

TAIWAN, CHINA/USA : MURDER OF HENRY LIU *

Documents:

1. Draft Resolution adopted by US House of Representatives Foreign Affairs Sub-Committee on Asian and Pacific Affairs, 7 February, 1985.
2. An amendment in the nature of a substitute to that resolution presented by representative Henry J. Hyde, 21 March, 1985.
3. Letter dated 21 March 1985 from Professor Hungdah Chiu to representative Henry J. Hyde.
4. Information on the Henry Liu case provided by the Taiwan authorities.

These documents were provided by Mr Hsin Chi-Lin, Director of the Department of International Information Service, Taiwan, China.

Feb. 7, 1985

DRAFT RESOLUTION

Expressing the sense of Congress that the Taiwan authorities should facilitate the transfer to the United States of individuals accused in the murder of Henry Liu to stand trial

Whereas Henry Liu, an American citizen of Chinese ancestry, was murdered in Daly City, California on October 15;

Whereas certain citizens of Taiwan have been and may be accused by authorities in the United States in connection with the crime;

Whereas both the cause of justice and sound American relations with the people of Taiwan will best be served if individuals accused of a crime committed on American soil are tried in American courts; therefore, be it

Resolved by the House of Representatives (the Senate concurring) that it is the sense of the Congress that the Taiwan authorities should take all possible steps to facilitate the transfer to the United States of all Taiwan citizens accused by U.S. authorities of involvement in the murder of Henry Liu, in order that they may stand trial in American courts.

March 21, 1985

AN AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO HOUSE CONCURRENT RESOLUTION 49

OFFERED BY: Henry J. Hyde

Expressing the sense of the Congress that an extradition agreement should be concluded between the American Institute in Taiwan and the Coordination Council for North American Affairs.

Whereas the Republic of China has requested on numerous occasions that an extradition agreement be concluded with the United States;

Whereas an extradition agreement with the Republic of China would improve the administration of criminal justice in the United States; be it

Resolved by the House of Representatives (the Senate concurring) that it is the sense of the Congress that the American Institute in Taiwan and the Coordination Council for North American Affairs should take immediate steps to conclude an extradition agreement which meets the best interests of both sides.

Further be it resolved that inasmuch as legal proceedings against several of the individuals charged with the death of Mr. Liu are currently underway in the Republic of China, the United States expresses the hope and expectation that justice be done under the laws of that country; and that following the current proceedings, the President of the Republic of China is urged to exercise such powers as he may have under all applicable law to bring to justice any other individuals who have been charged in accordance with law, and to facilitate extradition to the United States in any and all appropriate cases.

Professor Hungdah Chiu

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March 7, 1985

The Honorable Henry J. Hyde
U.S. House of Representatives
Washington, DC 20515

Attention: Mike

Dear Representative Hyde:

Dr. Maria H. Chang of the Hoover Institution has asked me to provide you with information concerning the extradition problem between the United States and the Republic of China (ROC) on Taiwan. I am pleased to provide you with the following information:

(1) Under international law, extradition is based on treaties between the two countries. This view is confirmed by the U.S. Supreme Court in the case of Factor v. Laubenheimer, 290 U.S. 276, 287 (1933):

The principles of international law recognize no right to extradition apart from treaty. While a government may, if agreeable to its own constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he has fled, and it has been said that it is under a moral duty to do so, . . . the legal right to demand his extradition and the correlative duty to surrender him to the demanding country exist only when created by treaty. (emphasis added)

(2) The general opinion in the United States has been that there was no authority to surrender fugitives to a foreign state in the absence of treaty. See Whiteman, Digest of International Law, Vol. 6 (1968), pp. 732-737. Whiteman was an Assistant Legal Adviser of the U.S. Department of State. The Digest was compiled under the auspices of the Department of State.

(3) There is no extradition treaty between the United States and the Republic of China on Taiwan. The ROC on Taiwan has repeatedly requested the United States to conclude an extradition treaty with her but the request has been repeatedly ignored. The United States has extradition treaties with more than 100 countries in the world. There are many economic criminals who escaped from

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Taiwan to the United States and these criminals have large amounts of money deposited in U.S. banks, and other assets.

