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Recent Developments in the Constitutions of Asian Marxist-Socialist States

by Professor Chin Kim*

I. AN HISTORICAL PERSPECTIVE

A Communist coup, led by Hafizullah Amin in April, 1979, established Afghanistan as the seventh Asian Marxist government.¹ As a result, another ideological ally was added to the six existing Asian Communist governments of: Cambodia, China, Laos, North Korea, Mongolia and Vietnam. By December, 1979, Amin's Marxist regime was replaced by the Soviet backed government of Babrak Karmal.² Due to both the guerilla warfare being waged against Karmal's government and the Soviet occupying force, there is no information available which would indicate that the Karmal government is currently attempting to draft a constitution for Afghanistan.

Under the leadership of the Vietnam backed Heng Samrin, the "Kampuchean People's Revolutionary Council Government" formally proclaimed itself as the new Cambodian Government of January 8, 1979.³ The survivors of the former regime of Pol Pot, who originally had seized power in 1975, fled to the mountainous back country in order to wage a guerilla struggle which has continued to this day. The adoption of a new constitution is unlikely under this protracted civil war.

In Laos, the National Congress of People's Representatives publicly established the Lao People's Democratic Republic in December, 1975.⁴ A 45 member Supreme People's Council, chaired by the President, was subsequently appointed to draft a new constitution.⁵ However, no constitution has yet appeared.

The latest Mongolian Constitution, enacted in 1960,⁶ declares that

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¹ McHenry, *Soviet Invasion of Afghanistan*, 80 DEPT. OF STATE BULLETIN B (Jan. 1980).

² *Id.*

³ J.M. van der Kroef, *Cambodia: from 'Democratic Kampuchea' to 'People's Republic'*, 19 ASIAN SURVEY 731 (1979).

⁴ For the English text of the Laos Constitution, see VIII CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (A. Blaustein & G. Flanz ed. 1976).

⁵ For the English text of "Supreme People's Council Appointed," see *id.*

⁶ For the English text of the Mongolian Constitution, see IX CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (A. Blaustein & G. Flanz ed. 1981).

the Mongolian People's Republic is a Socialist state.⁷ Such declarations are common to those constitutions of East European countries which have been enacted since 1960. The style and content of the 1960 Mongolian Constitution follows the pattern established by the U.S.S.R. and its East European satellite countries.⁸

The chief basis of the U.S.S.R. Constitution is the principle of socialism, incorporated by requiring the nationalization of the means of production.⁹ The economy is controlled and planned by the State and all means of production are owned either by the State or by cooperatives. The Soviet Constitution further provides for a one-party State.¹⁰ The highest body of state power is in the Supreme Society of the U.S.S.R. whose Presidium, the interim legislative organ, exercises a wide range of power. The highest executive power is exercised by the Council of Ministers.¹¹

By modeling themselves after the Soviet system, each of these Asian countries has localized Marxist-Leninist thought through its adoption to the political, social, and cultural realities within their borders.

The constitutions of Afghanistan, Kampuchea, Laos, and Mongolia, therefore, shed little light on an analysis of Asian constitutional documents. For an Asian interpretation of Marxism-Leninism, one must look to the three remaining Asian Communist countries. This paper will focus its attention on the Chinese, North Korean, and Vietnamese Constitutions, with emphasis on noteworthy developments since 1970.

II. THE PEOPLE'S REPUBLIC OF CHINA

On March 5, 1978, the First Session of the Fifth National People's Congress of the People's Republic of China (PRC) adopted its most recent Constitution.¹² It is the third Constitution since the establishment of the PRC; the first was adopted in 1954,¹³ and the second in 1975.¹⁴ The

⁷ MONGOLIAN CONSTITUTION art. 1.

⁸ For a discussion of the 1924, the 1940 and the 1960 Constitutions, see G. Ginsburg, *Mongolia's Socialist Constitution*, in 34 *PACIFIC AFFAIRS* 141 (1961).

⁹ KONSTITUTSIYA (Constitution) art. 4-7 (U.S.S.R. 1936, amended 1977).

¹⁰ *Id.* at art. 126.

¹¹ *Id.* at art. 30-88.

¹² For the English text of the 1978 Constitution of the People's Republic of China, see 21 *PEKING REV.* 5 (March 17, 1978). The new Constitution, according to Yeh Chien-Ying, ". . . is a set of general rules for managing the affairs of the state in the new period . . . for maintaining revolutionary order, safeguarding the interests of the working people and protecting the socialist economic base and the productive forces . . ." Yeh Chien-Ying, *Report on the Revision of the Constitution*, 21 *PEKING REV.* 15, 26-27 (March 17, 1978).

¹³ For the English text of the 1954 Constitution, see 2 *CONSTITUTIONS OF NATIONS* 261 (A. Peaslee ed. 1966).

