defendants told the Taipei District Court that they were ill-treated in order to force them to confess to the charges against them or make statements incriminating others. Amnesty International has in the past received similar reports of ill-treatment of suspects on political charges in other cases.

The law of the Republic of China provides that suspects on political charges may be detained incommunicado until they are formally charged (Article 43 of Military Trial Law and Article 27.c of the Code of Criminal Procedure). Article 245 of the Code of Criminal Procedure reinforces the isolation of the suspect by requiring that the investigation by the prosecutor "shall not be public". During that period detainees generally write a "confession" admitting the charges against them.

The right of the detainee to have visits during the investigation period and to receive and send mail is qualified by Article 105, paragraph 2 of the Code of Criminal Procedure which states that:

"if sufficient circumstances exist to justify apprehension lest the accused... alter evidence or conspire with a joint offender or witness, visitors or items may be prohibited...."

In correspondence with Amnesty International's delegate at the trial, the Taiwan Garrison Command justified prohibiting the suspects arrested in connection with the Kaohsiung Incident from receiving letters and visits from their relatives by reference to Article 105, paragraph 2:

"There are a number of defendants involved in this case, and their offences are interrelated. In order to prevent a conspiracy to falsify evidence, etc, visitors were not permitted in accordance with the law."

However, all conversations with relatives and lawyers, when they were permitted later on, were conducted through a glass partition and were taped.

In view of this degree of control, the explanation given by the Taiwan Garrison Command that "if they use coded words or similar methods to falsify evidence, they may outwit the monitoring person" is not convincing. Moreover, the military authorities usually detain suspects on political charges incommunicado for the period of their interrogation, whether they are interrogated as individuals or with other suspects on the same charges.

It is Amnesty International's impression, based on its work in countries all over the world, that isolation during interrogation creates the conditions in which torture and ill-treatment of suspects is likely to occur. This is especially so when, as in the Republic of China, it is customary to obtain a confession from a suspect before bringing him or her to court. In numerous cases known to Amnesty International, including that of the 41 tried in connection with the Kaohsiung Incident, these confessions of guilt have been the main evidence used during the trial.

As they had been arrested on suspicion of "sedition", the 41 prisoners were held throughout the period of their interrogation by the military authorities of the Taiwan Garrison Command. The same authorities were responsible for their interrogation and other aspects of the

investigation of their cases, and, in eight instances, for filing the indictment against them, and for trying and passing sentence on them. Moreover, their sentences were to be served in prisons administered by the military authorities. Such a situation is conducive to ill-treatment, as there are no checks or supervision by any outside or independent authority on the behaviour of the officers in charge of the interrogation.

Article 109 of the Military Trial Law of the Republic of China requires that the prosecutor, when examining a suspect, should not employ "violence, threats, inducements, fraud or other improper means". Article 106 of the Code of Criminal Procedure rules that a statement extracted by such "improper devices" is not admissible as evidence. This latter provision of the Codes of the Republic of China is in line with the United Nations Declaration on the Protection of all Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 12, which requires that "any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence against the person concerned or against any other person in any proceedings".

According to both this international standard and the laws of the Republic of China, the confessions which the defendants claimed had been obtained through improper means should not have been admitted as evidence unless the court had ascertained, by means of a thorough investigation, that the defendants' complaints were groundless. In the case of Huang Hsin-chieh and others, the court rejected the defendants' complaints without thoroughly investigating them. The court dismissed the defendants' requests for the interrogating officers to be examined in court and accepted statements by the prosecutor and the Bureau of Investigation that the complaints were unfounded.

- (ii) Amnesty International respectfully recommends that the government take effective measures to alter conditions in which the risk of ill-treatment of suspects is enhanced and to ensure that prisoners are not held incommunicado so as to avoid their being ill-treated, and specifically that:
- (a) Article 245 of the Code of Criminal Procedure, which requires that the investigation by the prosecutor "shall not be public", be revised to allow family visits and access to a lawyer of the prisoner's own choice.
 - (b) All detainees be allowed access to a doctor immediately upon arrest, at regular intervals thereafter and before release from detention, and be provided at all times with appropriate medical treatment. The doctor's examinations should be fully documented and available to those authorities responsible for the custody of prisoners and those responsible for investigating allegations of torture.

- (c) A provision be inserted in the Codes of the Republic of China to the effect that suspects shall be presumed innocent and treated as such in order to limit the pressures brought to bear on them by interrogation officers to "confess" to the charges against them.
- (iii) Amnesty International recommends that the authorities of the Republic of China introduce effective measures to ensure that proper investigation of complaints of torture or ill-treatment be made possible, which would regulate legal action against officials shown to have used torture or ill-treatment and which would specify appropriate compensation and redress for the victims. These measures would in particular ensure that:
- Any person claiming to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to -- complain to, and to have his or her case impartially examined by, the competent authorities of the state concerned.
 - Wherever there are reasonable grounds for believing that an act of torture or other ill-treatment has been committed, the competent authorities of the state concerned shall promptly initiate an impartial investigation, even if there has been no formal complaint.
 - If an investigation establishes that an act of torture or other ill-treatment appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading punishment is considered well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.
 - Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.
- (iv) Amnesty International recommends that places of detention be administered by a department separate from and independent of the investigating body and that a separate authority be made responsible for supervising interrogation and investigating complaints by prisoners or their families.

3. Trial Proceedings

(a) Preliminary Hearings by the Court

According to the law of the Republic of China, a military court judge may hold hearings before the trial in order to examine the accused and witnesses and assess the evidence. These preliminary hearings are an important stage in the judicial process as they are the only occasion when defence lawyers can participate in the collection of evidence to be submitted at the trial.

Although according to Article 164 of the Military Trial Law a trial cannot proceed in the absence of the defendant's lawyer, and according to Article 53 of the same law, courts-martial trials "shall be held in open court" unless national defence secrets are involved, nevertheless when Huang Hsin-chieh and his co-defendants were first examined at preliminary hearings on 21, 22 and 23 February 1980 no defence lawyer and no relatives were allowed to be present. The judge appointed instead a public defender, who was a military person from the same department as the prosecutor and the military judges and reportedly said nothing throughout the three days.

The indictment was served* on the defendants on the evening of 20 February 1980 and they were summoned to appear before the judge for preparatory hearings the next morning. They were given no opportunity to contact either relatives or lawyers until the first prison visit day a week later. On 21 February, the day of the opening of the preparatory hearings, the family and lawyers of the eight prisoners attempted unsuccessfully to visit them. They were not informed that the preparatory hearings were in progress. One of the lawyers learned that the hearings had started, and on 23 February tried to enter the court but was barred. He said he was told that it had been a mistake to come on that date. (One of the Amnesty International delegates then in Taipei, Professor of Criminal Law Dr C.F. Rüter, also sought permission to attend but was unsuccessful.)