(4) In the Republic of China, the request for extradition is governed by the Law of Extradition (promulgated on April 17, 1954, with amendments in 1981 to change the reference to "Ministry of Judicial Administration" to "Ministry of Legal Affairs"). The relevant articles are quoted below with commentaries if necessary:

Article 1

Extradition shall be effected in accordance with treaties. Where there are no treaties or no provisions applicable to a case in existing treaties, the provisions of this Law shall prevail.

Article 4

Extradition shall be refused if the person whose surrender is requested for is a citizen of the Republic of China; provided, that this shall not apply if the person acquired the citizenship after the requisition for extradition is made.

A citizen of the Republic of China who commits an offense specified in the provisions of Articles 2 and 3 of this Law in the territory of a foreign country shall, after the request for extradition made by a foreign government is refused, be referred to a court which has jurisdiction over the case for trial.

Comment: The original draft submitted by the ROC Executive Yuan to the Legislative Yuan (a unicameral legislative body) was "Extradition may be refused if the person whose surrender is requested for is a citizen of the Republic of China. . . ."; however, after the deliberation at the Legislative Yuan, the word "may" was changed to "shall." See Li-fa-yuan kung-pao (Gazette of the Legislative Yuan), 12th Session, No. 1 (October 1, 1953), p. 7.

Article 9

A request for extradition shall be made to the Ministry of Foreign Affairs through diplomatic channels. (emphasis added)

Comment: The United States took the initiative to sever diplomatic relations with the Republic of China on January 1, 1979, therefore, how the U.S. can send a request for extradition to the Republic of China through "diplomatic channels" is a question that needs to be studied.

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(5) Congressman Solarz said that under Article²¹² 22 of the Republic of China Law of Extradition the President of the Republic of China can extradite a Chinese national to the United States. This view is erroneous. Articles 21 and 22 of the ROC Law of Extradition provide:

Article 21

The court, after preparing the decision, shall submit it together with the complete record of the case to the Ministry of Judicial Administration for forwarding to the Ministry of Foreign Affairs. The Ministry of Foreign Affairs shall then report the case to the Executive Yuan for forwarding to the President of the Republic for approval.

If a court cannot decide to which country the accused should be delivered up in accordance with the provision of Article 6, it shall be so stated in the written decision for final decision by the President.

Article 22

If extradition is approved by the President, the cognizant court shall, after receipt of the order from the Ministry of Judicial Administration, notify the accused thereof.

If extradition is refused by the President, the cognizant court shall cancel the detention. The country making the requisition may not thereafter make requisition for extradition on the same case.

Nowhere in Articles 21 and 22 does it say that the President can overrule Article 4 on the prohibition of extradition of Chinese nationals. Congressman Solarz's view would render Article 4 meaningless, and thus contrary to the basic principle of statutory interpretation that the legislature intends the provisions of a statute to have a certain effect, and not to be meaningless. It is also contrary to another principle of interpretation of law -- expressio unius est exclusio alterius (expression of one thing is the exclusion of another). The specific exclusion of the extradition of Chinese nationals in Article 4 certainly exclude the President to exercise its discretion on this issue under Article 22.

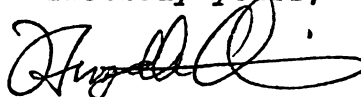
As a matter of fact, Article 22 is similar to U.S.C. Title 18, Chapter 209 -- Extradition, §3186. "The Secretary of State may order the person committed under §3184 [fugitive from a foreign

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country] or §3185 [fugitive from a foreign country under U.S. control] to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged." The Secretary's discretionary power is to be exercised after the Court decides that the person is extraditable. It does not mean that the Secretary has complete discretion in the extradition case, in disregard of other provisions of the U.S.C. on extradition.

Sincerely yours,



Hungdah Chiu
Professor of Law

hc/lym

cc. Dr. Maria H. Chang
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Information Relating to Henry Liu Murder Case

I. The Chronological Development of the Case:

(1) On May 26, 1984, the government of the Republic of China announced its determination to rid the country of criminal gangs and called on gang members to turn themselves in to police authorities within the period from May 26 to September 25. On September 25, however, in view of the fact that many gang members had still not turned themselves in, the government extended the deadline.