¹⁴ For the English text of the 1975 Constitution, see Kim, *The 1975 Constitution of the*

1978 Constitution underwent a few minor revisions in June, 1979.¹⁵ The amendments cover four points: the creation of standing committees for local revolutionary committees at and above the county level, the change of local revolutionary committees at various levels into local people's governments, the direct election of deputies to the people's congresses of counties by the voters, and the change in the relationship between higher and lower people's procuratorates from that of supervision to one of leadership.

While the PRC's 1954 Constitution was a more traditional document, the 1975 Constitution was simple in its style and organization and was seasoned with a revolutionary flavor. It rectified the Great Leap Forward Movement based on the General Line of Socialist Construction of 1958 and on the Great Proletarian Cultural Revolution which began in 1966.¹⁶ Article 10 of the 1975 Constitution rectifies the Great Leap Forward Movement in the following words: "The state applies the principle of grasping revolution, promoting production and other works. . . ."

Until the mid-1950's, the pattern of economic and industrial planning and development in the PRC was based primarily on the Soviet model. Dwindling Soviet aid and the nation's growing confidence in the ability of the Communist leadership to fashion a new society propelled Mao Zedong to initiate the Great Leap Forward Movement, beginning in 1958 and lasting through 1960. The slogan of the campaign was "Twenty years in a day," with emphasis placed on industry. The institution of rural People's Communes was a part of the Great Leap Forward Movement. The Communes reflected the expectation that a more efficient organization would release manpower for the projects which were an integral part of the industrialization program. The Great Leap Forward ended with a whimper in 1960, during the adverse weather of three bitter years (1959-1961) which caused widespread famine in many parts of the county.

The 1978 Constitution dramatically revises the preceding Constitution in many respects, significantly changing the functions and powers of state organs.¹⁷ Specifically, it revives the organs of the legal system,¹⁸ and establishes new citizens rights, particularly emphasizing the rights to freedom of thought and expression.¹⁹ The new Constitution explicitly resurrects such individual rights as election by secret ballot,²⁰ public trial

People's Republic of China, 1 HASTINGS INT'L & COMP. L. REV. 1, 28-35 (1977).

¹⁵ Peng Zhen, *Explanation on Seven Laws*, 22 BEIJING REVIEW 8, 10 (1979).

¹⁶ Kim, *supra* note 14, at 1.

¹⁷ Kim & Kearley, *The 1978 Constitution of the People's Republic of China*, 2 HASTINGS INT'L & COMP. L. REV. 251, 253 (1979).

¹⁸ *Id.* at 274. See also HSIA & HAUN, *THE RE-EMERGENCE OF THE PROCURATORIAL SYSTEM IN THE PEOPLE'S REPUBLIC OF CHINA* (1978).

¹⁹ Kim & Kearley, *supra* note 17, at 276-8.

²⁰ Kim & Kearley, *supra* note 17, at 269-70.

and defense in court.²¹ The definition of China's current historical stage is also changed. Most importantly, the overall objective of making China into a powerful, modern Socialist country by the end of this century is explicitly described.²²

Both the 1975 and the 1978 Constitutions defined the PRC as "a Socialist State of the dictatorship of the proletariat."²³ The 1978 Constitution establishes "Marxism-Leninism-Mao Zedong Thought" as the State's guiding ideology.²⁴

Marxism-Leninism-Mao Zedong Thought is an adaptation of Marxism and Leninism. It is the creative application of the ideological legacy of Marxism-Leninism as applied to Chinese reality, and serves as a primary source of Chinese national ideology. Marxist concepts, first disseminated among Chinese Communist Party leaders in partial, unsystematic form during the May Fourth era of 1919, were elaborated, modified, and codified as an association of intellectuals grew into a mass political movement. The teachings of Mao Zedong have played a key role in this ideological growth. Localization of Marxism-Leninism, as advocated by Mao Zedong, appears in such doctrines as loyalty to Mao Zedong, universal application of Mao's teachings, self-reliance, the primacy of human will over materialism, love of manual labor and devotion to the Communist Party.²⁵

The expression of Chinese Socialist innovation in constitutional documents and its proposed approaches for coping with the basic problems of Chinese Socialist society have a distinctive local flavor. The Constitution lists the right to strike, in addition to other basic rights of citizens.²⁶ It establishes a "democratic consultation" process for the election of deputies of the National People's Congress,²⁷ and it advances mass-line political philosophy.²⁸ Proper characterization of Chinese Socialist constitutionalism requires that five elements receive special treatment.

The first element is the theory of continuous revolution. This theory had previously been accorded major significance in the Chinese Communist Party's conception of a theoretical framework, but had never been embodied in the national Constitution. The theory was incorporated in

²¹ Kim & Kearley, *supra* note 17, at 273.

