

CHINA

SLAMMING THE DOOR ON DISSENT **Wang Dan's Trial and the New "State Security" Era**

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I. SUMMARY AND RECOMMENDATIONS

With its decision to bring Chinese dissident Wang Dan to trial on October 30 on the charge of “conspiracy to subvert the government,” the most serious charge in the Chinese criminal code, the Chinese government has signaled its determination to deny freedom of speech and association to any citizen daring publicly to raise fundamental criticisms of government policy. The charge sends a message to China’s dissidents that the courts will no longer draw a distinction between political speech or writing on the one hand and concrete action on the other: both levels of dissent are henceforth to be indiscriminately treated as “endangering state security.” It casts serious doubt on the commitment of top Chinese officials to the vaunted reform of the country’s legal system. And it shows conclusively that Western mantras about economic growth producing political liberalization notwithstanding, Chinese leaders are growing increasingly intolerant of dissent. In addition, by holding Wang Dan’s trial just weeks before the visit to Beijing of U.S. Secretary of State Warren Christopher and just weeks after visits of German Foreign Minister Klaus Kinkel and Italian Foreign Minister Lamberto Dini, Beijing has chosen to disregard international expressions of concern over its human rights record.

Human Rights Watch/Asia calls on the Chinese government to release Wang Dan and drop all charges against him. The government should also permit international observers, from the diplomatic community, the press corps and international legal and human rights organizations, to attend the trial in Beijing Intermediate Court No.1.

If Wang Dan is found guilty as charged, the international community must not stay silent:

- China’s chief trading partners, including the United States, the European Union, Australia, Canada and Japan, should postpone plans for any official trade missions to China where government ministers accompany corporate representatives for the express purpose of signing major business deals. There should be a moratorium on such ministerial-led visits until major human rights improvements, including the release of key political prisoners, take place.
- Human rights in China should be a top agenda item in any high-level bilateral meetings with senior Chinese officials, including President Jiang Zemin, at the time of the Asia Pacific Economic Cooperation (APEC) summit in Manila, November 20-25. Officials from APEC countries should publicly call for human rights improvements as an integral ingredient of China’s long-term economic and social development.
- State visits, including proposed summits of Chinese leaders with the presidents of Germany (November) and the U.S. (sometime in 1997), should be used as leverage for achieving concrete human rights objectives and should only take place if those objectives, including the release of key prisoners, are achieved.
- The countries in Africa, the Asia-Pacific region, Europe and the Americas, including the U.S. that support progress on human rights and that are represented on the U.N. Human Rights Commission, should begin efforts now to ensure that a resolution on human rights in China and Tibet is introduced and passed during the next session of the Commission in Geneva in 1997.

II. BACKGROUND TO THE CASE

Wang Dan, then a history student at Beijing University, had been a leader of the protests in Tiananmen Square in 1989 and was sentenced to four years in prison as a result. After serving most of his term, he was paroled in February 1993 but continued to speak out against what he saw as injustice and lack of redress for the victims of the June 4 crackdown. He was detained again in Beijing on May 21, 1995 for having coauthored and signed various petitions to the government in the run-up to the sixth anniversary of that crackdown. On May 24, police informed the family that Wang was under investigation for “disturbing the social order” and, in a sign that he was in for a long stay, that they could send him a parcel of clothes. For almost seventeen months thereafter, Wang was held incommunicado by the authorities at an unknown location. On October 10, Wang’s mother, Wang Lingyun, was informed that the prosecution

indictment against him was now ready (a copy is attached) and that she had twenty-four hours in which to find a lawyer to defend him against the charge of conspiring to subvert the government, a crime punishable by a minimum of ten years' imprisonment and by a maximum of death.

The alleged offenses in Wang Dan's case consist mainly of publishing articles in the overseas press deemed objectionable by Beijing and of receiving donations from abroad for the provision of humanitarian relief to imprisoned and released dissidents. These are actions that in the past would have attracted at most the charge of "counterrevolutionary propaganda and incitement." In Wang Dan's case, they have been arbitrarily interpreted in the indictment to constitute subversion and a fundamental "threat to state security." These features of the prosecution indictment appear to reflect the government's plans to replace the Criminal Law's statutes on "counterrevolutionary crime" with the seemingly more neutral and internationally acceptable statutes referring to "crimes of endangering state security." These changes are reportedly to be introduced at the next plenary session of the National People's Congress in March 1997.

The Wang Dan indictment in a sense constitutes a "transitional text" in this legislative reform process. Far from signaling any greater official tolerance of dissent in future, the impending legislative revisions will in practice mean the reverse, with top dissidents being charged with more serious crimes and receiving substantially heavier sentences than in the past.