(2) On November 12, 1984, a dragnet code-named Operation "Clean-Up" was launched against organized crime. Chen Chi-li was arrested in a raid on that night. Following his arrest, Chen Chi-li disclosed his involvement in the Henry Liu murder case. Another suspect, Wu Tun, was arrested a few days later.

(3) On November 17, 1984, the Ministry of Foreign Affairs asked the ROC representative in the United States, Dr. Fredrick F. Chien of the Coordination Council for North American Affairs (CCNAA), to inform the U.S. authorities of Chen Chi-li's implication in the case. With this information, a breakthrough was achieved in the investigation of this case by the U.S. authorities.

(4) On November 29, 1984, the U.S. authorities announced the arrest of one Yu Ta-chun, suspected of being involved in the case (Yu was in America and was later released for insufficient evidence), claiming at the same time that there were three other suspects in Taiwan. (In fact, one of the three suspects named, Tung Kwei-sen, is not in Taiwan, he is reportedly in the Philippines at present.)

On the same day, a U.S. State Department spokesman, responding to a question, stated that there was no evidence to indicate that the Taiwan authorities were involved in the case. The State Department spokesman also disclosed that, in the course of investigation, the Taiwan authorities had been cooperating with and providing assistance to U.S. law enforcement agencies.

(5) On January 13, 1985, Chen Chi-li, in his statement during interrogation, implicated three officials of the Defense Intelligence Bureau. Consequently, on the same day, Wong Hsi-ling, the Bureau's Director, Hu Yi-min, the Bureau's Deputy Director, and Chen Hu-men, Second Deputy Chief of the Bureau's Third Department, were detained for questioning.

(6) In a news release dated January 15, 1985, the Ministry of National Defense announced publicly that Wong Hsi-ling was suspended from duty, effective January 16, 1985 pending investigation.

On the same day, Dr. King-yuh Chang, Director-General of the Government Information Office formally announced in a press release the implication of Defense Intelligence Bureau personnel in the case; reiterated the ROC

government's willingness and readiness to fully cooperate with U.S. authorities on the case; and indicated that an ad hoc commission had been set up to look into activities of Defense Intelligence Bureau personnel that might tend to violate law or disciplinary rules. (See Attachment I).

(7) Relevant Information for Reference:

(a) Henry Liu was killed on October 15, 1984.

(b) Personal background of Henry Liu (See Attachment II).

II. Legal Aspects:

(1) Article 1 of the Law of Extradition of the Republic of China, promulgated and put into effect in 1954, provides that: "Extradition shall be in accordance with treaties. In the absence of treaties or where treaties exist but there are no applicable provisions, the provisions of this Law shall apply."

At present, there is no extradition treaty or agreement between the United States and the Republic of China. According to Article 4 of the Law of Extradition, "Extradition shall be refused if the fugitive whose surrender is requested is a citizen of the Republic of China." Consequently, extradition of the suspects in this case is forbidden by this explicit legal provision. Such provision is by no means unique to Republic of China law. The United States has similar legal precedents. For example, in 1936, in the case of Valentine v. United States ex rel., the U.S. Supreme Court restricted the power of the executive branch, and precluded them from handing an American citizen over to the French government.

(2) On the question of Chen Chi-li's prosecution, Article 7 of the ROC Criminal Code provides: "This Code shall apply to an offence not provided for in the two preceding articles, committed by a national of the Republic of China beyond the territory of the Republic of China and for which the minimum basic punishment is imprisonment for more than three years." In other words, if a national of the Republic of China commits a serious crime in a foreign country for which the minimum punishment is more than three years' imprisonment, he is subject to the jurisdiction of the Republic of China. Chen Chi-li, being a suspect in the murder case of Henry Liu, meets this jurisdictional prescription.

(3) Does the sending by the United States of a team to the Republic of China to interview the suspects infringe upon ROC jurisdiction?

According to this country's legal prescriptions, suspects under detention are permitted to meet their relatives and lawyers. Whether a suspect is permitted to meet persons who are not his relatives, the legal prescriptions leave the same to the discretion of the officer in charge of the detention house who shall take the circumstances of the suspect's case into consideration in reaching his decision. The arrangement in this instance for

members of the American team to meet with the two suspects in custody, Chen Chi-li and Wu Tun, is being made in accordance with this latter legal provision.