This is an infringement of Article 273 II of the Code of Criminal Procedure, which requires the court to give lawyers advance notice of the place, date and time of preparatory hearings "unless there are urgent circumstances". Despite this provision, the defence lawyers received no notice at all. In its verdict, the court rejected the defence lawyers' objection about the legality of

* Articles 155 and 148.1, Military Trial Law, require the prosecutor to serve the indictment on the injured party, complainant, accused, immediate superior officer of the accused (does not apply in this case) and the Superior Military Trial Organization.

these sessions of the preliminary hearings which took place in their absence, saying that it had not broken the law and that it had not given notice simply because no lawyers had as then been chosen by the defendants. On 23 February 1980 the preparatory hearings were suspended. When they resumed in early March, the accused were represented by defence lawyers of their own choice.

Choice of defence lawyers is further limited by the requirement that lawyers be registered with the Ministry of National Defence if they are to plead in military courts. This registration is sometimes refused.

These three in camera sessions of preparatory hearings were particularly important in the proceedings against the defendants. At these sessions all the defendants testified that their confessions had been made voluntarily. At the full court hearings later, however, the defendants withdrew their confessions and complained they had been obtained by "improper means" including physical or mental pressure (see above). The court dismissed these complaints on the grounds that the defendants had stated at the early sessions that their confessions had been made voluntarily. Later, the court based its verdict on these confessions.

The holding of some sessions of the preliminary hearings in camera without adequate defence counsel was in violation of the provisions of the Codes of the Republic of China and cast doubt on the fairness of these sessions and the accuracy of the court's findings.

The judge at the preliminary hearings agreed to the defence's request to cross-examine prosecution witnesses. On 7 and 8 March 1980 the court, with the participation of the defence lawyers, cross-examined five prosecution witnesses and two of the eight defendants whose confessions contained statements incriminating some of their co-defendants. All the prosecution witnesses were in the custody of the military authorities pending trial on related or unrelated charges.

The judge, however, refused to call any of the eight defence witnesses whose names were submitted by defence counsel.

It appears that the choice made by the court to agree or refuse to cross-examine witnesses was to the defendants' disadvantage.

After the first few sessions of the preliminary hearings, the defence lawyers were able to interview their clients; they had, however, to communicate with them via a microphone and their conversations were taped -- which was not in accordance with internationally agreed standards which specify that interviews between the prisoners and their legal advisers may be within sight but not within the hearing of a police or institution official.

The defence lawyers were granted an extension of time for the trial, after complaining that the original timetable was unfairly tight. However they were not allowed to photocopy documents from the evidence file as this is not explicitly provided for by the law. This caused a loss of time for the lawyers. It also put the defence at a disadvantage at the full hearings and gave rise to argument about what exactly was on the record.

(b) The Full Court Hearings

The full court hearings in the case of Huang Hsin-chieh and others took place from 19 to 28 March 1980 at the Military Trial Court of the Taiwan Garrison Command in Hsin-tien, Taipei. The trial was given wider publicity than any previous trial of people on political charges in Taiwan, and 120 observers, including local and international press reporters, were allowed to attend. Dr Michael Sandor, the Amnesty International delegate, was among the observers.

The eight defendants faced a bench of five military judges. Two military prosecutors presented the charges and the evidence against the accused and responded to the defence's submissions. Each defendant was assisted in presenting his or her defence by two lawyers and a relative.

The eight defendants were all prominent staff members of Formosa. In late 1978, at the time of the electoral campaign for supplementary seats in the Legislative Assembly and the National Assembly, most of them had been active in the Independent Candidates' Coalition, either as candidates or campaign assistants. The coalition helped all independent candidates who subscribed to its basic electoral platform. The elections scheduled for December 1978 were postponed when the United States announced it would break off its diplomatic relations with the Republic of China in favour of diplomatic recognition of the People's Republic of China as of 1 January 1979. Formosa was launched in May 1979 with the declared aim of organizing independent politicians and publishing their opinions in order to help them win more votes at the next election. These elections were held in December 1980, while most of the prominent members of the opposition were being detained. The eight defendants were:

1. Huang Hsin-chieh, aged 52, publisher of Formosa and independent (non-Kuomintang) member of the Legislative Assembly for life. He had previously been the publisher of another monthly political magazine, Taiwan Political Review, which was banned after its first issue. Huang Hsin-chieh was regarded as the leader of the attempted organization of independent politicians.

2. Shih Ming-teh, aged 39, General Manager of Formosa. He had previously spent 15 years in prison on political charges. Since his release in 1977, he has campaigned for independent candidates in elections to provincial or national assemblies. He was the main organizer of the Independent Candidates' Coalition and of Formosa's activities.

3. Yao Chia-wen, aged 42, lawyer and Circulation Manager of Formosa. He also ran a legal aid service in Taipei. In March 1979, he defended Yu Jui-yen, whom Amnesty International adopted as a prisoner of conscience at his trial on charges of "sedition". Yao Chia-wen had been an independent candidate for the National Assembly December 1978 elections.

4. Chang Chun-hung, aged 42, independent member of Taiwan Provincial Assembly and Editor-in-Chief of Formosa. Once a member of the Kuomintang, he has, since the early 1970s, worked as Editor and Editor-in-Chief of four political magazines, all of which were banned.

5. Lin Yi-hsiung, aged 39, independent member of Taiwan Provincial Assembly, Circulation Manager of Formosa and a lawyer.

6. Lin Hung-hsuan, aged 38, administrator of the Kaohsiung office of Formosa. He is a graduate in philosophy and theology.

7. Lu Hsiu-lien, aged 36, Deputy Director of Formosa. A Harvard graduate in law, she is also a publisher and a well-known feminist. She was an independent candidate for the National Assembly in the December 1978 elections.

8. Chen Chu, aged 30, Deputy Director of the Kaohsiung office of Formosa.

These eight defendants were charged on 20 February 1980 under Article 2, paragraph one of the Statute for the Punishment of Sedition with "attempting to overthrow the government by illegal means and by carrying out subversive activities". They were accused of "using Formosa as a legal cover for carrying out a so-called 'plan to seize power'" and of "having instigated the Kaohsiung Incident in an attempt to escalate mass violence and subvert the government". Each defendant was in addition accused of other specific "subversive activities", to do with either contacts with Taiwanese exiles or with their role on Formosa or with their actions at the 10 December demonstration in Kaohsiung. The defendants were questioned at length by the court, individually and then together, during the nine-day trial.

The prosecution submitted that all the defendants had shown "seditious intent" with a "plan to seize power", which, it said, had been formulated by Yao Chia-wen and adopted by the other seven. As evidence, the prosecutors cited the defendants' confessions, in which they had all admitted having accepted and followed this "power-seizure plan", which was, according to the prosecutor, a plan to overthrow the government, relying on a two-fold strategy: the activities of Formosa, which were aimed at attracting sympathisers; the organization of demonstrations and rallies "to escalate the level of violence". Advocacy of the use of violence, said the prosecution, was contained in the concept of "brinkmanship of violence", also formulated by defendant Yao Chia-wen.