In one sense, Wang Dan's imminent trial merely represent the latest round in a pattern of governmental repression in China. Its significance, however, goes beyond the silencing of an outspoken critical voice. The fact is that China's urban dissident movement, after seven years of struggling to survive and reassert some measure of influence in the country's political affairs since June 1989, has in effect been comprehensively smashed. In a series of political trials held since 1994, and similar to the one Wang Dan now faces, the authorities have driven home the message that no degree of overt political opposition, however peacefully expressed, will be tolerated. Among the most prominent such cases:

- On October 8, 1996, Liu Xiaobo, a renowned literary critic and former professor of Chinese literature who helped negotiate the safe departure of students from Tiananmen Square on June 4, 1989, was summarily arrested. Together with Wang Xizhe, a veteran dissident from southern China, Liu had coauthored an open letter to the Chinese and Taiwan governments in late September calling for a peaceful solution to the question of national reunification; asking that the Chinese Communist Party finally deliver on pledges of free speech and party pluralism; and pointing out that under China's constitution, President Jiang Zemin should be impeached for having recently claimed that the People's Liberation Army was under the "absolute leadership of the Party" rather than the national legislature. He was arrested by police at his home in Beijing, and the following day, he was sentenced by the Public Security Bureau without benefit of a trial to three years' "reeducation through labor." Fearing imminent arrest, Wang Xizhe, who had served almost twelve years of a fourteen-year sentence imposed in 1981 for previous dissident activity, went into hiding and subsequently escaped from China, arriving in the U.S. on October 15.
- In September 1996, the trial of Zhang Zongai took place. Zhang is a former elected member of the Xi'an People's Congress who spent five years in jail for denouncing the government's crackdown on the 1989 pro-democracy movement, on charges of "counterrevolutionary propaganda and incitement," in part for having written letters seeking guidance from the Taiwan news media on how to bring democracy to China and for conducting an interview with Wang Dan prior to the latter's redetention. The outcome of trial is as yet unknown.
- In late September 1996, there was the reported trial and sentencing of Guo Haifeng, a student leader of the 1989 Tiananmen Square protest movement who served more than three and a half years in jail for his activities

at that time, to seven additional years' imprisonment on charges of "hooliganism," apparently for assisting another dissident to flee China.¹

- On July 4, 1996, Liu Nianchun, human rights and labor activist, was administratively sentenced to a three-year reeducation through labor term, the three years to be served on top of the fifteen months he had already been detained. Liu had disappeared into residential surveillance on May 21, 1995, the same day that Wang Dan vanished.
- In May 1996, the secret trial took place of Li Hai, a graduate student who spent a year in prison after June 1989 and then co-sponsored the 1993 "Peace Charter," only to be rearrested in May 1995 for allegedly "leaking state secrets," a charge apparently related to his human rights' monitoring activities. Almost six months after the trial, Li's family still had not been informed of the sentence.
- In December 1995, Wei Jingsheng was sentenced to a further fourteen years' imprisonment on the counterrevolutionary charge of "conspiracy to subvert the government" for having dared, following his release in September 1993 from an even longer previous sentence for dissident activities, to continue publishing articles critical of the government and calling for greater civil and political freedom in China.
- In December 1994, Hu Shigen, Kang Yuchun and Liu Jingsheng, activists who attempted to organize an unofficial labor union and create a political party devoted to social-democratic goals, were sentenced to prison terms of twenty, seventeen and fifteen years respectively on various major charges of counterrevolution.

Meanwhile, hundreds of other known political dissidents, unofficial religious activists and believers, independent labor-rights advocates and ethnic-minority rights campaigners in Tibet, Xinjiang and Inner Mongolia who have been rounded up by the security authorities and sentenced after unfair trials over the past decade remain behind bars throughout China, increasingly forgotten by the international community as trade and security interests dominate relations with China. The true number of those currently imprisoned in China for exercising their rights to freedom of speech and association far exceeds those cases currently known to outside monitoring groups.

¹ Also in September 1996, Wang Hui, the wife of imprisoned labor-rights activist Zhou Guoqiang, who is currently serving a four-year term of "reeducation through labor" in a prison camp in Heilongjiang Province, was secretly detained by Beijing police on account of her persistent attempts to appeal against her husband's incarceration, and has not been heard of since. During a previous detention this summer, Wang Hui reportedly attempted to hang herself in her cell but was cut down by prison guards and then given a severe beating as punishment.

III. THE STATE'S CASE AGAINST WANG DAN

As noted above, Wang Dan was taken into custody by public security officials in May 1995 and then disappeared for more than a year. On October 14, 1996, he was granted a one-hour meeting with his mother, his first contact with the outside world since his detention, to discuss and prepare his defense strategy. Wang was said to be in poor physical condition; he is believed to be suffering from throat and prostate ailments although it is unclear whether he has had any access to medical care during his detention. He is nevertheless said to be "mentally prepared" to receive a heavy sentence at his trial, since not only has he been charged with committing the most serious offense in China's Criminal Law, but the procuracy has also branded him a "repeat offender" and asked the court to sentence him with "extra severity." It thus appears that lenient treatment has been ruled out in Wang's case, although international pressure has sometimes been able to secure a lighter sentence.

