The United Nations Standards and China's Legal System of Criminal Justice

联合国刑事司法准则 与中国刑事法制

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序 言

设在中国北京的中国政法大学刑事法律研究中心(下简称"研究中心")和设在加拿大温哥华的刑法改革与刑事政策国际中心(下简称"国际中心")共同组织撰写了这部专著——《联合国刑事司法准则与中国刑事法制》。经过作者们两年的努力,本书终于付诸出版了。这是我们两个中心合作项目的一项新的成果。

1995 年"研究中心"与"国际中心"签订了第一份合作协议。 三年来,双方除合作撰写这部专著以外,还多次组织了法律专家 互访活动,召开和参加有关刑事法律和刑事诉讼改革的国际会议, 举办中外法学讲座,派出学者进行专题研究,翻译加拿大刑事法 典和其他外文资料,协同组织两国司法实际部门的高级官员开展 交流活动,从而在中加两国之间建立了一座刑事司法领域友好合 作的桥梁。最近,双方又决定在1998 年至 2000 年继续合作。我 们相信本书的出版,对两国今后在联合国各项准则基础上开展刑 事法律研究和刑事司法改革方面的交流合作,一定会产生良好的 作用。

两年前,陈光中教授提出合作撰写本书,立即得到丹尼尔·普瑞方廷先生和杨诚博士的赞同。当时,中国刚刚通过关于修改刑事诉讼法的具有历史意义的决定,确立了律师自侦查阶段介入的规则,吸收了无罪推定的核心内容,改善了强制措施和庭审制度,使刑事诉讼程序更加符合国际人权准则的要求。此后,中国又于1997年修订刑法,确立了罪刑法定、法律面前人人平等和罪刑相适应的原则,并修改了关于反革命罪的规定,加强了刑法保护社会主义市场经济秩序的功能。对照这两部法律的修改内容,我

们认为本书各个专题的探讨具有十分现实的意义。1998年3月12 日,中国政府官布准备加入《公民权利和政治权利国际公约》。我 们希望,本书的出版能够为加入公约后有关法律的协调提供建设 性的参考意见。同时希望本书有助于中外法律研究工作者和司法 培训部门的工作,以促进联合国刑事司法准则的进一步贯彻实施。

本书各章的排列顺序是,先由"国际中心"的学者介绍评述 联合国刑事司法准则及其历史沿革,再由"研究中心"的学者综 合论述与联合国准则相对应的中国刑事法律规定及其改革,然后 由双方学者分别就有关专题作较为系统的探讨。由于本书的撰写 是国际合作的成果,各章在写作风格上难免有不尽一致之处,内 容上也可能有交叉的部分,希望读者谅解。从国际上对联合国刑 事政策的研究出版状况来看,本书无疑具有相当高的学术和应用 价值。

本书的具体编辑工作主要由卞建林博士、杨诚博士负责。

本课题的完成和专著的出版得到了美国福特基金会和加拿大 国际开发署的支持和帮助,我们对此表示深深的感谢。

中国政法大学刑事

法律研究中心主任

不列颠哥伦比亚大学内 刑法改革和刑事政策国际中心主任 丹尼尔•普瑞方廷 御用律师

1998 年 5 月干北京

Preface

The Centre for Criminal Law and Justice (hereinafter the Research Centre) at China University of Political Science and Law in Beijing, China, and the International Centre for Criminal Law Reform and Criminal Justice Policy (hereinafter the International Centre) in Vancouver, Canada, jointly organized the production of the book, *The United Nations Standards and China's Legal System of Criminal Justice*. This book is now ready for publication after the two years excellent work by all the authors. It is a new result of the program of co-operation between our two Centres.

In 1995, the Research Centre and the International Centre signed our first Agreement of Co-operation. In the past three years, aside from the joint effort in producing this book, we have organized many visits by legal experts, hosted and participated in international conferences on the reform of criminal law and criminal procedure, held Chinese and foreign seminars of law, sent scholars to conduct research activities on specific subjects, translated the Canadian Criminal Code and other foreign language materials, co-ordinated and organized exchange activities involving senior officials of the departments of justice of the two countries, and thereby built a bridge between China and Canada in the field

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of criminal justice for friendly co-operation. Recently, we decided to continue our co-operation in 1998 through 2000. We believe that the publication of this book will be beneficial to the development of exchange and Co-operation between our two countries to promote the research of criminal law and the reform of criminal justice on the bases of the United Nations standards.

Two years ago, the idea of jointly producing this book was proposed by Professor Chen Guang-zhong and was agreed by Mr. Daniel Prefontaine and Dr. Vincent Cheng Yang. At the time, China had just passed a historical resolution to amend its Law of Criminal Procedure. The new Law has recognized the principle of access to lawyers starting from the early phase of investigation, absorbed key elements of the presumption of innocence, improved the systems of compulsory measures and court trial, and thereby made the criminal process more compatible to international human rights standards. In 1997, China amended its Criminal Law, affirmed the principles of equality before the law, legality and balance between crime and punishment, changed the provisions of counter-revolutionary offences, and strengthened the function of the criminal law in maintaining the order of socialist market economy. Considering the amendments to both laws, we see the practical and immediate significance in the discussions of the various topics in this book. On March 12, 1998, the Chinese Government announced that China was preparing to join the International Covenant of Civil and Political Rights. We hope that this book could provide some constructive reference ideas regarding the adjustment of laws relevant to this Covenant. It is also our hope that the book can assist Chinese and foreign

legal researchers and judicial training institutions in their work and promote further implementation of the United Nations standards in criminal justice.

Chapters in this book are set in this order: a scholar of the International Centre first provides an introduction to the United Nations criminal justice standards as well as an analysis of their historical evolution; a scholar of the Research Centre then gives a comprehensive review of the corresponding provisions in criminal law and the law reform in China; and this is followed by discussions of specific topics by scholars of both Centres. Given that the book is a product of international co-operation, we hope that the readers will appreciate that the chapters may not be completely consistent in writing styles and there might be some overlaps in the contents. However, being aware of other research publications on United Nations criminal justice standards in the world, we would like to conclude that this is a book of high academic and practical values.

The actual work of editing this book was mainly accomplished by Dr. Bian Jianlin and Dr. Vincent Cheng Yang.

The Ford Foundation of the United States and the Canadian International Development Agency provided assistance for this research project and the publication of the book. Their support is gratefully appreciated.

Prof Chen Guang-zhong,

Daniel Prefontaine, Q. C.

Director

Executive Director

Centre for Criminal

International Centre for Criminal

Law and Justice

Law

at China University of Political Science and Law Reform and Criminal Justice Policy at the University of British

Beijing, May 1998

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