²² Kim & Kearley, *supra* note 17, at 253.

²³ HSIEN FA (Constitution) art. 1. (China, amended 1978).

²⁴ HSIEN FA (Constitution) art. 2 (China).

²⁵ MAO TSE-TUNG, *SELECTED WORKS OF MAO TSE-TUNG*, (1961-65). *See also*, SCHRAM, *THE POLITICAL THOUGHT OF MAO TSE-TUNG* (1969).

²⁶ HSIEN FA (Constitution) art. 45 (China). For a discussion of the right of strike, *See* Kim, *supra* note 14, at 13, 14.

²⁷ HSIEN FA (Constitution) art. 21 (China).

²⁸ HSIEN FA (Constitution) art. 16 and 41. For a discussion of mass line philosophy, *See* Kim, *supra* note 14 at 11-14.

the general program of the Communist Party's 1973 Constitutions²⁹ and in the preambles of the 1975³⁰ and 1978 Constitutions.³¹ The latter preamble charged the people with the duty to "persevere in continuing the Revolution under the dictatorship of the proletariat."³² Mao Zedong, creator of the theory, advocated that continuous revolution was the proper method of achieving social change, but that it must occur in wavelike fashion. This distinctly Chinese theory refutes the type of incremental linear view of progress inherent in the Soviet system.³³ Mao rejects the idea that social change can be tightly controlled or directed from above by the dictates of the State, as the Soviet model advocates. Rather, he maintains that it is through the interplay of social forces, and through the development and resolution of contradictions in society, that social progress comes about.³⁴ This line of the Chinese theoretical basis of Communist revolution is, therefore, quite a contrast to the Soviet position. The 1977 USSR Constitution asserts that "the aims of the dictatorship of the proletariat having been fulfilled, the Soviet state has become a state of the whole people."³⁵ The Chinese theory departs from the Soviet theory by adopting the philosophy that the proletarian dictatorship stage of socialization will be greatly prolonged.

The second element is concerned with the status of the Communist Party. The 1978 Constitution prescribes that "the Communist Party of China is the core of leadership of the whole Chinese people . . ." and that "the working class exercises leadership over the state through its vanguard, the Communist Party of China."³⁶ This provision, originating in the 1975 Constitution (which stipulated in precise language that "the National People's Congress is the highest organ of state power under the leadership of the Communist Party of China . . ."),³⁷ clearly established the Chinese Communist Party's leadership role over the state organs. This move merely codified what was already evident in PRC state affairs;

²⁹ For the English text of the 1973 Party Constitution, see 16 PEKING REV. 26 Sept. 7, 1973.

³⁰ HSIEN FA (Constitution) para. 3, preamble (China 1975, amended 1978).

³¹ HSIEN FA (Constitution) para. 4, preamble (China).

³² *Id.* See also Kim, *supra* note 14, at 5-6.

³³ Young & Woodward, *From Contradictions Among the People to Class Struggle: The Theories of Uninterrupted Revolution and Continuous Revolution*, 28 ASIAN SURVEY 912, 915-918 (1978).

³⁴ *Id.*; See also, J. STARR, *CONTINUING THE REVOLUTION: THE POLITICAL THOUGHT OF MAO* (1979).

³⁵ KONSTITUTIA (Constitution) para. 4 (U.S.S.R.). For the English text of the 1977 U.S.S.R. Constitution, see XV CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (A. Blau-stein & G. Flanz ed. 1977).

³⁶ HSIEN FA (Constitution) art. 2 (China).

³⁷ HSIEN FA (Constitution) art. 16 (China 1975, amended 1978).

namely, that the party is the ultimate source of all political power.³⁸

The political ideas of Mao Zedong, which were shaped by the struggle for power and by his thinking, served different functions at each stage of the Chinese Communist revolutionary process. In 1975, overriding concern for the party leadership was instrumental in the consolidation of political power within the party. To combat and prevent revisionism, and in order to persist in continued revolution under the dictatorship of the proletariat, it was necessary to strengthen the Communist Party's centralized leadership. Thus, the Constitution clarifies the role of the party in its preamble, its general principles and the structure of the state, as well as in those articles pertaining to the fundamental rights and duties of citizens.³⁹

Under the existing Constitution, the National People's Congress appoints the Premier, upon the recommendation of the Central Committee of the Communist Party of China.⁴⁰ Control over the armed forces is now a duty of the party Chairman, placing the armed forces directly under the party and creating an army of the party.⁴¹ While the state Constitutions of some Communist countries include prominent references to the role of the Communist Party,⁴² none gives this role the preeminence it receives under the Chinese Marxist Constitution.