In his defence, Yao Chia-wen said that he was a lawyer and had always insisted that the activities of Formosa remain within the law, although he conceded that the Formosa group would have gone ahead with the demonstration even if permission had been refused.

No evidence, other than the defendants' confessions, which they withdrew, was submitted in court to substantiate the charges that they had advocated violence or the illegal overthrow of the government. Nor was any evidence submitted to show that the defendants had planned any violence at the 10 December 1979 Human Rights Rally.

All the defendants challenged the admissions to the charges made in their respective confessions. They complained that the confessions had been obtained by "improper means", such as sleep deprivation, coercion, inducement, threats and beatings. Yao Chia-wen complained that his confession had been distorted; and Chen Chu's confession contained obviously false admissions. All the defendants stated in court they did not advocate the use of violence to achieve political change. They stressed their belief in a democratically-elected government and their wish to see more independent (non-Kuomintang) politicians elected.

Amnesty International is not aware of anything in the articles printed in Formosa or in the activities or the political program of those associated with it to suggest that the defendants had advocated or planned violence.

In its verdict, the Court said that any argument that the defendants had not advocated violence was not acceptable for they had all admitted to it in their confessions. It added that for the purpose of a conviction of "sedition", "to overthrow the government through illegal means is not limited to violence".

Amnesty International believes that these eight defendants were convicted on account of their political views and activities. The accusation that they advocated or planned violence was not substantiated, and the organization has adopted them as prisoners of conscience.

- (v) Amnesty International therefore recommends that Huang Hsin-chieh, Shih Ming-teh, Yao Chia-wen, Chang Chun-hung, Lin Yi-hsiung, Lin Hung-hsuan, Lu Hsiu-lien and Chen Chu be released immediately and unconditionally with restoration of their civil rights.
- (vi) As regards the preparation of the defence of a suspect to be tried on political charges, Amnesty International recommends that facilities to consult the evidence collected by the prosecution be given to defence counsel well in advance of the trial and that all trials be held in open court.

- (vii) Amnesty International further recommends that in line with the Codes of the Republic of China and internationally agreed standards for the protection of all detainees against ill-treatment, no confession obtained as a result of torture or ill-treatment be admitted as evidence.

Other Cases of Detention Related to the Kaohsiung Incident: Chou Ping-teh et al

After the trial of Huang Hsin-chieh et al, 33 other defendants were tried by the Taipei District Court (a civilian court) for their participation in the Kaohsiung Incident. They had all been arrested between 13 December and early January 1980 and kept in the custody of the Taiwan Garrison Command where they were interrogated on suspicion of "sedition". On 29 February 1980, they were transferred to civilian courts, as the military authorities had found no evidence of "sedition" against them. They were charged on 31 March 1980 under the Law of the Armed Forces with either "inciting a group of people to commit or threaten violence" or "being accomplices in acts of violence".

The Taipei District Court held preliminary hearings in order to examine the evidence in the case from 17 to 19 April 1980. It was open to the defendants' lawyers, their relatives and the press. Most of the defendants retracted their confessions, in which they had admitted to the charges against them, or withdrew statements they had made incriminating others. They also described the ill-treatment they had been subjected to during interrogation (see above).

The full court hearings took place from 21 to 26 May 1980. The verdict was announced on 2 June 1980. The prison sentences, ranging from 10 months to six years and eight months, were in many cases reduced by courts of appeal. Three defendants were acquitted and one given a suspended sentence. The others are serving prison sentences of between nine months and six years.

Amnesty International has adopted the majority of those convicted as prisoners of conscience as it believes they are being detained either on account of their political activities and of their association with Formosa or in violation of their right to take part in a demonstration. These prisoners are:

1. Chou Ping-teh, aged 41. Shopkeeper. Director of Kaohsiung office of Formosa. Member of Formosa (editorial) Committee.
2. Tsai Yu-chuan, aged 19. Presbyterian Church minister. Formosa distributor.
3. Yang Ching-chu, aged 40. Member of Formosa Committee. Writer. Candidate for National Assembly. Director of Kaohsiung office of Formosa.
4. Chi Wan-sheng, aged 41. Member of Formosa Committee.

5. Chiu Chui-chen, aged 29. Member of Formosa staff.
6. Chiu Mao-nan, aged 38. Shopkeeper. Candidate for partial elections to Legislative Assembly in December 1978. Director of Pingtung office of Formosa.
7. Liu Hua-ming, aged 37. Profession not known.
8. Yu Ah-nsiung, aged 42. Staff member of Formosa's Tainan office.
9. Wang T'ao, aged 36. Member of Formosa (editorial) Committee. Writer. Candidate in December 1978 partial elections to Legislative Assembly.
10. Chang Fu-chung, aged 28. Editor of Formosa. Photographer. Co-author of Long Live Elections.
11. Chen Po-wen, aged 48. Photographer. Vice-Chairperson of Taichung Fund Committee of Formosa.
12. Chen Chung-hsin, aged 31. Editor of Formosa.
13. Tsai Chui-ho, aged 41. Small business owner. Member of Taichung Fund Committee of Formosa.
14. Wei Ting-chao, aged 44. Spent eight years in prison on political charges. Editor of Formosa.
15. Fu Yao-kun, aged 47. Profession not known.
16. Hsu Cheng-hsiang. Resident of Kaohsiung.
17. Tai Chen-yao, aged 32. Profession not known.
18. Wu Cheng-ming, aged 25. Taxi-driver.
19. Wu Wen-hsien, aged 23. Cametaker at Pingtung office of Formosa.
20. Hsu Tien-hsien, aged 29. Staff member at Formosa's Tainan office. Presbyterian Church minister.

According to Amnesty International's information, the charges against them of "inciting a group of persons to commit or threaten violence" or of being accomplices in such acts were not substantiated. In most cases, confessions and incriminating testimonies made under duress were the only evidence against the defendants during their trial. Their claims that statements had been improperly obtained were not, to Amnesty International's knowledge, properly investigated by the court, and they should not, in Amnesty International's view, have been used as evidence.

- (viii) Amnesty International recommends that Chou Ping-teh, Yang Ching-chu, Chiu Mao-nan, Wang T'ao, Chen Po-wen, Wei Ting-chao, Hsu Cheng-hsiang, Wu Sheng-ming, Wu Wen-hsien, Hsu Tien-hsien, Tsai Yu-shuan, Chi Wan-sheng, Chiu Chui-chen, Liu Hua-ming, Yu Ah-hsiung, Chang Fu-chung, Chen Chung-hsin, Tsai Chui-ho, Fu Yao-kun and Tai Chen-yao be released immediately and unconditionally and have their civil rights restored.
- (ix) Amnesty International recommends also the immediate restoration of their civil rights to those who were sentenced to shorter terms of imprisonment and have by now been released — that is, Chen Fu-lai, Pan Lai-chang, Li Chang-tsung, Wang Man-ching, Chen Ying-chi, Hsu Chi-tan, Tsai Ching-wen and Li Ming-hsin.

