

## LETTER TO THE EDITORS

March 14, 1970

Board of Officers  
 University of Pennsylvania Law Review  
 3440 Chestnut Street  
 Philadelphia, Pa. 19104

Dear Sirs:

The publication in your January 1970 issue of Mr. Lung-sheng Tao's review<sup>1</sup> of my book, *China and International Agreements: A Study of Compliance*, calls for commentaries that follow. Involved are issues crucial to our understanding of China's compliance with its treaties and our search for meaningful alternatives to the present China policy.

The main thrust of Mr. Tao's criticism is that my book suffers from deliberate omissions. He writes, "[M]any treaty violations that have inevitably occurred are ignored by the author."<sup>2</sup>

One would be justified to expect a systematic, or at least sample, documentation of instances in which such "violations" took place. But Mr. Tao's substantiating evidence consists of one footnote:

*See, e.g.,* J. COHEN & H. CHIU, *THE PEOPLE'S REPUBLIC OF CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY* (forthcoming, 1970); H. CHIU, *THE TREATY LAW AND PRACTICE OF COMMUNIST CHINA* (forthcoming, 1970).<sup>3</sup>

This author has a copy of an early draft of Mr. Chiu's work. A thorough search, however, has failed to uncover any passage in the draft bearing on Mr. Tao's position. This is not to say, of course, that either Mr. Chiu's final draft or the other forthcoming book will not contain materials supporting Mr. Tao's allegation. But it does seem odd that no stronger evidence than a citation of two as yet unpublished works could be adduced by the reviewer in support of a pivotal point on which the validity of his theme stands or falls.

Mr. Tao maintains that the value of my observations is "substantially" diminished because my "discussion is limited to nonpolitical treaties . . . ." "[A]ny informed scholar," he continues, "knows that Communist China's record with treaties of nonintervention fails in a comparison with its performance of nonpolitical agreements."<sup>4</sup> His corroborating footnote reads:

*See C.P.C. Greets 28th Anniversary of Burmese C.P.,* 10 PEKING REVIEW 5 (1967); N.Y. Times, March 22, 1969, at 5, col. 1.<sup>5</sup>

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<sup>1</sup> Tao, Book Review, 118 U. PA. L. REV. 477 (1970).

<sup>2</sup> *Id.* 479.

<sup>3</sup> *Id.* n.9.

<sup>4</sup> *Id.* 479.

<sup>5</sup> *Id.* n.10.

On checking the *New York Times*, one finds a description of a meeting in Peking between Chinese and Burmese Communist leaders in which the former expressed condolences over the death of Thakin Than Tun, leader of the Burmese White Flag Communist Party. While the news dispatch described the Chinese pledge of moral support to the Burmese Communist Party, no mention whatsoever was made of economic or military assistance to the Burmese. With respect to the *Peking Review* article cited by Mr. Tao, an examination of it reveals not a word supporting his statement concerning China's intervention in other countries. In fact, the article's title was "Cadres Must Be Trusted Correctly"—quite different from that indicated in the footnote.

But quite apart from the questionable relevancy of these footnotes, it must be recognized that the term "intervention" is highly elusive. Does the United States' active economic and military involvement in Vietnam, for example, constitute an "intervention"? A group of reputable international lawyers said yes.<sup>6</sup> But just as reputable a group could be found to say no.<sup>7</sup> It was precisely to avoid a drawn-out, fruitless discussion on a subject incapable of precise definition that I wrote:

Peking's concept of what constitutes an intervention in the domestic affairs of another . . . must be thoroughly examined in view of the inclusion of a nonintervention clause in many of its treaties and the recent expulsion of its personnel from several African states for having allegedly intervened in their domestic affairs. It may be noted that this subject of nonintervention is more complex than is immediately apparent, and remains to be codified even after three sessions of the United Nations Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.<sup>8</sup>

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<sup>6</sup> See, e.g., Falk, *New Approaches to the Study of International Law*, 61 AM. J. INT'L L. 477, 478 (1967); Friedman, *United States Policy and the Crisis of International Law*, 59 AM. J. INT'L L. 857, 865-71 (1965); Wright, *Legal Aspects of the Vietnam Situation*, 60 AM. J. INT'L L. 750, 759 (1966).

<sup>7</sup> See, e.g., Open letter from Prof. William W. Bishop, Jr., Richard R. Baxter, Myres S. McDougal, Louis B. Sohn, & Neill H. Alford, Jr. to President Johnson, Feb. 14, 1966, in 112 CONG. REC. 3842-43 (1966), in which the professors confirmed the legality of the United States' position in Vietnam as "defensible" under international law, hence not an intervention.

For a collection of works dealing with the various legal aspects of the Vietnam War, see *THE VIETNAM WAR AND INTERNATIONAL LAW* (R. Falk ed. 1963).

<sup>8</sup> L. LEE, *CHINA AND INTERNATIONAL AGREEMENTS: A STUDY OF COMPLIANCE* 124 (1969).

Differences of views existed concerning whether "intervention" included using not only military force, but also political, economic, and cultural pressures; making the recognition of governments or maintenance of diplomatic relations contingent upon the receipt of special advantages; supporting anticolonial movements; and preventing states from disposing freely of their natural wealth and resources. See Lee, *The Mexico City Conference of the United Nations Special Committee on Principles of International Law and Co-operation among States*, 14 INT'L & COMP. L.Q. 1301 (1965).

Actually, the number of Chinese treaties containing a nonintervention clause is

A final comment may be made on another statement by Mr. Tao. He writes:

The Chinese deny that international organizations such as the United Nations are subjects under international law, and they therefore maintain that such organizations do not have the capacity to conclude treaties in their own right. Those like Lee who assert that Communist China would comply with treaties or agreements concluded by the United Nations, when it actually denies that organization's capacity for making treaties, bear a heavy burden in justifying their position.<sup>9</sup>

In the first place, the Chinese Communists have in fact concluded agreements with the United Nations or its agencies. Two chapters of my book are devoted entirely to such agreements: chapter six on the Korean Armistice Agreement and chapter twelve on the UNICEF Agreement. In addition, one may cite the Chinese Communist agreements with the United Nations Relief and Rehabilitation Agency, concerning the administration and distribution of relief goods in Chinese Communist held territories through the China Liberated Areas Relief Association, and with the International Refugees Organization, predecessor of the United Nations High Commissioner for Refugees, concerning the evacuation from China of refugees of European origin. In the face of these agreements already concluded with the United Nations, it would be Mr. Tao's "heavy burden" to show that China "actually denies that organization's capacity for making treaties."

Second, contrary to Mr. Tao's allegation, I have never asserted that China would comply with treaties or agreements concluded with the United Nations or, indeed, with any state. My book is a study of China's past record of treaty compliance. As for the future, I deliberately avoided "attempting any answer."<sup>10</sup> Even China's past record contains some specific violations, which I, unlike Mr. Tao, was able to document in detail.<sup>11</sup> An apology from Mr. Tao appears in order.

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insubstantial: Out of more than 2,000 agreements concluded by the People's Republic of China since its establishment in 1949, only 17 of them—less than 1%—fall under the category of "friendship treaties" containing a nonintervention clause. See CHUNG-HUA JEN-MEN KUNG-HO-KUO YU-HAO T'IAO-YUEH HUI-PIEN (1965); (Collection of Goodwill Treaties of the People's Republic of China); LEE, *supra* note 8, at 20. No such treaties have been concluded since 1965.

<sup>9</sup> Tao, *supra* note 1, at 479-80 (footnotes omitted).

<sup>10</sup> LEE, *supra* note 8, at 122.

<sup>11</sup> *Id.* 41, 48-49.