According to details entered in the prosecution indictment, Wang was held under "residential surveillance" (*jianshi juzhu*) from May 22, 1995, the day following his initial detention, onwards. Under Chinese law, "residential surveillance" is supposed to be a minor "coercive measure" whereby a suspect is allowed freedom of movement under surveillance within a specified radius of his or her home. In recent years, however, Chinese police have increasingly applied the measure against dissidents and others as a means of circumventing lawful time limits on criminal detention, turning it into a disguised form of arrest. In the case of China's leading dissident and Nobel peace prize candidate Wei Jingsheng, who was held incommunicado by police under so-called residential surveillance for twenty months prior to his formal arrest and sentencing in December 1995, the court compounded the illegality by refusing to deduct this period from his new fourteen-year sentence on the grounds that Wei had not been "detained" during that time. His sentence was thus effectively increased to almost sixteen years. Presumably Wang Dan will encounter the same treatment at his trial.

But this was merely the first in a series of procedural violations committed by the police in both cases. According to the Criminal Procedure Law, formal arrest (*daibu*), to be approved by the procuracy upon the police's establishment of sufficient preliminary evidence of an offense, must follow within ten days of a suspect's initial detention, or the person is to be freed. In the former case, the suspect's family must be informed within twenty-four hours of the decision to make an arrest. There then follows an often lengthy period of "investigative custody," during which the police are required to obtain sufficiently clear evidence of guilt to justify making a request to the procuracy for a public prosecution to be initiated in court. Further time is then legally required for the procuracy to examine and approve the police's request and, eventually, to prepare the bill of indictment, forward it to the court and present a copy to the defendant's family. In Wang Dan's case, the prosecution indictment, dated October 7, 1996, notes that Wang was not formally arrested until October 4, 1996, thus indicating that the entire post-arrest criminal process had been telescoped into a mere three-day period.

The core illegality lies in the authorities' claim that during the actual period of investigative custody, Wang was not in police detention but merely under residential surveillance—when in practice it is clear that all relevant phases of the criminal process were actually carried out and completed during that period. But in addition, Wang's family were neither informed that formal arrest had been carried out until more than a week after the event, nor given a copy of the bill of indictment until Wang's mother asserted her right to serve as one of his defenders in court, together with the lawyer that she had managed to find within the police's arbitrarily imposed time-limit of twenty-four hours.

Although more obvious in Wang's and Wei's cases than in most others, such procedural violations are in fact the norm rather than the exception in China's judicial system in the cases of leading dissidents or "counterrevolutionaries." In view of the international plaudits reaped by the Chinese government following revisions to the Criminal Procedure Law that were passed by the National People's Congress earlier this year, the question arises as to what grounds exist for believing that China's law enforcement authorities will be prepared to abide by the more stringent standards of judicial process scheduled to come into force in January 1997, when they have shown such consistent disregard for the much less onerous standards that currently apply.

IV. MANUFACTURED QUOTATIONS

In reviewing the detailed allegations raised against Wang Dan in the prosecution indictment, one is reminded of what Bao Tong, the former chief aide to ousted Premier Zhao Ziyang, is reported to have said upon reading the indictment brought against him after June 1989: "It's not so much what they've accused me of getting up to, it's that they really haven't accused me of doing anything."²

The procuracy commences its case by citing Wang's authorship, after his release from prison in February 1993, of some thirty articles that were published in the Hong Kong, Taiwan and Western news media, and in which he allegedly "incited turmoil" and "sought to create public opinion in support of the overthrow of the state power and the socialist system." Only three of the articles are cited by name, however, and only a few brief phrases and sentences from those are actually quoted in the indictment in support of the authorities' accusations. The procuracy apparently viewed these quotations as being so conclusively damning that there would be no necessity for it to burden the court with any more specific examples drawn from the remaining twenty-seven or so offending articles mentioned in the indictment.

The first item of evidence produced is an article that appeared in Hong Kong's *Ming Bao* in September 1994 titled "On the Urgency of Democratic Reform in China." In that article, notes the indictment,

The defendant attacked the Four Basic Principles laid down in China's Constitution as being "like a paper horse that falls at the first touch."³

By the normally lurid and inventive standards of Chinese political metaphor, this is a relatively timid formulation. Most Chinese dissidents worth their salt would probably have deployed the ever-popular "praying mantis who vainly obstructs the wheel of history" and would almost certainly have opted for a "paper tiger" in preference to Wang's horse. But since the Chinese authorities have no known plans to introduce laws prohibiting mixed metaphor, the Beijing procuracy must have a different argument to pick with Wang. Although not presented in the indictment, the actual context in which Wang made his disparaging equine remark was as follows:

The [Communist Party's] ossified ideological tenets are like a double-edged sword. They help it to maintain stability, but at the same time resemble a piece of burning charcoal which it is unable to cast from its hand. It was forced to make remarks about democracy that no one believed, and was then thrown into passivity and has since chosen to keep silent on the matter, keeping its opponents well at a distance. The reason for this is that the Four Basic Principles afford such a narrow space for debate

² "Bu shi tamen zhikong wo gan shenmo, shi tamen mei zhikong wo zuo shenmo." Bao was sentenced to seven years' imprisonment on the charge of "leaking state secrets" for his alleged role in the 1989 pro-democracy movement, released from jail in May 1996 and then immediately transferred to the alternative custody of a high-security government facility in western Beijing.