The Case of the Reverend Kao Chun-ming et al

In early January 1980, nine people were arrested by the Taiwan Garrison Command, on suspicion of "sedition" either for having harboured Shih Ming-teh, the General Manager of Formosa, or for failing to report him to the authorities while he was wanted by the police after the Kaohsiung Incident. One of these nine was released soon afterwards. Those arrested were: Wu Wen, aged 37, Lutheran Minister; Hsu Ching-fu, aged 45, film company manager; Lin Wen-chen, aged 41, Dean of Women's Bible School; Chang Wen-ying, aged 31, dentist; Shih Jui-yun, aged 31, secretary to the Reverend Kao Chun-ming; Huang Chao-hui, aged 34, graduate of Tainan Theological College; Lin Shu-chih, aged 30, shopkeeper; Chao Chen-erh, aged 36, clerk in the Taiwan Bible Society; Hsu Chiang Ching-yin, aged 39, wife of Hsu Ching-fu.

On 24 April 1980, the Reverend Kao Chun-ming, aged 51, Secretary General of the Presbyterian Church in Taiwan, was arrested too on suspicion of having harboured Shih Ming-teh. The prisoners were held incommunicado until their indictment on 19 April 1980. They were charged either under Article 4(7) of the Statute for the Punishment of Sedition for "protecting or concealing a 'seditious' person" or under Article 9 of the Statute for the Elimination of Communist Spies During the Period of Suppression of Rebellion for failing to report a "seditious" person to the authorities.

Preliminary hearings in their cases were held by the Military Court on 8 May 1980. They were open to the defendants' relatives, the press and observers, including foreign observers. Shih Ming-teh is reported to have refused to testify. The full court hearings took place on 16 May 1980, also in the presence of the defendants' relatives, the press and observers. Sentences ranging between seven years' imprisonment and two years' suspended were announced on 5 June 1980. They were confirmed by appeal courts in July and September 1980.

Amnesty International has adopted the Reverend Kao Chun-ming and his co-defendants as prisoners of conscience. It believes that they are being detained for non-violent actions which they performed out of humanitarian concern and for conscientious reasons on behalf of a possible prisoner of conscience facing the death penalty or life imprisonment.

- (x) Amnesty International recommends that the Reverend Kao Chun-ming, Lin Wen-chen, Hsu Ching-fu, Chang Wen-ying, Wu Wen and Lin Shu-chih be released immediately and unconditionally with restoration of their civil rights. Amnesty International recommends also the immediate restoration of civil rights of Shih Jui-yun, Huang Chao-hui, Chen Chen-erh and Hsu Chiang Ching-yin who were given suspended sentences.

4. The Visit of the Amnesty International Delegation to Green Island Prison

Among the prisoners in Taiwan who are adopted by Amnesty International as prisoners of conscience are some who are being held in Green Island prison. The majority of those known to Amnesty International are believed to have been detained since the early 1950s. The organization is concerned because they were arrested in a period of emergency and often given summary trials. It is concerned too about the physical and mental hardship suffered by these people as a result of their long-term of imprisonment. Other prisoners of conscience detained in Green Island prison arrested more recently are serving sentences ranging from seven years' to life imprisonment. The majority of them are writers or journalists; some were independent candidates in elections; others are former government officials believed to have been victims of purges.

Amnesty International has received confirmation from various sources, including Green Island prison officials, that 20 political prisoners whom it believes have been detained since the early 1950s are still in prison. According to Green Island prison authorities, 115 prisoners were being held there, in February 1980, on political charges.

The Amnesty International delegates to Taiwan in February 1980 discussed these matters with the authorities of the Republic of China. Prisoners of conscience have been released in the past by presidential amnesty and by general reduction of sentences. Those who had been convicted of being "communists" or of association with "communists" were, however, excluded from these amnesties and from the last general commutation of sentences which took place in 1975.

Some prisoners of conscience have in the past been released on parole under criminal law regulations which specify that "a conditional release may be granted... after 10 years of a sentence to imprisonment for life or after one half of a sentence to imprisonment for a definite period has been served" and provided at least one year of the sentence

has been served. Evidence of "repentance" on the part of the prisoner is necessary for such an application to be granted, but otherwise no category of prisoner is legally excluded from being considered for release on parole. Amnesty International regrets that a large number of political prisoners serving long-term sentences and alleged to be communists have not so far benefited from these measures.

Amnesty International is concerned too because most long-term political prisoners were tried in camera and were subject to severe limitations in presenting their defence. Amnesty International is particularly perturbed about the cases of prisoners in Green Island who received summary trials in the early 1950s and whose rights of defence were severely restricted.

- (xi) Amnesty International therefore recommends that the government review all cases of people imprisoned for political offences with a view to securing the immediate release of those imprisoned for the non-violent exercise of their right to freedom of expression or association and to granting parole to others who have already spent 15 or 20 years or more in prison on political charges.

The delegates were granted permission to go to Green Island prison. They had understood from their conversation with General Wang Chin-hsi, Commander of the Taiwan Garrison Command, that they would be allowed to meet the three prisoners they had said they would particularly like to see. However, upon arrival at the prison, the prison authorities said they had not been informed of this. The visit to the prison proceeded on the understanding that the prison authorities would seek authorization for the delegates to speak to these prisoners.

During their visit the delegates did speak to three prisoners, but they were not the ones they had asked to meet. The prisoners answered the delegates' questions which were first put to the Prison Governor. Among those the delegates spoke to were Hsu Wen-tsan and Chuang Hsin-nan. The former is now 52 and has already spent 29 years in prison. He is believed to be detained on charges of "pro-communist" activities dating back to the Nationalist Government's arrival in Taiwan in 1949. Chuang Hsin-nan, now about 30, is believed to have been arrested in March 1969. Both prisoners were employed in the prison laundry; this job allows them some freedom of movement. They told the delegates that the previous month 25 prisoners had sent a petition to President Chiang Ching-kuo but that they had not yet received an answer. The prison authorities assured the delegates that the letter had been sent from the prison to the security agency responsible.

Amnesty International was disquieted to learn that one of the prisoners who spoke to its delegates had been punished -- it is believed for having had this conversation. Various reports received by Amnesty International in the summer of 1980 indicated that one of the prisoners had been put in solitary confinement, was not allowed to leave his cell and had had his feet shackled for at least two months. The reports indicated that the reason for this punishment might have been his discussion with the delegates.

