

(Translation)

Statement by the Chinese Government On Anonymous Persons v. Liu Qi Case

According to US media reports, the U.S. District Court of Northern District of California accepted in February 2002 the lawsuit filed by two anonymous persons and others against Liu Qi, Mayor of Beijing of the People's Republic of China, in which the Mayor was accused of being involved in the so-called persecution against "Falun Gong". The report also claimed that the summons for this case had been served on Mayor Liu Qi. In order to safeguard China's state sovereignty, explain the solemn position of the Chinese Government in handling the cultic "Falun Gong", and defend the legitimate rights and interests of Mayor Liu Qi, the Chinese Government hereby makes the following statement to the U.S. District Court of Northern District of California.

I. No summons by any U.S. court has been served on Mayor Liu Qi

Mr. Liu Qi is the Chairman of the Organizing Committee for the 29th Olympic Games and Mayor of Beijing, Capital of the People's Republic of China.

At the invitation of the Salt Lake Organizing Committee for the Olympic Winter Games 2002 (see Annex I for invitation letter), Mayor Liu Qi arrived in the United States in February 2002 to observe the Winter Olympiad and report to the Executive Committee of the International Olympic Committee and IOC's 113th Plenum on the progress of the preparations for the Beijing

Olympiad 2008. During the trip, Mayor Liu paid a transit visit to the City of San Francisco to reciprocate the visit to Beijing by Mayor Brown of San Francisco in October 2001 (see Annex II for itinerary).

Mayor Liu was given a warm welcome by Mayor Brown and representatives of San Francisco communities during his working visit there from February 5 to 7. To ensure the mayor's security and safety, the local police department provided two bodyguards and police escort vehicles throughout his stay in San Francisco.

On the evening of 7 February, Mayor Liu and his entourage arrived at the San Francisco Airport to take UA flight 564 to Salt Lake City with a scheduled departure at 19:25. The delegation was about to enter the security check area of the United Airlines when an adult male quickly approached Mayor Liu and asked him in the face, "Are you Mr. Liu?" Not knowing who the man was, Mayor Liu did not reply and walked on to the security check gate. All of a sudden, the unidentified man broke through the cordon of the security check area and rushed toward the Mayor. He took out of his pocket an object that looked like a pad of paper and threw it against the back of Mayor Liu. The object then fell off on the ground and Mayor Liu paid no heed to it. Other members of the delegation promptly surrounded Mayor Liu to protect him from further attack and none of them picked up the aforementioned object. Mayor Liu and his entourage then cleared the security check and headed for the boarding without delay.

Present on the scene throughout the incident were Chinese Deputy Consul-General Deng Qingbo in San Francisco and other Chinese officials as well as the bodyguards assigned by the San Francisco Police Department for Mayor Liu's security. The unidentified male later tried to get the US bodyguards to pick up the object he had thrown but was refused.

The above facts show that (1) the man who threw the object did not identify himself; (2) Mayor Liu Qi and other Chinese personnel had no idea what the object was; and (3) none of the Chinese personnel accepted the object. Therefore, the so-called "service" on Mayor Liu cannot stand.

II. The handling of "Falun Gong" by the Chinese Government

I. Some basic facts about "Falun Gong"

Li Hongzhi, formerly known as Li Lai, is the "Master" of "Falun Gong". Born in Gongzhuling City (formerly known as Gongzhuling Town of Huaide County) of China's Jilin Province on 7 July 1952, he was a high school graduate and worked successively as a trumpeter, attendant and security guard. In 1991, he stopped drawing any salary from his employer but remained on the payroll. In May 1992, he began to preach "Falun Gong".

A large body of evidence has proven that "Falun Gong" has been a cult that is opposed to humanity, science and society. In total negation of modernity, science and law, "Falun Gong" claims that the "Falun Dafa" is superior to all existing religious doctrines and is the "only law" that can save mankind. "Falun Gong" has demanded that its practitioners reject life as a normal person, abandon their responsibilities to families and society and give their unreserved loyalty to the dictates of the "Falun Dafa".

At the beginning, Li Hongzhi, the "Master" of "Falun Gong", asked patients who went to him for Qi Gong treatment to "donate" money. Later he amassed large sums of money by charging high fees for his training classes and selling illegal publications. From 1992 to 1994, such training classes generated him a net earning of over RMB 1.7 million yuan while the total sales of "Falun Gong"-related illegal publications from 1992 to 1999 amounted to RMB 161 million yuan. The "Falun Dafa Research Society"

also made an illegal profit of RMB 41 million yuan. "Falun Gong" had little tolerance for anyone who had a dissenting view. Its key members have instigated practitioners who were kept in the dark to besiege or storm government offices and media institutions, disrupt public order, undermine implementation of laws and regulations and engage in sabotage of public facilities and other unlawful or criminal activities.