The third element deals with foreign relations. The 1978 preamble calls for the liberation of Taiwan, although neither a method nor a timetable is included.⁴³ As the basis of China's foreign policy, the "Five Principles" enumerated are: mutual respect for sovereignty, mutual nonaggression, reciprocal noninterference in internal affairs, equality and mutual benefit, and peaceful coexistence.⁴⁴ Also indicated is China's commitment to proletarian internationalism.⁴⁵ A passage such as that proclaiming "an indestructible friendship with the great Union of Soviet Socialist Republics and the People's Democracies . . ." in the 1954 Constitution⁴⁶ is nowhere to be found in the 1975 Constitutions. Instead, the new international tenet set forth in the 1978 preamble (based on Mao's theory of the three worlds)⁴⁷ underscores China's need to unite with all countries sub-

³⁸ Since the Communist Party theoretically represents the interest of the people faithfully, this is not a change for the framers of the Constitution.

³⁹ HSIEN FA (Constitution) preamble, art. 1-3, 11-13, 16, 26 (China).

⁴⁰ HSIEN FA (Constitution) art. 22 (China).

⁴¹ HSIEN FA (Constitution) art. 19 (China).

⁴² Kim, *supra* note 14, at 10.

⁴³ HSIEN FA (Constitution) para. 7 (China).

⁴⁴ HSIEN FA (Constitution) para. 8 (China).

⁴⁵ *Id.*

⁴⁶ Kim, *supra* note 14, at 7.

⁴⁷ For a discussion of this theory, see S.S. KIM, CHINA, THE UNITED NATIONS, AND WORLD ORDER 80-81 (1979).

jected to aggression, subversion, interference and control by the Socialist-Imperialist superpowers, and to oppose their hegemonism.⁴⁸

Cooperation and friendship between the PRC and the Soviet Union lasted from 1949 to 1955. During this period, the Soviet Union provided economic aid to the PRC and the two nations collaborated in conducting their foreign affairs. In 1956, following the suspension of Russian aid programs; Sino-Soviet discord developed over doctrinal issues which in turn related to their respective national interests. The genesis of the Sino-Russian ideological differences emerged in February, 1956 when Khrushchev announced a de-Stalinization policy without first reaching an understanding with the PRC. To the Chinese Communists, this was revisionism; to the Russians, the rejection of their view was perceived as dogmatism. Thus, desirability and inevitability of local revolutionary wars, became an important issue. The Chinese make a critical distinction between revolutionary and global wars; the former are desirable and inevitable but the latter can be and should be avoided. Conversely, Soviet leaders have blurred the distinction between local and world wars by uncritically accepting and advocating the policy of peaceful coexistence.⁴⁹

The fourth element is the concept of the united front. Both the 1975 and the 1978 Constitutions speak of a "revolutionary united front,"⁵⁰ as contrasted to the "democratic united front" language used in the 1954 Constitution.⁵¹ "[L]ed by the working class and based on the worker-peasant alliance . . ." the front is said to unite "the large numbers of intellectuals and other working people, patriotic democratic parties, patriotic personages, our compatriots in Taiwan, Hong Kong and Macao, and our countrymen residing abroad."⁵² According to Mao Zedong's thesis of the "People's Democratic" dictatorship,⁵³ the united front concept is to be implemented through the forum known as the Common Program of the Chinese People's Political Consultative Conference (CPPCC), which was created in 1949.⁵⁴ The latest CPPCC Conference was convened in Peking in July, 1979, when the Second Session of the Fifth National Peo-

⁴⁸ In his report to the National People's Congress in June, 1979, Hua Guofeng said, ". . . social-imperialism is the main source of tension in the international situation today." Hua Guofeng, *Report on the Work of the Government*, reprinted in 22 BEIJING REV. 27, 28 (July 6, 1979).

⁴⁹ DUTT, CHINA AND THE WORLD: AN ANALYSIS OF COMMUNIST CHINA'S FOREIGN POLICY (1966).

⁵⁰ HSIEN FA (Constitution) para. 5, preamble (China 1975, amended 1978). See also HSIEN FA (Constitution) para. 6, preamble (China).

⁵¹ Kim, *supra* note 14, at 6.

⁵² HSIEN FA (Constitution) para. 6, preamble (China).

⁵³ Kim, *supra* note 14, at 6.

⁵⁴ Kim, *supra* note 14, at 4.

ple's Congress met.⁵⁵

In both Chinese and Soviet systems, as in every Marxist-oriented system of government, Communist Party formulates national policies. However, in states that are not yet classless, minor non-Communist Parties are permitted to exist because doctrinally there should be parties to represent former Nationalist Party members, former businessmen, and intellectuals.