During their visit the delegates were assured by the prison authorities that there were no prison cells containing "special instruments", but the information it has received over many years from other sources does not bear this out, but suggests that restraining devices are used punitively.

- (xii) Amnesty International recommends that existing rules and regulations as regards conditions in detention centres, especially those to do with punishment, be revised to conform to internationally agreed standards for the treatment of prisoners and their protection from ill-treatment, and that such new rules be fully communicated to all personnel in places of detention and made available to all detainees and their families.
- (xiii) Amnesty International further recommends that a procedure in line with international standards be introduced whereby the prisoners, their lawyers and their families are allowed to make a request or complaint to the central prison administration, the judicial authority or other authorities and whereby every request or complaint is promptly dealt with.

5. The Abolition of the Death Penalty

The delegates expressed concern about the use of the death penalty to Republic of China government officials. The death penalty is prescribed by law for certain criminal and political offences. The delegates were told that it could not be abolished at the moment and that it was considered necessary for the protection of the public from dangerous criminals.

Amnesty International is concerned about the number of death sentences passed by Taiwan civilian and military courts and about the number of executions carried out every year. Between July 1979 and June 1980, 57 death sentences were reportedly passed in Taiwan: 28 for corruption and fiscal offences, five for drug offences, 17 for murder and seven for robbery.

To Amnesty International's knowledge, at least 11 death sentences were passed by Taiwan's courts between September and the beginning of November 1980. During the same period five executions were carried out.

Amnesty International opposes the death penalty in all cases on the grounds that it is a violation of the right to life and constitutes cruel, inhuman and degrading treatment.

- (xiv) Amnesty International recommends that all executions be suspended and the authorities of the Republic of China consider the total abolition of the death penalty.

May 13, 1981

Mr Thomas Hammarberg,
Secretary General,
Amnesty International,
10 Southampton Street,
London WC2E 7HF,
England.

Dear Mr Hammarberg:

Your letter of February 27, addressed to Premier Sun Yun-hsuan, was referred to me for reply. The government's comments on your memorandum are enclosed.

To summarize, many points in your memorandum do not coincide with the facts. It seems, first, that you have failed to give credit to our unswerving efforts to promote the democratic system and rule of law, and second, that you have accepted the one-sided and unsubstantiated assertions of defendants in the Kaohsiung incident.

It is our expectation that you will publish this letter and the government's comments along with your memorandum.

Yours sincerely,

James C.Y. Soong, Ph.D.
Director General

Enclosure

JS/sft

COMMENTS OF THE GOVERNMENT OF THE REPUBLIC OF CHINA
ON THE MEMORANDUM SUBMITTED BY AMNESTY INTERNATIONAL

I

The Republic of China is the first democratic republic in Asia. Since its inception in 1912, the ROC has promoted constitutionalism. Through 70 years, it weathered internal rebellion and foreign aggression but succeeded in adopting a constitution in 1946 following the end of World War II and implementing it in 1947.

The Central Government of the Republic of China moved to Taiwan in 1949 when the Chinese mainland fell to the communists as a result of armed rebellion. Despite the existence of a state of emergency, the government has continued to implement constitutionalism, promote the democratic system of government, carry out land reform, engage in economic reconstruction, universalize educational opportunities, renovate political institutions, and further social welfare programs. For the last 30 years, the nation's real economic growth rate averaged nine per cent. These efforts combined to create economic progress unprecedented in China. In 1980, per capita national gross product reached NT 12,282. With foreign trade of US \$39.3 billion, it was the free world's 22nd largest trader. These achievements have been internationally recognized. Even the communist regime on the Chinese mainland has broadcast the slogan "an economy learn from Taipei", expressing the long-suppressed longing of compatriots on the mainland to join with free China.

Human rights enjoyed by the people of the Republic of China in the economic field have approached the level enjoyed in the advanced western countries. Politically, people in the Republic of China have the right to vote and stand for election in accordance with the law. The President, Vice-President, heads of local governments, and parliamentary representatives at all levels are elected. These practices reflect the unwavering efforts of the Government of the Republic of China to protect human rights despite the continuing armed rebellion by the Chinese communist regime across the Taiwan Straits.

II

The assertion on page five of the memorandum that the political program of the eight participants who took part in the Kaohsiung Incident and were convicted by the military tribunal did not involve the use or advocacy of violence, etc is contradicted by the facts. The so-called Kaohsiung Incident was a riot. The ringleaders made their plans beforehand and advocated and used violence to escalate violence. This is evidenced in their premeditated assaults on the police with wooden clubs, steel bars and incendiary materials prepared in advance.

Although no rioters were hurt, 183 policemen under strict orders not to strike back were injured, some of them seriously. Because witnesses and evidence showed the ringleaders planned the riot in advance, the eight were tried by the military court. Thirty-three others who were instigated to join the riot were tried by the civilian court.

The memorandum notes that some defendants alleged they received ill-treatment, such as exhaustive questioning, inducement, threats, beatings etc during the trials. These allegations were investigated by the court and found to be groundless. During the period of the defendants' detention, military prosecutors visited the various detention centers from time to time. At that time the defendants did not make any complaints about ill-treatment. Both Shih Ming-teh and Chen Chu explicitly stated during the nine-day open trial attended by Chinese and foreign reporters that they were not ill-treated. This has been explicitly verified in the decisions made by the courts.

The memorandum asserts that a prisoner was punished as the result of a meeting between an Amnesty International delegation and three prisoners at the Green Island Prison. This assertion is not true. The delegation first asked to see Pui Yau-shan, a prisoner. When the request was turned down as a violation of prison rules, the delegation picked three prisoners at random and interviewed them. The guides who accompanied the delegation did not raise any objection. Members of the delegation expressed appreciation to the guides and members of the prison staff for their cooperation. None of the prisoners interviewed was punished.

III

The assertion in the memorandum that restrictions have been placed on the lawful exercise of the rights of freedom of expression and freedom of association provided in the constitution is contrary to fact. People in the Republic of China enjoy these freedoms fully within the framework of law. Despite the existence of martial law, the Republic of China has never suspended implementation of the constitution, never dissolved the legislature and never abrogated the fundamental rights of the people as provided in the constitution.

Although the constitutions of various states guarantee freedom of expression and freedom of association, these freedoms are not absolute. The exercise of these freedoms must be in accordance with law and must not jeopardize the fundamental rights of others. To serve vital national interests, all states place certain restraints on freedom of expression and freedom of association.

In *Schenck v. United States*, 249, US 47, 52 (1919), Justice Holmes of the US Supreme Court, commenting on the issue of whether the sudden shouting of "fire" in a crowded theater should be considered as freedom of expression, positively held that such freedom should be restricted.

