

Guofu Liu

The Right to Leave and Return
and Chinese Migration Law

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BY

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Preface

The Right to leave and return (RLR) has been affirmed as a fundamental human right in several international instruments. While being a fundamental human right, each State has the sovereign right to regulate RLR in accordance with its own laws. The regulation of RLR, however, is not only an attribute of sovereignty but an issue with important political, economic and security implications for the State. Given its significance, it is understandable and desirable that States regulate RLR. The regulation must however take account of both the interests of the State and the human rights dimension of the right. This is an issue of balance.

In the case of China, the country's communist political system has significantly affected the development of RLR and the country's approach to it. As a rule China's approach is restrictive. As part of its reform and 'opening up' policies, China has embarked on a range of reforms to liberalise RLR, but the reforms lack cohesion and focus, and remain restrictive. Given its peculiar past and complex social and economic conditions, China may have some justifications for its approach, but on balance, has more to gain from adopting a more liberal approach. The issue of RLR in China is crucial both for the future of China, and for development of RLR in the world.

China's current policy's on RLR still reflects a closed culture. A more open policy is not only consistent with international human rights norms, but also a useful infrastructure for the country's place in the global economy. Great achievements over the last 25 years and encouraging developmental trends demand acceleration of reforms to protect RLR in China. A careful and well-coordinated migration strategy with a well-defined RLR focus could enhance China's economic progress as well as its international human rights image. When designing the reform strategy, the balance of the Western experience and Chinese realities needs to be finely kept.

This book explored the Chinese regulatory regime governing RLR to determine its consistency with international standards. The book is divided into 13 chapters. It investigated RLR in international migration law and practice; analysed RLR in the context of China, and identified its driving factors; investigated the conditions and practical concerns relevant to the protection of RLR; and concluded with recommendations on how the Chinese regulatory regime governing RLR can be improved.

The aim of this book is to explore the Chinese regulatory framework governing the right to leave and return (RLR), to determine its consistency by reference to international human rights ethics. The intention of this research is not only to criticise and expose the deficiencies of RLR in China, but to investigate the possibility, necessity and solution of adequately addressing these problems.

Lists of Acronyms

CHINESE INSTITUTIONS

BBSCA	Bureau of Border Security Check and Administration
BEEA	Bureau of Exit and Entry Administration
CCTV	China Central Television
Central Bank	The People's Bank of China
CEPA	The Closer Economic Partnership Arrangement
CNTA	Chinese National Tourism Administration
CPC	Communist Party of China
HKSAR	Hong Kong Special Administration Region
MFA	Ministry of Foreign Affairs, China
MFERT	Ministry of Foreign Economic Relations and Trade, China
MLSS	Ministry of Labour and Social Security, China
MOC	Ministry of Commerce, China
MOE	Ministry of Education, China
MOP	Ministry of Personnel, China
MPS	Ministry of Public Security, China
MSAR	Macao Special Administration Region
NPC	National People's Congress, China
SAFE	State Administration of Foreign Exchange, China
SAFEA	State Administration of Foreign Experts Affairs, China
SAIC	State Administration of Industry and Commerce, China
SBS	State Bureau of the Statistics, China
SHMO	State Council Hong Kong and Macao Affairs Office, China
SOCO	State Council for Overseas Chinese Affairs Office, China
STO	State Council Taiwan Affairs Office, China

INTERNATIONAL INSTITUTIONS

CPDPM	UN Sub-Commission on Prevention of Discrimination and Protection of Minorities
HRC	UN Human Rights Committee
ICHR	International Court of Human Rights
ICJ	International Court of Justice
IMF	The International Monetary Fund
IOM	The International Organization for Migration

NGO	Non-Governmental Organizations
OECD	Organization of Economic and Cooperation Development
WTO	The World Trade Organisation

REGIONAL AND OTHER COUNTRIES' INSTITUTIONS

AFCM	African Commission on Human and People's Rights
AMCM	Inter-American Human Rights Commission
AMCT	Inter-American Court of Human Rights
CPV	Communist Party of Vietnam
ECJ	European Court of Justice
EU	European Union
EUCM	European Human Rights Commission
EUCT	European Court of Human Rights
MLWS	Ministry of Labour, War Invalids and Social Affairs, Vietnam
OAS	The Organization of American States
SBV	State Bank of Vietnam
USCR	US Committee for Refugees

OTHERS

1963 Ingles' Study

on RLR	<i>Study of Discrimination in Respect of the Right of Everyone to Leave any country, including His Own, and to Return to His Country: Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities</i>
OAED	<i>Oxford Advanced Learner's English-Chinese Dictionary</i>
PRC	The People's Republic of China
RLR	The right to leave and return
ROC	The Republic of China
SARS	Severe Acute Respiratory Syndrome
USVISIT	USA Visitor and Immigration Status Indication Technology System

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Chapter One

Introduction

1.1 RESEARCH OBJECTIVES AND SIGNIFICANCE

The aim of this book is to explore the Chinese regulatory framework governing the right to leave and return (RLR), to determine its consistency by reference to international human rights ethics. In more specific terms, the book focuses on four main objectives: (i) an investigation of RLR in international migration law; (ii) an analysis of RLR in the context of China and an identification of the factors that drive it; (iii) an investigation of the favourable conditions and practical concerns relevant to the protection of RLR in China; and (iv) identification of the policy implications for the protection of RLR in China.

Although considerable research has been devoted to human rights in the world and in China,¹ less attention has been paid to RLR in China, especially from the

¹ Ingles, Jose D., *Study of Discrimination in Respect of The Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country: Special Rapporteur of the CPDPM*, United Nations Publication Sales No.: 61.4. XIV. 2 New York, 1963; Freedman, Warren, *The Right to Travel: A Right or A Privilege? Work Paper of Sao Paulo Conference on the Law of the World* (Washington, the USA: the World Peace Through Law Centre, 1981); Hannum, Hurst, *The Right to Leave and Return in International Law and Practice* (Dordrecht, the Netherlands: Martinus Nijhoff Publishers, 1987); Plender, Richard, *International Migration Law*, Revised 2nd ed, (Dordrecht, the Netherlands: Martinus