(4) In the present case, the government of the Republic of China has, from the start, closely cooperated with the American authorities and has, on its own initiative, provided to the latter relevant information. Although there is no extradition treaty or agreement between the two nations, thereby rendering it impossible for the Republic of China, under its laws, to allow for the extradition of the two suspects, Chen and Wu, the ROC has left no stone unturned in coordinating with the American authorities and has agreed to the dispatch of a three-member U.S. fact-finding team to the Republic of China to meet with Chen and Wu, so as to afford the U.S. team a firsthand opportunity to understand the facts. The team arrived in Taipei on January 22 and left for United States on January 26 after completing its work. After an indictment is formally filed, the case will be tried in public.

III. Matters Relating to the Case:

(1) Allegations that the death of Henry Liu was related to his book, Biography of Chiang Ching-kuo: The book was first published in serial form in the magazine Nan Pei Chi (The Perspective) in Hongkong during the 1972 to 1974 period. In 1975 the serial articles were republished in a single volume by the magazine. A revised edition was published in a serial in the Chinese-language paper, The Tribune, in the U.S., beginning July 24, 1983. The revised edition contained affirmations of many of the achievements of President Chiang.

Grapevines at home and abroad tell of a story that Mr. Chiang Hsiao-wu, son of President Chiang Ching-kuo and president of the Broadcasting Corporation of China, was deputy secretary-general or executive secretary of the National Security Council. In actual fact, the three deputy secretaries-general of the NSC are Wang Min, Tung Shih-fang, and Chou Chung-fang; the NSC does not have an executive secretary. Mr. Chiang Hsiao-wu has never held any position in any intelligence or security agencies.

(2) The background of Henry Liu: Newsweek magazine of the United States reported in its issue of January 28, 1985 that Liu had been identified as an informant for the U.S. Federal Bureau of Investigation, "passing on information about Chinese-Americans." UPI reported that he had gathered intelligence on Red China for the ROC National Defense Ministry's Intelligence Bureau. Time magazine reported in the issue of January 28, 1985 that "Liu had apparently acted at various times as an agent or informant for Peking, Taipei and U S. authorities and may have been caught in his triple dealing." The foregoing are but media reports, and there is at present no clue linking the death of Liu to his complicated intelligence gathering activities for different parties.

(3) Statement of Chen Chi-li implicating the Defense Intelligence Bureau in Liu's case: Insofar as DIB personnel are implicated in Liu's case, several questions are raised. Can this be a frame-up by Chen? Did the accused

personnel know of Chen's crime after the fact and have failed to report? Or did they know of the planned crime before the fact or even have instigated the commission thereof? Up to the present moment, these questions are still under investigation.

IV The Basic Attitude of the Republic of China in Handling this Case:

(1) The government of the ROC was shocked on learning of Chen Chi-li's implication of Defense Intelligence Bureau personnel in the murder of Henry Liu. Those implicated have been placed under custody pending investigation. If there is sufficient evidence against them, they will be severely dealt with by a military tribunal according to law.

(2) The ROC has set up an ad hoc commission to look into and strengthen the disciplinary side of the Defense Intelligence Bureau so as to prevent any recurrence of individual activity on the part of its personnel that might violate law or disciplinary rules.

(3) The ROC government has consistently and firmly opposed to and condemned the use of violence. The government shall see to it that justice is upheld in this case, that those involved are dealt with according to law, and that the facts of this case are made public.

(4) Immediately after Chen Chi-li, first taken into custody in connection with the Clean-Up Operation, disclosed that he was involved in the murder of Henry Liu, the ROC government informed the American authorities thereof, thus enabling the latter to resolve the case. Thereafter, the government has maintained close contact with the U.S. authorities, provided all necessary factual information, and arranged for the U.S. fact-finding team mentioned above to come to Taipei on January 22, 1985, to meet with the two suspects, Chen Chi-li and Wu Tun. All such endeavours are aimed to one thing, namely, to bring to light the facts of this case at an early date.