³ The "Four Basic Principles" refer to Deng Xiaoping's March 1979 injunction that China will forever adhere to "the leadership of the Communist Party," "the dictatorship of the proletariat," "the socialist path" and "the Four Modernizations." In 1982, the Chinese government wrote these principles into the preamble of the State Constitution.

that any sincere and earnest discussion about democracy is liable to get out of control. By the same token, if the Communist Party wished to reason or argue things out with others, it would also find itself in the wrong even before it began, since the Four Basic Principles essentially preclude all discussion. The Four Basic Principles are thus like a paper horse that falls at the first touch.⁴

At issue here, from the procuracy's point of view, is not so much Wang's straightforward plea for the authorities to extend the limits of debate in China beyond the narrow confines laid down in Deng's Four Basic Principles. Rather, it is that since those principles are enshrined in the constitution, any questioning of their authority is in practice viewed as tantamount to a "violation" of the constitution. This is the unstated axiom permitting the procuracy to characterize Wang's mere criticism of the principles as being self-evidently contributory to the alleged "conspiracy to subvert the government." For the procuracy to be accusing Wang of subversion on the basis of a mild metaphorical comment published in a newspaper article amounts to an eloquent endorsement of the truth and accuracy of his views on the restrictive nature of the Four Basic Principles.

The second of Wang's statements cited by the procuracy reads:

In the mainland today, the authorities are imposing press censorship upon the people and freedom of speech under the Constitution has become an empty phrase.

The judicial authorities have no compunction here in citing a mere verbal or written statement by the defendant as posing evidence of "counterrevolutionary guilt." What is surprising is that they should be doing so without embarrassment when the viewpoint at issue is one claiming that freedom of expression is under restriction. The only possible grounds for legally challenging that statement would be if it were somehow false. But by citing the proposition itself as constituting evidence of guilt, the procuracy only succeeds, once again, in demonstrating its validity.

The third "statement" cited in the prosecution indictment is, in point of fact, a composite creation stitched together by the Beijing procuracy from two separate comments that Wang made in different articles written more than one year apart. According to the prosecution indictment,

[The defendant] slandered the Chinese Communist Party and the People's Government as being "a lost and confused generation, whose leaders rule over a lost and confused party that resolutely refuses to surrender the slightest of its interests and would even sacrifice the future of the country to ensure that its power is not checked."

The first part of this pseudo-quotation is derived from Wang's September 1994 article, "On the Urgency of Democratic Reform in China." The original context, which is again omitted from the prosecution indictment, contains some surprises:

Again, we should be aware that the philosophy in which the Communist Party actually believes long ago deviated from its own nominal convictions. It believes in stark, much-needed pragmatism more than it believes in Marxism-Leninism. For a long period, the Communist Party leadership has acted quite sensibly. It regards nothing as really indispensable apart from the safeguarding of its ruling power. Who cares what color the cat is, so long as it catches mice? ... So the Communist Party doesn't stubbornly believe in dogmas quite as it appears to do. Rather, we should say that it is a "lost and confused party" led by a "lost and confused generation," including Deng Xiaoping. It is unsteadily groping its way across the river by feeling for the stones underfoot, and only God knows where it may finally end up.

⁴ "Lun Minzhu Gaige Zai Zhongguo de Poqiexing," *Ming Bao*, September 5, 1994.

As can be seen, Wang's description of the party leadership as representing a "lost and confused generation" was made in the context of a rather generous and sympathetic assessment of the party's recent record and achievements. Undeterred by the conciliatory tone of these remarks, however, the procuracy then proceeds to reassign Wang's "lost and confused generation" to perform the subject role in a much more caustic and angry-sounding passage, one that he wrote just a few months after his release from prison in February 1993. The original passage, which appeared in an article published in the *South China Morning Post* on July 2 of that year, reads as follows:

Through the brutality of the June 4 incident, we can see that the Chinese Communists resolutely refuse to surrender the slightest of their interests. They would even sacrifice the future of the country to ensure that their power is not checked.

After a quick and tidy excision of the unsettling reference to "June 4," and a judicious insertion of Wang's unflattering reference to the Chinese leadership, the procuracy then constructs the quotation cited above, conveying sentiments that are significantly more radical and confrontational in nature than those Wang Dan actually voiced.

In a subsequent paragraph, the Beijing procuracy again upbraids Wang for his commission of the following metaphorical misdemeanors:

From May 1994 through 1995, Defendant Wang Dan wrote articles propagating the view that "the government is dragging the entire country toward a final point of decision" and that "China today is like a country sitting on top of a volcano, like the 'wind-filled tower awaiting the coming storm.'"

The real focus of the government's disquiet appears to lie with Wang's conviction that "the time has now come for us to put our words into concrete action." But what specific "concrete action" did Wang actually have in mind, or rather what did such action eventually consist of? According to the procuracy, nothing less than the following:

To this end, Defendant Wang Dan proceeded to draft a petition titled "A Proposal to Safeguard Basic Human Rights and Uphold Social Justice," and then to collude [with other dissidents] to concoct another petition titled "Draw the Lessons from the Bloodshed—Promote Democracy and the Legal System," for which more than eighty signatures of support were obtained and which was later published in newspapers in Hong Kong, Taiwan and elsewhere.