The Statute for the Punishment of Sedition and the Statute Governing the Prosecution and Elimination of Communist Spies during the period of suppression of rebellion of the Republic of China do not prohibit lawful exercise of freedom of expression and freedom of association. Like the national security statutes of other states, these statutes only restrain expressions or associations of a seditious or instigative nature and activities endangering national security or the public order.

IV

1. The assertion in the memorandum that the Statute for the Punishment of Sedition and the Statute Governing the Prosecution and Elimination of Communist Spies During the Period of Suppression of Rebellion do not in any way define the term "sedition" or "seditious person" obviously results from a misreading of the statutes. According to the provisions of the Statute for the Punishment of Sedition, the term "rebel" denotes one who commits offenses prescribed in Articles 2 through 7 of the said statute. In other words, it denotes the "seditious person" prescribed in Article 2 or the "person conspiring with a rebel" as prescribed in Articles 3 through 7 of the statute.

A "seditious person" denotes one who commits offenses prescribed in paragraph 1 of Article 100, paragraph 1 of Article 101, paragraph 1 of Article 103 and paragraph 1 of Article 104 of the Criminal Code. The term "a seditious person" is clearly defined in paragraph 1 of Article 100: "a person who commits an overt act with the intent to destroy the organization of the state, seize state territory, change the constitution by illegal means, or overthrow the government"; in paragraph 1 of Article 101: "a person who with violence commits an offense specified in paragraph 1 of the preceding article"; in paragraph 1 of Article 103: "a person who has dealings with a foreign state or its agents with the intent that such a state or another state wages war against the Republic of China"; and in paragraph 1 of Article 104: "a person who has dealings with a foreign state or its agents with the intent to deliver territory of the Republic of China to such a state or another state." These articles clearly set forth the constituent elements of sedition.

2. Many other states have stipulations against sedition in their criminal codes, such as: offenses against internal security in paragraph 2 of chapter 1 of the West German Criminal Code; offenses against internal security and other offenses against the state in chapter 14 of part 2 of the Austrian Criminal Code; sedition offenses in paragraph 1 of chapter 13 of part 2 of the Swiss Criminal Code; offenses of conspiracy and sedition and other offenses against encroaching upon national sovereignty and territorial integrity in paragraph 3 of chapter 1 of part 1 of volume 3 of the French Criminal Code; offenses against external security in paragraph 1 and offenses against internal security in paragraph 2 of chapter 1 of part 2 of the Italian Criminal Code; offenses endangering peace or national independence in chapter 2 of series 1 of volume 2 of the Spanish Criminal Code, and offenses against internal security in chapter 2 of part 2 of the

Japanese Criminal Code. Although the constituent elements of these similar provisions differ, their common intention is to safeguard national security and protect the people's welfare.

3. Page five of the memorandum stresses that the case did not involve the use of violence and questions the wisdom of a court statement that conviction of sedition "to overthrow the government through illegal means does not require proof of violence." Judging from the legislation and practice of various other states, the offense of sedition does not necessarily require the inclusion of violence. In the State v. Shepherd, 177 No.205, 222, 76 SW, 79, 84 (1903), as quoted in Perkins, Criminal Law 380 N.91 (1957), sedition requires only some "word, deed or writing" calculated to incite persons to such public disorder as riot, rebellion, insurrection or civil war. (Italics added).

According to Black's Law Dictionary p. 1218 (5th ed. 1979), sedition means communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamiation of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any document which advocates...the overthrow or reformation of the existing form of government or the state by violence or unlawful means...attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state. See 18 USCA 2383 et seq.; see also Alien and Sedition Laws; Smith Act (Italics added).

The term "sedition" is no less specifically defined in statutes of the Republic of China than in the similar statutes of other states.

V

1. Regarding the assertion that "suspects shall be presumed innocent and treated as such", the existing Code of Criminal Procedure of the Republic of China provides that "suspects shall be presumed innocent." Article 154 of the Code of Criminal Procedure stipulates: "the facts of an offense shall be established by evidence. The facts of an offense shall not be presumed in the absence of evidence." Paragraph 3 of Article 156 stipulates: "where an accused has made no confession nor is there any evidence, his guilt shall not be presumed merely because of his refusing to testify or remaining silent." These stipulations clearly indicate that "no person shall be presumed guilty without evidence" and presume that all people are innocent. There is recognition that defendants have the rights to refuse to testify or to remain silent.

Paragraph 1 of Article 301 stipulates: "if it cannot be proved that an accused has committed an offense or if his act is not punishable, a judgment of 'not guilty' shall be pronounced." This provision is also aimed at recognizing the principle of in dubio pro reo before a defendant is convicted.

In addition, Article 161 of the code stipulates: "the prosecutor shall bear the burden of proof as to the facts of the crime charged against an accused." This further shows that in accordance with the Code of Criminal Procedure, a defendant is not required to prove his innocence. The stipulation that the burden of proof rests with the prosecutor fully coincides with the spirit of modern legislation and the requirements of the United Nations Universal Declaration of Human Rights.

2. As regards the stipulation in Article 245 of the Code of Criminal Procedure that "an investigation shall not be public", the purpose is to protect the human rights of suspects. Should the investigation be made public, it would be difficult to provide redress should damages be inflicted on the reputation or status of the suspect even in the absence of prosecution. Paragraph 2 of Article 228 further stipulates that in the course of investigation, the prosecutor shall not unnecessarily summon or interrogate a suspect in order to safeguard the person's reputation and guard against false accusation.

Article 105 of the code stipulates that a detained suspect may receive visitors, send mail and receive books and other articles. These provisions are also included in Article 115 of the Military Trial Law. The stipulation that "an investigation shall not be public" in the Code of Criminal Procedure is a protection of human rights.

VI

It is presumptuous of Amnesty International to recommend that those convicted in the Kaohsiung riot case be released immediately and unconditionally. The Republic of China is a nation ruled by law. Any decision made by the courts in accordance with law is conclusive, has binding force, and should be executed accordingly. There can be no exception for those convicted in the Kaohsiung riot case. They were tried and convicted in keeping with due process. The recommendation of Amnesty International violates the spirit of the democratic system and the rule of law. It is a gross interference in the internal affairs of a state and could not be tolerated by any sovereign state.

Concerning the recommendation that our laws and statutes be revised, it must be made clear that according to Article 62 of the Constitution of the Republic of China, the Legislative Yuan is the highest legislative organ of the state. It is constituted of members elected by the people and exercises legislative power on the people's behalf. The power to enact or amend laws rests with the representatives of the people and cannot be influenced by any external force. This recommendation of Amnesty International is tantamount to interference in internal affairs and could not be tolerated by any sovereign state.

VII

Laws of the Republic of China provide redress for a person convicted in consequence of errors of fact or of law made by the court. Article 420 of the Code of Criminal Procedure prescribes that a convicted person may apply for a new trial. Article 441 of the same code has provisions for an extraordinary appeal; so has Article 37 of the Military Trial Law.