The CPPCC maintains a democratic facade and exercises leadership over non-Communist elements. On the surface, the concept of a people's democratic dictatorship seems to exclude the political activity of certain classes. However, this is not true, since the application of an ideological formula seems less relevant to the Chinese Communists than the practical usefulness of having minor parties.⁵⁶

The last element is the advocacy of the principle of Democratic Centralism. This principle originally appeared in the 1954 Constitution,⁵⁷ and was reaffirmed in the 1975 Constitution.⁵⁸ The principle of Democratic Centralism as a means of coping with the bureaucracy is enunciated not only in the Asian Marxist-Socialist Constitutions,⁵⁹ but also in the 1971 USSR Constitution.⁶⁰

All state organs, including the National People's Congress and the Local People's Congress, are to practice democratic centralism.⁶¹ The Constitution of the Chinese Communist Party also confirms that "the organizational principle of the party is Democratic Centralism."⁶² The report on the revision of the 1975 Constitution maintains that: "[W]ithout ample democracy, it is impossible to have a high degree of centralism, and without a high degree of centralism, it is impossible to build socialism."⁶³ Through ample democracy, a higher degree of centralism is to be

⁵⁵ The CPPCC decided that . . . "the policy of 'long-term coexistence and mutual supervision' between the Communist Party and various democratic parties should be encouraged to discuss . . . principles and policies of the Communist Party and State affairs." Deng Xiaoping, *Opening Speech at the Second Session of the CPPCC Fifth National Committee*, reprinted in 22 BEIJING REV. 14 (June 22, 1979).

⁵⁶ For a discussion of this point in relation to the insignificant number of minority party members in China, see WHITAKER, *AREA HANDBOOK FOR THE PEOPLE'S REPUBLIC OF CHINA*, 289-291 (1972).

⁵⁷ HSIEN FA (Constitution) art. 2 (China).

⁵⁸ HSIEN FA (Constitution) art. 3 (China).

⁵⁹ HON PPOP (Constitution) art. 9 (N. Korea); See also HIEN PHAT (Constitution) art. 6 (Soc. Rep. of Vietnam).

⁶⁰ KONSTITUTSIA (Constitution) art. 3 (U.S.S.R.).

⁶¹ HSIEN FA (Constitution) art. 3 (China).

⁶² HSIEN FA (Constitution) art. 5 (China). For the English text of the Constitution of the Communist Party of China, adopted by the Tenth National Congress of the Communist Party of China on Aug. 28, 1973, see 16 PEKING REV. 26 (1973).

⁶³ Kim, *supra* note 14, at 11-12.

achieved with "efficient and simple administration."⁶⁴

Democratic Centralism is a regulated democracy controlled by cadres of the Communist Party. Democratic centralism rises from the bottom, and the representative organs of both party and state are elected by lower bodies which in turn elect their executive arms at corresponding levels. The principle is based on the majority rule and obedience to instructions emanating from above. Ample democracy encourages masses to participate actively in politics and administration to the fullest.

III. THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

In December, 1972, the Democratic People's Republic of Korea (DPRK) adopted a new constitution⁶⁵ replacing the 1948 Constitution.⁶⁶ The 1972 Constitution combines notions of socialism and nationalism to produce a document of fundamental law and propaganda that is unique, compared to the constitutions of other Marxist-Socialist states.⁶⁷

While bearing a significant resemblance to the fundamental laws of other Marxist-Socialist states, the 1972 Constitution is unique in the way that it adapts Socialist constitutionalism to its particular national situation. In addition to being fundamental law, the North Korean Constitution propagandizes alleged past successes, establishes broad socio-economic goals for the future,⁶⁸ and provides lofty methods of achieving national goals.⁶⁹

As far as the legal organs are concerned, North Korean courts, under the existing Constitution, are charged with three broad tasks: first, providing formal legal support for the existing regime; second, educating organizations and citizens as to their legal duties and encouraging them to fulfill these requirements; and third, performing the bureaucratic functions. The procurator's offices also have three basic constitutional functions: first, to supervise the observance of state laws by organizations and individuals; second, to ensure that "decisions and directives of state organs" do not conflict with the official pronouncements of designated higher authorities; and third, to protect the current political system, all state and cooperative property and every individual's constitutional

⁶⁴ Kim, *supra* note 14, at 11-12.

⁶⁵ For the English text of the 1972 Constitution of the Korean People's Republic, See Seymour, *The Korean People's Republic*, VI CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (Blaustein and Flanz, eds., 1973).

⁶⁶ The English text of the 1948 Constitution may be found in J.F. TRISTA, CONSTITUTIONS OF THE COMMUNIST PARTY-STATES 242 (1968).

⁶⁷ For an analysis of the 1972 Constitution, see Kim & Kearley, *The 1978 Constitution of North Korea*, 11 TEXAS INT. L.J. 113 (1976).

⁶⁸ HON-PPOP (Constitution) art. 1-72 (N. Korea).