Thus, according to the Chinese government, the attempt by Chinese citizens to safeguard, uphold or promote the goals of basic human rights, social justice, democracy and the legal system, by means of writing articles or petitions and by seeking to have these published even outside China's borders, is a legally proscribed activity and one to be construed by the courts as constituting a conspiracy to subvert the government.

V. DANGEROUS LIAISONS

The remainder of the indictment comprises a vague and meandering litany of Wang's various contacts with overseas-based Chinese pro-democracy activists. First, he is said to have "colluded" with Wang Juntao, now living in Boston, Massachusetts and running an organization called the China Research Institute, and Hu Ping, former chairman of the Chinese Alliance for Democracy, a worldwide Chinese dissident group based in the U.S. This "collusion" consisted, according to the indictment, of his agreeing to serve on the board of Wang Juntao's institute and of discussing tactics with Hu Ping to "set up an oppositional force" in China. Both the Chinese Alliance for Democracy, which publishes the magazine *China Spring* and is seen by the Chinese authorities as a pro-Taiwan organization, and the China Research Institute, which is seen as an association of anti-government Chinese expatriates, are anathema to the Chinese government. But freedom of association is written into the country's constitution, and therefore the procuracy has no technical grounds for complaint.

Wang Dan is then accused of receiving financial assistance from two U.S.-based organizations, the Greater Los Angeles Front for a Democratic China and the Boston-based Fund for Democracy in China. But in fact, the Beijing procuracy is only able to come up with two reasons for why Wang allegedly obtained these unstated sums of money. First, it says that the funds formed some unspecified part of a “self-study project” aimed at “allowing students who were arrested or dismissed from college during the 1989 democratic movement and other such movements” “to remain in China to persist in promoting the country’s democratization”; and second, it states that an again unspecified sum was used to “provide financial assistance” to several imprisoned and released Chinese dissidents.

Without further elaboration, the above “evidence” is bluntly characterized by the procuracy as providing proof positive that Wang “colluded with hostile overseas forces in order to carry out the criminal act of conspiring to subvert the government” and that he “actively enlisted the services of domestic reactionary forces as part of his organizational preparations for conspiring to subvert the government.”

Finally, there is the matter of Wang’s “collusion” with Wei Jingsheng. On this, the procuracy has the following to report:

In September 1993, Defendant Wang Dan began conspiring with Wei Jingsheng to united the various illegal organizations within China, and wrote letters to Han Yanmin [a Guangxi-based labor activist also cited in Wei’s court indictment] and others stating that the democratic forces had to acquire a sizable collective image before they would be truly qualified to speak out.

Again, the latter would seem to represent little more than a candid assessment by Wang and Wei of the current stage of development of China’s hard-pressed democracy movement and hardly the stuff of a “subversive conspiracy.” But there was more:

[Said Wang:] We should keep in touch, strengthen communication among ourselves, stay in touch by letter, and unite together in mutual assistance; [and in order to prevent] the authorities from striking us down one by one, we should act in unison, whether advancing or retreating.

With this, the state rests its case, for in China, only one political entity is permitted the right to organize, develop organic connections and present a “sizable collective image” to the country’s citizenry, and that is the Communist Party of China.

VI. CONCLUSIONS: A NEW LOOK FOR CHINA’S LAWS ON DISSENT

Some broader analytical observations may now be made. Taken together, these point to the conclusion that the Wang Dan indictment constitutes a transitional text that sheds light on a subtle but highly significant exercise now being carried out by the Chinese government in creating a new image for the country’s existing laws on dissent. The purpose of this “reimaging” is apparently to cosmetically retool those laws while at the same time reinforcing their repressive nature and impact. An indication of this development came in early 1995 when an inquiry made to the Chinese government by a Western human rights activist concerning the current status of several political prisoners known to have been convicted on charges of “counterrevolutionary incitement and propaganda” elicited the response that, to the contrary, they had been convicted of “counterrevolutionary conspiracy to subvert the government.” A subsequent similar inquiry made by the same activist to one provincial government in China then brought forth the more revealing official observation that “crimes of counterrevolution...are now referred to as the crime of subverting the government.”

The first analytical point worth noting is that since the adoption of the present Criminal Law in 1979, the Chinese courts’ use of Article 92 in criminal proceedings has been an extremely rare event. Out of an overall prisoner

database compiled by Human Rights Watch/Asia of more than 1,200 persons reported to have been convicted of counterrevolutionary offenses of all types since 1979, only fourteen are known to have been convicted of “conspiracy to subvert the government.” Half of that number were senior Communist Party officials (notably the “Gang of Four”) who were brought to trial after 1979 for involvement in the most violent excesses of the Cultural Revolution, and the other seven were peaceful dissidents, three of whom were sentenced as long ago as 1983. The remaining four were pro-democracy activists Chen Ziming and Wang Juntao, sentenced to thirteen years’ imprisonment in 1991; Liu Gang, sentenced to six years’ imprisonment in 1991 (the court cited obscure “mitigating circumstances” in Liu’s case); and Wei Jingsheng, sentenced to fourteen years’ imprisonment in December 1995.