Additionally, there are compensation provisions for a person wrongly accused under the laws of the Republic of China. Article 1 of the Law of Compensation for Wrongful Detentions and Executions stipulates that: under any of the following circumstances, the person unjustly accused in a case processed in accordance with the Code of Criminal Procedure and related orders may claim compensation from the government in accordance with the provisions of this law:

1. If he has been detained prior to a ruling not to prosecute or a final judgment of acquittal;
2. If he has been detained or punished prior to a final judgment of acquittal rendered in accordance with proceedings of a new trial or an extraordinary appeal.

These provisions, however, are not applicable in the Kaccsiung riot case.

VIII

Whether the death penalty should be abolished is a controversial issue of debate in penology. Those who advocate abolition of capital punishment may have reasons based on an individualistic ideology of human rights. But national conditions differ with states and so do laws concerning the death penalty. According to Capital Punishment, published by the United Nations in 1967, 72 countries and areas supplying information still provided for the death penalty and only 16 had abolished it. Australia, Mexico and the United States had not fully abolished capital punishment.

Although some articles of law in the Republic of China provided for the death sentence, these are implemented with extreme scrupulousness. These may be viewed from two different aspects:

1. From the aspect of law: paragraph 1 of Article 63 of the Criminal Code stipulates: "a death penalty or imprisonment for life may not be imposed on an offender who has not completed the 18th year or who has completed the 80th year of his life. If the punishment prescribed for the offense is death penalty or life imprisonment, such punishment shall be mandatorily reduced." Article 75 of the Law Governing the Disposition of Juvenile Cases stipulates: "In no case shall a juvenile

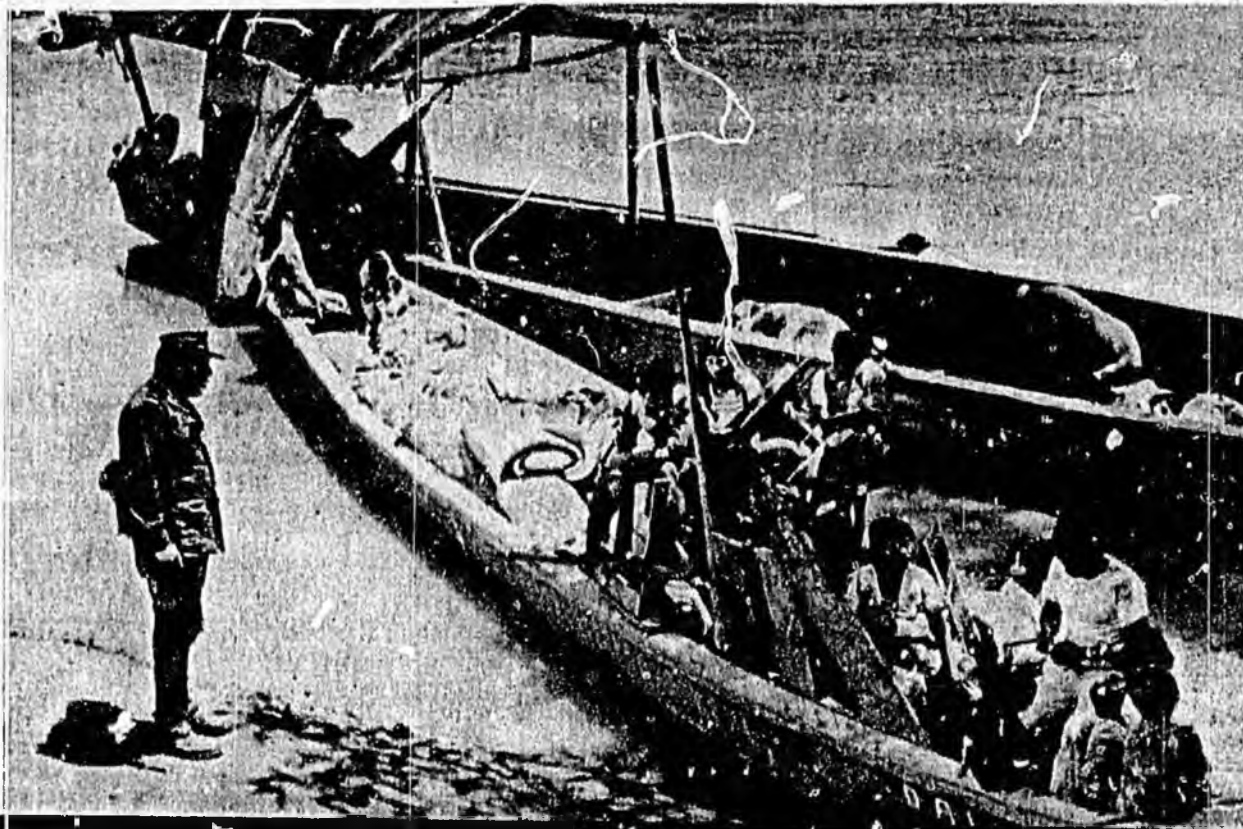
be sentenced to death or life imprisonment for the commission of an offense, except when it involves paragraph 1 of Article 272 of the Criminal Code." Paragraph 4 of Article 344 of the Code of Criminal Procedure stipulates: "In a case for which a death sentence or life imprisonment has been pronounced, the trial court shall, without waiting for lodgment of an appeal, ex officio refer it directly to the competent superior court for trial and notify the party concerned." Article 461 of the same code stipulates: "A death sentence shall be subject to approval of the supreme judicial administrative organ." These provisions demonstrate the extreme scrupulousness provided before applying the death penalty.

2. From the aspect of practice: only a few death sentences have been made by courts of the Republic of China in recent years: seven in 1978, two in 1979 and five in 1980. Most of them involved the commission of homicide. These verified statistics refute the statistical errors found on page 20 of the memorandum.

amnesty action

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Mexico



UN focuses on human rights abuses

The United Nations has been urged to check on how member states have observed UN calls for the release of certain categories of prisoners, including prisoners of conscience.

In an oral intervention to the Sub-Committee on Prevention of Discrimination and Protection of Minorities in Geneva, AI said there is a need to follow up such UN calls by creating procedures to gather information on the relevant categories of prisoners, in particular prisoners of conscience.

'Disappearances' violate international law

Cont'd from page 1

"disappearances:" the right of families to know the fate of their relatives.

However, relatively little attention has been paid to the detention of prisoners of conscience — people imprisoned because of their political, religious, or other conscientiously held beliefs and who have not used or advocated violence.

The UN General Assembly has in recent years adopted a number of resolutions concerning the protection of the human rights of certain categories of prisoners. These resolutions do not use the term "prisoners of conscience" but the different categories of prisoners referred to would include many prisoners of conscience.