⁶⁹ HON-PPOP (Constitution) art. 73-106 (N. Korea).

rights.⁷⁰

The first three chapters of the 1972 Constitution, "Politics," "Economy" and "Culture," form a broad conceptual unit which the 1948 Constitution presented in a single chapter, "Basic Principles."⁷¹ An overview of these chapters will highlight further innovations in the document.

In the first chapter of the 1972 Constitution, entitled "Politics," there are at least four elements which have little or no precedent in either the constitutions of other Socialist countries or North Korea's former constitution. The first element concerns the issue of an independent national economy. Although the Constitution reaffirms the Marxist principle of state dependency on the unity of an entire people, and the principles of Socialist production relations, it also declares that an independent national economy is essential.⁷² Although this is a feature not found in other Socialist constitutions, there is no actual conflict with the ideology of comparable constitutions because no Marxist-oriented state would openly discard an independent national economic policy. Instead, emphasis on economic self-reliance as a practical ideological guideline seems to derive from the Juche idea.⁷³

The second innovation concerns the Juche idea. As an indication of North Korea's departure from standard Socialist principles of development, its Constitution states that the DPRK "is guided by the Juche idea of the Worker's Party of Korea, which is a creative application of Marxism-Leninism to our country's reality."⁷⁴ In international relations, the Juche idea supports equality with all nations in foreign affairs, yet independence in domestic affairs.⁷⁵ Thus, the application of the Juche idea to the Sino-Soviet rift is characterized by a neutral stance.

The third element is the declaration of the Chongsan-ri spirit and the Chongsan-ri method. The Chongsan-ri spirit which promotes the majority of state affairs, originated in 1959 when Kim Il Sung visited the village of Chongsan-ri to speak on the current management of the Socialist agriculture, offering guidance toward a Chongsan-ri work method.⁷⁶

⁷⁰ HON-PPOP (Constitution) art. 133-146 (N. Korea).

⁷¹ HON PPOP (Constitution) ch. 1 (N. Korea 1948, amended 1972).

⁷² HON PPOP (Constitution) art. 2 (N. Korea).

⁷³ HON PPOP (Constitution) art. 4 (N. Korea). The Juche idea is, ". . . the principle of making indigenous need and experience the essential criteria (of North Korean politics), of implanting self-sufficiency as the central theme of the Korean Revolution (based on Marxism-Leninism) . . ." R. SCALAPINA & C. LEE, 1 COMMUNISM IN KOREA 500 (1972). According to Kim Il Sung, the Juche idea would promote the study of the reality of one's own country, "one's own things in earnest and be vested in them." M. FUKUSHIMA, ON THE SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 132-3 (1975).

⁷⁴ R. SCALAPINA, *supra* note 73.

⁷⁵ HON-PPOP (Constitution) art. 16 (N. Korea).

⁷⁶ FUKUSHIMA, *supra* note 73, at 140-142.

The Constitution declares that the "great Chongsan-ri spirit and the Chongsan-ri method" are to be applied by the state in all its work "to guarantee that the upper units help the lower, the masses' opinions are respected and their conscious enthusiasm is roused by giving priority to political work, work with the people."⁷⁷

The last element involves the Chollima Movement. The North Korean Constitution proclaims the Chollima (flying horse) Movement to be "the general line of socialist construction which . . . accelerates construction to the maximum. . . ."⁷⁸

The Chollima Movement, in line with the building of socialism, is a government-sponsored production drive, inaugurated in 1959, to ensure the success of the so-called Five Year Plan. Chollima signifies the legendary flying horse said to have run one thousand Ni (Korean measurement of distance) in a day. Farmers and industrial workers are exhorted to excel like flying horses to the limits of their endurance, and exemplary individuals and work teams are awarded Chollima titles.

In the second chapter, "Economy," there are two noteworthy features. First, the Tae'an work method is introduced as a basic economic principle of the nation.⁷⁹ According to Kim Il Sung:

The Tae'an work system is a system of economic management admirably suited to the nature of a socialist system, for it stipulates that the factories and enterprises conduct all their management activities under the collective leadership of Party committees and carry out their economic tasks by giving precedence to political work, infusing the producing masses with an enthusiasm for work; that superiors do everything they can to help their subordinates and that the economy be managed and operated in a scientific and rational way.⁸⁰

It augments the Chollima Movement as a productivity incentive and system of personnel management in the factories. This method was initiated in 1961 when President Kim Il Sung issued instructions to use it at the Tae'an Electrical Appliance Plant. The movement calls for a higher degree of politicization and for increased communication between management and workers. It also provides a system of evaluation on which the work teams are judged. The Tae'an method is designed to offer a fairly rational means of overcoming managerial problems in a centralized control and planning system and to increase morale and the workers' sense of participation in the management decisions of the plant. At the

⁷⁷ HON-PPOP (Constitution) art. 12 (N. Korea).