Viewed against the backdrop of the 1989 pro-democracy movement, a tumultuous event in which millions of people participated nationwide and to which the government responded by declaring martial law and killing hundreds of unarmed demonstrators, the courts’ eventual use of Article 92 against Chen, Wang and Liu at least conformed, in a perverse general sense, to the relevant criteria of China’s statutes on counterrevolution. The 1989 movement, after all, was characterized by the authorities as being a “counterrevolutionary rebellion”—perhaps the most heinous form of “conspiracy to subvert the government.”

The use of this charge against Wei Jingsheng and Wang Dan displays no such conformity with the broad contours of “criminal justice with Chinese characteristics” as practiced by the courts since 1979, and may therefore portend something very different. In Wang’s case, the additional charge of “endangering state security” has been inserted into the prosecution indictment—and in an apparent first for China’s court system, he has been charged under both the counterrevolutionary statutes *and* the State Security Law of the PRC, a highly repressive item of legislation passed by the NPC in February 1993. This appears not to be accidental: according to press and foreign diplomatic reports, China’s leadership was so impressed with the favorable international reaction that it received for its revisions of the Criminal Procedure Law in March 1996 that it has decided to enact a corresponding set of revisions to the country’s Criminal Law early next year. As noted above, foremost among these will probably be the long-awaited repeal of the historic counterrevolution statutes (Articles 90 to 104) and their replacement with systematic provisions for the punishment of “crimes endangering state security” (*weihai guojia anquan zui*).

Many Western government officials have expressed the hope that these revisions will serve to purge China’s Criminal Law of its politically discriminatory and repressive aspects, in particular the broad license conferred on the courts under Article 102 (“crimes of counterrevolutionary propaganda and incitement”) to impose sentences of up to life imprisonment upon those guilty only of making statements or writing articles critical of the Communist Party and the government. For clear counsel on this point, however, one need turn no further than to the “Detailed Rules for Implementing the State Security Law of the PRC,” promulgated by the State Council in July 1994, and specifically to an item cited by the Beijing procuracy earlier this month in its bill of indictment against Wang Dan:

Article 8: The following activities are the “other sabotage activities which endanger state security” referred to in Article 4 of the State Security Law:

[...] 2. Fabricating or distorting facts, publishing or disseminating written or verbal speeches, or producing or propagating audio and video products which endanger state security.

This succinctly dispenses with the notion that the forthcoming shift from laws on counterrevolution to ones covering threats to state security will bring any enhanced freedom of expression for Chinese dissidents. One searches in vain in the State Security Law and in the “Detailed Rules” for any definition of what actually constitutes an act of “endangering state security,” encountering instead a maze of stipulations such as the following:

The “hostile institutions” referred to in the State Security Law refer to institutions which are hostile to the PRC government and socialist system characterized by the people’s dictatorship, as well as institutions which endanger state security. The Ministry of Public Security shall identify the hostile institutions. (“Detailed Rules,” Article 5)

Although empowered to identify the “hostile” institutions and individuals in question, the authorities are nowhere required to inform China’s citizens of the outcome of their investigative labors, making voluntary compliance with these and any future related laws problematic. Likewise, the October 7 indictment expressly accuses Wang Dan of violating this equally opaque legal injunction:

The “collusion” activities of endangering state security referred to in Article 4 of the State Security Law refer to the following activities carried out by institutions or individuals inside the country:

(1) Plotting or carrying out activities for endangering state security together with organizations, institutions or individuals outside the country. [...] (“Detailed Rules,” Article 7)

The bottom line is that if the Chinese government had any intention of abolishing the existing laws on counterrevolution in a way that would bring to an end the persecution of peaceful political dissent in China, then it would certainly not be bringing Wang Dan to trial at the present time or on the specific charges contained in the prosecution indictment that appears below. The trial thus may be a harbinger of things still to come in China. At least where political dissidents are concerned, all the judicial signs thus far point not to any impending liberalization or relaxation of controls on freedom of expression but instead to intensified repression by the country’s state security forces.

VII. APPENDIX I(a): BILL OF INDICTMENT AGAINST WANG DAN

Issued by the Sub-Procuratorate of Beijing Municipal Procuracy October 7, 1996⁵

Defendant: Wang Dan, male, twenty-seven years old, unemployed, resident at No.32 Xinkai Lane, Xijiekou Dong, West City District, Beijing Municipality. In January 1991, [the defendant] was convicted of the crime of counterrevolutionary propaganda and incitement and sentenced to a fixed term of four years’ imprisonment, with one year’s deprivation of political rights. On February 17, 1993, he was released on parole, and on February 16, 1994 the period of deprivation of political rights was completed. On May 22, 1995, he was placed under residential surveillance (*jianshi juzhu*), and on October 3, 1996 he was formally arrested (*daibu*) for committing the crime of conspiring to subvert the government. Currently held in custody.