In 1977, the Assembly referred to all people detained or imprisoned as a result of their struggle against colonialism, aggression and foreign occupation, for self-determination, independence, the elimination of apartheid, and all forms of racial discrimination and racism. The Assembly also drew attention to the fact that in many parts of the world prisoners are detained for offenses they have committed, or are suspected of having committed, by reason of their political opinions or convictions. The Assembly called upon member states to examine periodically the possibility of releasing such prisoners.

AI believes that the imprisonment of prisoners of conscience should not be discussed in abstract terms only. Each individual case involves human suffering.

● In Taiwan, WU Yueh-Ming, aged 61, has been imprisoned in Green Island prison for more than 30 years. He is charged with "having been handed a communist poster and having posted it up." He



GONG Pinnel, imprisoned in the People's Republic of China since 1950.

was also charged with having joined a communist group in 1950. He was sentenced to life imprisonment by a military tribunal sitting *in camera*.

● In the People's Republic of China, GONG Pinnel, the former Roman Catholic Bishop of Shanghai, has spent more than 25 years in prison. He was sentenced to life imprisonment on charges of counterrevolutionary activities. He is now over 80 years old.

● In Morocco, Abdelali Ben CHEKROUN, 29, a mathematics teacher, was sentenced to 30 years' imprisonment in 1977. Together with almost 100 others he was charged with belonging to illegal

associations attempting to overthrow the government, although even the prosecution accepted that the defendants had only reached the stage of propagating their ideas. Each of these individuals is a prisoner of conscience, only three cases among thousands. AI's information is that there are prisoners of conscience in almost half the member states of the United Nations.

UN committee wants end to political executions

Politically motivated executions deserve the "most urgent consideration" of the United Nations Commission on Human Rights, according to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

During its August-September session in Geneva, the Sub-Commission recommended that the Commission put a proposal before the UN Economic and Social Council calling on governments to abolish the death penalty for political offenses.

The Sub-Commission is comprised of 26 experts elected in their individual capacity.

It adopted a number of decisions of interest to Amnesty International:

● It called for the cooperation of governments with the UN Working Groups on Enforced or Involuntary Disappearances. Extension of the Working Group's mandate to "indispensable," it said.

● Further, the Sub-Commission said, if a government does not supply requested information within a reasonable period, it should be presumed that events in question did indeed occur. (AI had made the same suggestion as part of its oral intervention on prisoners of conscience.)

● In a surprise resolution, the Sub-Commission asserted that "the establishment of a post of the United Nations High Commissioner for Human Rights would be highly valuable in advancing the promotion and protection of human rights in the world." It was the first time any UN body had spoken in favor of such a post.

In confidential session, the sub-commission dealt with communications alleging "consistent patterns of gross violations of human rights" in a number of countries. In accordance with its usual procedure, these deliberations were not made public. AI had made submissions on Argentina, Uruguay, Haiti, the Republic of (South) Korea, Pakistan, and Iraq.

Under its public procedures, the sub-commission adopted resolutions on Afghanistan, Kampuchea, the Bahais in Iran, El Salvador, South Africa, Namibia, and the territories occupied by Israel.

**AMNESTY
INTERNATIONAL
REPORT
1982**

**This report covers the period
January to December 1981**

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (but not the Optional Protocol to the former as Amnesty International had recommended). Concerned about the human rights violations reported to it during 1981, Amnesty International proposed to the government that a mission visit the country.



Taiwan

Amnesty International appealed for the release or retrial of more than 120 prisoners of conscience and possible prisoners of conscience, 20 of whom had been held for more than 30 years.

On 27 February 1981 Amnesty International submitted a memorandum to the government. It contained recommendations arising from its mission to Taiwan in February 1980 and from its observation of the trial in March 1980 of eight defendants charged with sedition after a demonstration in Kaohsiung on 10 December 1979. Amnesty International called for the release of its adopted prisoners of conscience and for the country's legislation to be amended to bring it in line with international standards on interrogation, trial and detention procedures. In particular Amnesty International recommended: the abolition of provisions under which people can be imprisoned for the non-violent exercise of their right to freedom of expression and association; a precise legal definition of the offence of sedition; an end to incommunicado detention and other conditions that facilitate ill-treatment in custody; and the introduction of procedures to investigate complaints of ill-treatment and compensate victims.

On 5 August 1981 Amnesty International published the text of its memorandum together with a reply from the government and Amnesty International's response. The government rejected the Amnesty International recommendations as interference in its internal affairs. It said that the violence at the Kaohsiung demonstration was planned in advance by eight of the prisoners and that their allegations of ill-treatment had been investigated by the court and found to be groundless. It stated that the purpose of the legal provision that pre-trial investigation "shall not be public" was "to protect the human rights of the suspects", "safeguard the person's reputation and guard

against false accusation". In its response Amnesty International reaffirmed that it had not been proved that the defendants convicted of sedition had planned the violence that erupted during the demonstration. Regarding prisoners' complaints of ill-treatment, Amnesty International stressed that the isolation of suspects during interrogation facilitated ill-treatment. It also made it difficult for defendants to prove their complaints to the courts, and for the government to disprove them. In its memorandum Amnesty International expressed disquiet at reports that one of the prisoners who had spoken to its delegates visiting Green Island military prison in February 1980 (see *Amnesty International Report 1980*) had been punished as a result. Amnesty International noted that the government denied this and reiterated its recommendation that an independent body be set up to deal with prisoners' complaints. Amnesty International repeated its belief that the definition of the offence of sedition was imprecise. It was concerned that charges of sedition had been used to imprison people critical of the government whom Amnesty International regarded as prisoners of conscience.

During 1981 the government did attend to some of the matters on which Amnesty International had made recommendations. The Minister for Legal Affairs, Li Yuan-tze, was reported to have said in March 1981 to the Legislative Yuan (Assembly) that the right of a suspect to have access to counsel during investigation would be given serious consideration during the forthcoming revision of the code of criminal procedure. On 1 July 1981 the government promulgated a State Compensation Law. Under this a plaintiff may claim compensation for damages caused by government employees in the course of their duties. On 7 October 1981 Amnesty International wrote to the Minister for Legal Affairs welcoming this measure.

Dr Chen Wen-cheng, an assistant professor at Carnegie-Mellon University in the USA, was found dead in Taipei on 3 July 1981, the day after he had been interrogated by the Taiwan Garrison Command about his political activities in the USA. The authorities said that he had been escorted home the night before. On 8 July 1981 Amnesty International cabled the government expressing concern about Dr Chen Wen-cheng's death and asking for information about the circumstances. The government sent Amnesty International copies of the reports by the prosecutor's office and by two members of the Control Yuan (the elected assembly which has the power to impeach and censure public functionaries). The first concluded that the death was the result of suicide or accident; the second, that it was probably accidental. A US expert in forensic medicine who examined the body at the request of Chen Wen-cheng's employer found no evidence of systematic torture and concluded that he had been murdered. The