The crimes committed by Li Hongzhi and his cultic "Falun Gong" organization have brought tremendous harm to Chinese society. "Falun Gong" has ravaged lives, ruined families and trampled on human rights. Up to now, it has claimed more than 1,700 lives as a result of the bewitched practice of the followers, their refusal to take medical attention, suicide or self-inflicted injuries. What is more, over 650 followers have become mentally deranged and 18 innocent people have been murdered. Tens of thousands of families were broken and deprived of harmony and happiness. Social stability was endangered by the serious disruption "Falun Gong" instigated.

Since their flight abroad, Li Hongzhi and other key members of "Falun Gong" have used "Minghui" and their other websites on the Internet to issue so-called "scriptures" and preach heretic fallacies to instigate further disturbance and criminal activities by the followers.

2. The Chinese Government banned "Falun Gong" in accordance with law

On 22 July 1999, the Chinese Government banned the "Falun Gong" cult organization in accordance with law. Li Hongzhi and other key members of the cult fled abroad. By forming and using the "Falun Dafa Research Society" and the "Falun Gong" organization under its control,

preaching superstitious and heretic fallacies, cheating people and causing death to other persons, and by masterminding and organizing assemblies and demonstrations without proper application and permission as required by law and inciting crowds to disrupt public order, Li Hongzhi was suspected of having committed the crimes of disturbing public order. On 29 July 1999, the procuratorial organ of the Beijing Municipality decided to apprehend criminal suspect Li Hongzhi (see Annexes III and IV for the Decision on Approval of Arrest and the Arrest Warrant). On the same day, the Ministry of Public Security of the People's Republic of China issued the Wanted Order Gong Ji [1999] No. 0102 (see Annex V for the Wanted Order) ordering the arrest of criminal suspect Li Hongzhi.

As stipulated in the *Regulations on the Registration and Administration of Associations*, any social organization must register with proper authorities, and it must abide by China's Constitution, laws, regulations and state policies and shall not oppose the fundamental principles laid down by the Constitution or subject the national interests, public interests and the legitimate rights and interests of other organizations and citizens to jeopardy.

The Falun Dafa Research Society, with the "Falun Gong" group under its control, was well organized and meticulously structured. But it was set up without the permission by the competent authorities, nor did it go through the required registration formality. It was hence an illegal association.

The *Decision of the Ministry of Civil Affairs of the People's Republic of China on Banning the "Falun Dafa Research Society"*, issued on 22 July 1999, said that as investigations established, the "Society" had not been registered as required by law and had engaged in such illegal activities as preaching superstitious and heretic fallacies, cheating people, stirring up

trouble and disrupting social stability, and accordingly, and in line with the pertinent provisions of the *Regulations on the Registration and Administration of Associations*, a decision was made to declare the "Society" and the "Falun Gong" group under its control illegal organizations and thus banned immediately.

3. The Chinese Government aims at transforming the overwhelming majority of "Falun Gong" practitioners through education and metes out punishment according to law only to very few law-breaking or criminal elements.

The *Decision of the Standing Committee of the National People's Congress on Banning Cult Organization, Guarding Against and Punishing Cult Activities* (adopted on 30 October 1999) said that in the course of handling cult organizations in accordance with law, it is essential to differentiate those who take part in cult activities without knowing the truth from the criminal elements who form and use cult organizations for illegal activities that intentionally undermine social stability. No action will be taken against the victims of deception, but the organizers, plotters, chieftains and key members who have committed crimes will definitely be looked into for their criminal responsibilities according to law. Those who turn themselves in or demonstrate meritorious services will be given lesser, mitigated or no punishment in accordance with law.

The departments of the Chinese Government and judiciary have acted strictly according to law in addressing the "Falun Gong" question. The policy towards the overwhelming majority of ordinary practitioners is one of persuasion and education, stressing that there will be no punishment whatsoever so long as they do not participate in the illegal activities of

"Falun Gong". Only those who use the "Falun Gong" cult to undermine the implementation of laws and regulations will be severely dealt with.

4. The handling of foreign "Falun Gong" members who make trouble inside China

From 20 November 2001 to 25 June 2002, more than 130 foreign "Falun Gong" members came to China on separate occasions to preach "Falun Gong" and stir up trouble at Tiananmen Square or other public places in Beijing. Their actions violated *the Law on Assembly, Procession and Demonstration* and the relevant laws on the handling of cults. The relevant Chinese authorities, after reprimanding, warning and educating these foreign law-breakers, ordered them to leave China within a time limit. They were given humanitarian treatment by the Chinese side during their detention.

China is a country ruled by law, and foreigners are required to abide by Chinese laws while inside China. Those who are engaged in illegal activities of preaching cults and stirring up trouble in China will be dealt with by Chinese judicial organs in accordance with law. It is on sound legal basis and in full compliance with required procedures that the Chinese government at all levels, including the City of Beijing, have handled the issue of foreign "Falun Gong" members. Chinese law enforcement personnel have always acted with civility and fairness in performing their duties, and the charges of "beating", "using torture to coerce confession" and other alleged "abuses" are completely groundless.