The Beijing Municipal Public Security Bureau, having completed its investigation into the case of Wang Dan’s conspiracy to subvert the government, transferred the case to our Procuratorate for review and prosecution; we have ascertained the criminal facts of the case to be as follows:

After his release on parole in February 1993, Defendant Wang Dan wrote more than thirty articles, including “On the Urgency of Democratic Reform in China,” “Post-Deng China and the Democratic Movement” and “Supervise Power through Speech,” which were published successively in the Taiwan *United Daily News* and Hong Kong *Ming Bao* newspapers, among others. In these articles, Defendant Wang Dan attacked the Four Basic Principles laid down in China’s Constitution as being “like a paper horse that will fall at the first touch”; he falsely claimed that “In the

⁵ Text of indictment as issued in Chinese by *Human Rights In China*, October 16, 1996; present translation by *Human Rights Watch/Asia*.

mainland today, the authorities are imposing a news blockade against the people, and freedom of speech under the Constitution has become an empty phrase"; and he slandered the Chinese Communist Party and the People's Government as being "a lost and confused generation, whose leaders rule over a lost and confused party that resolutely refuses to surrender the slightest of its interests and would even sacrifice the future of the country to ensure that its power is not checked." By thus inciting turmoil, he sought to create public opinion in support of the overthrow of the state power and the socialist system.

From September 1993 to March 1995, Defendant Wang Dan successively colluded with Wang Juntao (released on bail for medical treatment following his conviction and imprisonment on charges of conspiracy to subvert the government) and Hu Ping, former chairman of the "Chinese Alliance for Democracy," an overseas-based reactionary organization; moreover, he accepted the post of board member on Wang Juntao's "China Research Institute," an organization established in the United States for purposes of conspiring to subvert the Chinese government. Defendant Wang Dan discussed with Hu Ping the so-called tactics of struggle they would use in scheming to "set up an oppositional force" in China. Furthermore, Defendant Wang Dan accepted material support from the U.S.-based Greater Los Angeles Front for a Democratic China, as part of a "self-study project" aimed at allowing "students who were arrested or dismissed from college during the 1989 democratic movement and other such movements" "to remain in China to persist in promoting the country's democratization." He recommended a series of former members of illegal organizations within China to take part in the plan, and moreover applied to Shen Tong, former member of an illegal organization and currently chairman of the U.S.-based Fund for Democracy in China, for operating expenses, and accepted financial assistance from abroad. Defendant Wang Dan colluded with hostile overseas forces in order to carry out the criminal act of conspiring to subvert the government.

From May 1994 through 1995, Defendant Wang Dan wrote articles propagating the view that "the government is dragging the entire country toward a final point of decision" and that "China today is like a country sitting on top of a volcano, like the 'wind-filled tower awaiting the coming storm'"; he also clamored that "the time has now come for us to put our words into concrete action." To this end, Defendant Wang Dan proceeded to draft a petition titled "A Proposal to Safeguard Basic Human Rights and Uphold Social Justice," and then colluded with Bao Zunxin, Liu Xiaobo, Liu Nianchun and others to concoct another petition titled "Draw Lessons from the Bloodshed—Promote Democracy and the Legal System," for which more than eighty signatures of support were obtained and which was later published in newspapers in Taiwan, Hong Kong and elsewhere. In September 1993, Defendant Wang Dan began conspiring with Wei Jingsheng to unite the various illegal organizations within China, and wrote letters to Han Yanmin⁶ and others stating that the democratic forces had to acquire a sizeable collective image (*qunti xingxiang*) before they would truly be qualified to speak out. "We should keep in touch, strengthen communication among ourselves, stay in touch by letter, and unite together in mutual assistance"; and in order to prevent "the authorities from striking us down one by one, we should act in unison, whether advancing or retreating." Furthermore, Defendant Wang Dan set up a mutual-aid donations fund from which he provided financial assistance to Kang Yuchun, Wang Guoqi, Liu Jingsheng and others. Wang Dan actively enlisted the services of domestic reactionary forces as part of his organizational preparations for conspiring to subvert the government.

The accuracy of the above-mentioned facts is attested to by the material evidence, documentary evidence, the witnesses and witness testimony, and the forensic-scientific expert evaluations that have been placed on file. The facts are clear and the evidence is reliable, sufficient and convincing. This procuratorate holds that Defendant Wang Dan, despite having been paroled after his conviction and imprisonment on charges of counterrevolution, failed to repent and reform himself after his release from prison. Moreover, he proceeded to fabricate and distort facts; published and disseminated articles and statements that endangered the security of the state; actively colluded with overseas organizations and

⁶ A labor rights activist from Guangxi province who was also cited in the government's prosecution indictment against Wei Jingsheng

individuals, obtaining their support and receiving financial assistance from them; incited turmoil; and carried out a series of criminal acts which endangered the security of the state and [represented] a conspiracy to subvert the government, thus posing a major danger to society. The acts in question violated Articles 90, 92 and 63 [as received: the latter could be a transcription error for "Article 62 (ed.)] of the Criminal Law of the People's Republic of China; Article 4 (section 1, section 5) and Article 23 of the [State] Security Law; and Article 7 and Article 8 (paragraph 2) of the Implementing Regulations [of the State Security Law], constituting the crime of conspiracy to subvert the government. [The defendant] is a repeat offender and thus should be sentenced with extra severity. With a view to defending the state power of the people's democratic dictatorship and the socialist system, and in order to uphold the security of the state, this Procuratorate hereby, in accordance with the stipulations of Article 100 of the Criminal Procedure Law of the People's Republic of China, presents this public prosecution and requests that punishment be meted out in accordance with the law.