⁷⁸ HON-PPOP (Constitution) art. 13 (N. Korea); FUKUSHIMA, *supra* note 73, at 133-135. The Chollima Movement is a North Korean version of the Chinese Great Leap Forward Movement.

⁷⁹ HON-PPOP (Constitution) art. 30 (N. Korea).

⁸⁰ FUKUSHIMA, *supra* note 73, at 142.

same time, it also provides a framework for improving technical guidance.

Second, taxation is denounced as a vestige of the old society and abolished.⁸¹ This declaration follows the 1966 decision to abolish the agricultural tax-in-kind by the Supreme People's Assembly.⁸² The agricultural tax-in-kind was initiated when the tax rate imposed was almost 25 percent of the harvest. However, this percentage was first reduced and then abolished in 1966. The 1972 Constitution states that there is to be no taxation of income. The economic significance of this pronouncement seems nominal since only a minimal proportion of government revenues had been derived from direct taxation. Since the State establishes all prices, wages and the allocation of goods, a much greater indirect tax burden remains. In principle, the Government finances its programs and services by collecting and allocating, through various means, the difference between what state and cooperative enterprises pay for their purchases and what they receive for their sales.

The Juche idea also permeates the cultural sphere, as reflected in the Constitution's third chapter. The provision for Juche oriented literature and art, "national in form and socialist in content . . ." ⁸³ is also consistent with the development of a nationalist socialism, while the provision that the State should preserve and improve the Korean language is based on a purer, nationalistic notion.⁸⁴ Neither the former North Korean Constitution nor other Marxist constitutions contains such formulations with regard to culture.

The 1972 Constitution creates structural changes in the state system which set the document apart from both its predecessor and other Marxist constitutions. The constitutional government's structural provisions call for unitary, centralized state power coordinated by a small central core of decision-makers to insure quick and uniform policy responses. Even the legal system reflects this desire for firm control at the central level.⁸⁵ One of the major innovations of the 1972 Constitution has been the creation of the Office of the Democratic People's Republic of Korea.⁸⁶ The President, who is elected for a four-year term, is charged with guiding the interests of the Republic. He not only fulfills the traditional executive function of supporting and promoting the laws and ordinances created by other governmental bodies, such as the policy-making organ of the Central People's Committee, but he may also exercise greater inde-

⁸¹ HON-PPOP (Constitution) art. 33 (N. Korea).

⁸² Seymour, *supra* note 65, at 11.

⁸³ HON-PPOP (Constitution) art. 45 (N. Korea).

⁸⁴ HON-PPOP (Constitution) art. 46 (N. Korea).

⁸⁵ HON-PPOP (Constitution) arts. 133-146 (N. Korea).

⁸⁶ HON-PPOP (Constitution) arts. 63-83 (N. Korea).

pendence by issuing orders of his own creation.⁸⁷

Selected by the Supreme People's Assembly for a four-year term, the President is the head of state and represents the state power of the Republic.⁸⁸ Thus, the constitutional separation of the head of state and the head of government found in North Korea's original Constitution,⁸⁹ and in most Socialist Constitutions,⁹⁰ was eliminated. Indicative of this change in roles, the 1972 Constitution directs that the President has responsibility for the leadership of the Administrative Council, the administrative and executive organ of power.⁹¹ In addition, the President is required to function as General Secretary for the Worker's Party of Korea (Communist Party)⁹² and head the National Defense Commission.⁹³ Furthermore, the President exercises the authority to ratify and abrogate treaties, the executive right to receive foreign envoys and the executive right to pardon.⁹⁴ Therefore, the President of the DPRK has more than the symbolic function exercised by leaders of other Socialist countries. He possesses strong political powers and responsibilities resembling a Western style president, rather than a Soviet head of state.

IV. THE SOCIALIST REPUBLIC OF VIETNAM

During the first few months after the collapse of the Republic of Vietnam on April 30, 1975, separate Communist governments were maintained in the northern and southern parts of Vietnam. By mid-November of 1975, the decision was made to unify the country. The election of the National Assembly was held in April, 1976; the Assembly convened the following June. The Assembly ratified the unification of the country, renamed it the Socialist Republic of Vietnam (SRV), and appointed a committee to draft a new constitution.⁹⁵

Work on the first draft of the proposed constitution began early in 1978. On February 2, 1978, the Political Bureau, the Central Committee of the Vietnamese Communist Party, issued a directive to organize debates on the draft Constitution among the cadres and the people.⁹⁶ Ac-

⁸⁷ HON-PPOP (Constitution) arts. 91, 100-106 (N. Korea).

⁸⁸ HON-PPOP (Constitution) arts. 63-83 (N. Korea).