III. US courts have no jurisdiction over this case

1. The principle of sovereign immunity is derived from one of sovereign

equality which, as the cornerstone of modern international law, has been explicitly enshrined in many important international legal documents including the Charter of the United Nations. Based on the legal principle of *par in parem non habet jurisdictionem* (between equals there is no jurisdiction), the courts of one State shall not accept a lawsuit in which a foreign State is the defendant without the explicit consent of its government to give up jurisdictional immunities. Only when a foreign State institutes a proceeding before a court of another State, or only when there is a counter-claim arising out of the same legal relationship or facts as the principal claim, the foreign State cannot invoke jurisdictional immunity. Even if a foreign State has lost the case in the court of another State, it is not subject to measures of constraint. Such are the basic contents of the principle of sovereign immunity.

2. The principle of sovereign immunity was universally accepted by countries in their judicial practices as early as in the 19th century. The US was among the first countries to follow this principle. The Case of Schooner Exchange heard by the US Supreme Court and many cases before US courts thereafter all upheld this principle. All European, American and Asian countries at the time almost invariably followed this principle. In international relations of the modern times, the principle is upheld by many countries and reflected in their legislative and judicial practices. Moreover, articles on sovereign immunity are found in influential international legal instruments with far-reaching impact, such as *the Bustamante Code* of 1928. Many renowned scholars of international law represented by Lassa Francis Lawrence Oppenheim also supported this principle. All in all, the principle of sovereign immunity enjoys a strong backing by legislative activities, record of court decisions and judicial practices of countries, as well as by international legislation and opinions of jurisprudence authority. Therefore,

the principle of sovereign immunity has long since acquired the status of customary international law which remains the case today.

3. Since beginning of the 20th century, especially since the end of World War II, the theory of so-called restrictive immunity has been preferred in some countries which stand against sovereign immunity for commercial activities of States. A number of domestic legislations providing for limited immunity for States and their property were thus enacted, such as the United States *Foreign Sovereign Immunities Act* of 1976. Yet even these countries still recognize it as a common principle of international law that a foreign State is entitled to jurisdictional immunity in their courts and that the denial of such immunity is but an exception to the principle. It must be stressed at the same time that the theory of restrictive immunity has not acquired the status of customary international law.

4. It is China's act of state when the Chinese Government, acting in compliance with the Constitution and laws of the land, outlawed the "Falun Gong" cult and dealt with individuals engaged in illegal activities on Chinese soil. Likewise, it should be viewed as an act of state when Mr. Liu Qi performed his duty as Mayor of Beijing in accordance with the power entrusted to him by China's Constitution and laws. Therefore, according to the principle of sovereign immunity, a norm of customary international law, Mayor Liu Qi is entitled to jurisdictional immunity in a foreign court.

Even judged by the theory of restrictive immunity, which denies immunity to commercial activities of a State, the act of the Chinese Government to ban "Falun Gong" is evidently not of commercial nature and is therefore fully entitled to jurisdictional immunity.

IV. The impact of this case on China-US relations

Since the establishment of diplomatic relations between China and the US in 1979, the two countries have enjoyed increasingly broad and close exchanges and cooperation in such fields as politics, economy, trade, science and technology, culture, drug control and counter-terrorism. Beijing is the Capital of China. With Mayor Liu Qi at its helm, the City has developed extensive exchange programs with San Francisco and other US cities. Such exchanges and cooperation have vigorously promoted the well-being of the two peoples and effectively contributed to peace and stability in the Asia-Pacific region and the world at large.

Both China and the US are major countries with important global influences. They have extensive and important common interests despite certain differences. China-US relationship has always been a two-way and mutually beneficial one. Such relationship can develop on a sound and steady course only when the two countries observe such basic norms governing international relations as mutual respect for sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit.

Mayor Liu Qi is an important official of the Chinese Government. The frame-up against him by the US-based "Falun Gong" cult organization is not only aimed at attacking the Chinese Government but also obstructing the normal exchanges and undermining the friendly cooperation between China and the US. The political motive behind this "Falun Gong" scheme cannot be more sinister.

Should the US court adjudicate this trumped-up case, it would send a

deadly wrong signal to the "Falun Gong" cult organization, cause immeasurable disruption to the normal bilateral exchanges and cooperation in various fields, and severely undermine the common interests of the two countries.

Annex I: Letter of Invitation from Salt Lake Organizing Committee for the Olympic Winter Games of 2002

Annex II: Itinerary of US visit by delegation headed by Mayor Liu Qi

Annex III: *Decision on Approval of Arrest* by the First Branch of Beijing Municipal People's Procuratorate

Annex IV: *Arrest Warrant* by the Beijing Public Security Bureau

Annex V: *Wanted Order* by the Ministry of Public Security of the People's Republic of China

Annex VI: Articles 59 and 60 of *The Law of Criminal Procedure of the People's Republic of China*