Procurator Wang Zhonghua
Clerk of Court Wang Ting
October 7, 1996

VIII. APPENDIX I(b): APPLICABLE LEGAL STATUTES

1) Criminal Law of the PRC

Article 90:

All acts of endangering the People's Republic of China committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system are crimes of counterrevolution.

Article 92:

Whoever plots to subvert the government or dismember the state is to be sentenced to life imprisonment or not less than ten years of fixed term imprisonment.⁷

Article 62:⁸

⁷ Article 103 of the Criminal Law further stipulates: "Whoever commits any of the crimes of counterrevolution mentioned above in this Chapter, except those in Articles 98, 99 and 102, may be sentenced to death when the harm to the state and the people is especially serious and the circumstances especially odious." (A subsequent government decree extended the death penalty to crimes committed under Article 99, which refers to "the use of feudal superstition or superstitious sects and secret societies to carry on counterrevolutionary activities.")

⁸ According to the transcript of the prosecution indictment on which the translation given in Appendix I(a), above, is based, the procuracy cited Articles 90, 92 and 63 of the Criminal Law against Wang Dan. However, since Article 63 calls for

Counterrevolutionary elements who, at any time after their punishment have been completely executed or they have received a pardon, commit another crime of counterrevolution are all to be treated as recidivists.

2) *State Security Law of the PRC*

Article 4:

Any organization and individual whose conduct harms the PRC's state security must be dealt with by legal means.

Acts of harming the PRC's state security referred to in this law are those carried out by organizations, groups and individuals outside the territory, or instigated and financed by them but carried out by others; as well as those carried out by organizations and individuals inside the territory in collusion with organizations, groups and individuals outside the territory:

1. Of plotting to subvert the government, dismember the state and overthrow the socialist system;
2. Of taking part in an espionage organization or accepting a mission assigned by an espionage organization or its agents;
3. Of stealing, secretly gathering, buying and illegally providing state secrets for an enemy;
4. Of instigating, luring and bribing state personnel to rise in rebellion; and
5. Of engaging in other sabotage activities against state security.

Article 23:

lenience and mitigated punishment to be extended to those who "voluntarily surrender," "whose crimes are relatively minor" and who (even if their crimes are serious) "demonstrate meritorious service," citation of this article appears to flatly contradict the procuracy's insistence elsewhere in the indictment that Wang is "a repeat offender and thus should be sentenced with extra severity." It may well be possible that the original indictment in fact calls for application of Article 62, and that a transcription error occurred in the version of the indictment published overseas.

Article 100 of the Criminal Procedure Law, also cited in the indictment, simply calls for the procuracy to initiate public prosecutions in cases where the facts of the alleged crime have been adequately established.

When an act of harming the PRC's national security carried out by organizations, groups or individuals outside the territory or instigated and financed by them but carried out by others, or carried out by organizations and individuals inside the territory in collusion with organizations, groups and individuals outside the territory, constitutes a crime, it shall be investigated for its criminal responsibilities according to the law.⁹

3) *Detailed Rules for Implementing the State Security Law of the PRC*

Article 7:

The "collusion" activities of endangering state security referred to in Article 4 of the State Security Law refer to the following activities carried out by institutions or individuals inside the country:

1. Plotting or carrying out activities for endangering state security together with organizations, institutions or individuals outside the country;
2. Accepting the financial support of organizations, institutions or individuals outside the country, or doing so at their instigation, to carry out activities which endanger state security; and
3. Establishing ties with organizations, institutions or individuals outside the country, and obtaining their support and assistance for carrying out activities which endanger state security.

Article 8:

The following activities are the "other sabotage activities which endanger state security referred to in Article 4 of the State Security Law:

1. Organizing, plotting or carrying out terrorist activities which endanger state security;
2. Fabricating or distorting facts, publishing or disseminating written or verbal speeches, or producing or propagating audio and video products which endanger state security;
3. Carrying out activities which endanger state security through establishing social organizations or business institutions;
4. Using religion to carry out activities which endanger state security;
5. Endangering state security through creating national disputes or inciting national splittism; and
6. Activities of individuals outside the country who disregard dissuasion and meet with personnel in the country who have endangered state security or who are seriously suspected of endangering state security.¹⁰

⁹ "State Security Law of the People's Republic of China," adopted by the National People's Congress Standing Committee on February 22, 1993; translation from the British Broadcasting Corporation's *Summary of World Broadcasts*, March 3, 1993.

¹⁰ "Detailed Rules for Implementing the State Security Law of the People's Republic of China," promulgated by the State Council on July 12, 1994; translated in *Foreign Broadcast Information Service* (FBIS-CHI-94-135), July 12, 1994.

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