⁸⁹ HON-PPOP (Constitution) arts. 47-51 (N. Korea 1948, amended 1972).

⁹⁰ KONSTITUTSIIA (Constitution) arts. 121-124 (U.S.S.R.).

⁹¹ HON-PPOP (Constitution) arts. 92, 107-114 (N. Korea).

⁹² Y. Kim, *The 1922 Socialist Constitution of the Korean Democratic People's Republic*, 3 REV. OF SOCIALIST L. 281, 87-88 (1977).

⁹³ HON-PPOP (Constitution) art. 93 (N. Korea).

⁹⁴ HON-PPOP (Constitution) arts. 94-97 (N. Korea).

⁹⁵ As to a chronology leading to this event since the fall of the Republic of Vietnam, see generally *Viet-Nam: Introductory Survey* [1979] EUROPA Y.B.: A WORLD SURVEY 1742-3.

⁹⁶ For the English text of the VCP Directive on the Draft Constitution Debates, see, 4 FBIS DAILY REPORT: ASIA & PACIFIC K5-7 (Feb. 10, 1978).

ording to this directive, the original timetable was to indicate the progression of steps necessary for the adoption of a new constitution by the middle of 1978.⁹⁷ However, the invasion of Cambodia and the war with the PRC delayed the original schedule.

On August 15, 1979, the second draft Constitution was made public for the nationwide debate. More than a year later, on December 18, 1980, the National Assembly of the Socialist Republic of Vietnam adopted the Constitution in its final form.⁹⁸

From the perspective of Vietnamese constitutional history, the new constitution is the third such document since the creation of the People's Republic. The first Constitution was adopted in 1946⁹⁹ and the second in 1959.¹⁰⁰ An analysis of the Constitution reveals that it promotes the spirit of the two previous Constitutions. The circumstances leading to the revision of the 1959 Constitution were explained in the preamble of the new Constitution. The notable purpose would seem to be the attainment of a unified Vietnam. The Constitution delineates the Socialist revolutionary tasks and objectives set forth at the Fourth Communist Party Congress in 1976. The major revisions of the 1959 Constitution have been made along ideological lines to strengthen the dictatorship of the proletarian state, to develop the working people's right to collective mastery and to insure success in carrying out the three revolutions: the revolution in production relations, the scientific-technological revolution, and the ideological and cultural revolution. Also emphasized in the preamble is the development of the new system, the new economy, the new culture and the new type of Socialist man.¹⁰¹ The preamble also promotes the theme that the creative application of Marxism-Leninism by the Communist Party¹⁰² has patterned a correct path for the leaders of the Vietnamese.

The Constitution's preamble records both a summary of the revolutionary achievements and the basic law determinative of the successful growth of Socialism.¹⁰³ An interesting passage from the preamble portrays the Vietnamese struggle against "the Chinese hegemonist aggressors and

⁹⁷ *Id.*, at K6; See also 4 FBIS DAILY REPORT: ASIA & PACIFIC K11-14 (May 5, 1978).

⁹⁸ For the English text of the Constitution of the Socialist Republic of Viet-Nam, see D. Blaustein, *Socialist Republic of Viet-Nam*, 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (Blaustein & Flanz, eds., 1981).

⁹⁹ For a discussion of the 1946 Constitution, see B. FALL, *THE VIET-MINH REGIME: GOVERNMENT AND ADMINISTRATION IN THE DEMOCRATIC REPUBLIC OF VIET-NAM* (1956).

¹⁰⁰ Style and content of the 1959 Constitution resemble those of the 1954 Constitution of the PRC. For the English text of the 1954 Constitution, see *Viet-nam Democratic Republic*, 2 CONSTITUTIONS OF NATIONS, 1197 (Peaslee ed., 1966). For a discussion of the 1959 Constitution, see B. Fall, *Constitution Writing in a Communist State: The New Constitution of North Viet-Nam*, 6 HOWARD L. J. 57 (1960).

¹⁰¹ HIEN PHAT (Constitution) para. 17, preamble (Viet-Nam).

¹⁰² HIEN PHAT (Constitution) para. 11, preamble (Viet-Nam).

¹⁰³ See, *supra* note 98, at 1.

their henchmen in Kampuchea."¹⁰⁴ This phrase did not appear in the first draft. It reflects the evolution which took place in the two years since the first and second drafts were issued. The preamble also depicts a triangular relationship between the Vietnam Communist as a leader, the people as master and the State as the administrator in Vietnamese society.¹⁰⁵

The preamble "specifies the relationships between the party's leadership, the people's mastery and state management in Vietnamese society," and insures the successful Socialist construction and defense of the Socialist fatherland.¹⁰⁶ This relationship was not clearly stated in the 1959 Constitution. Its preamble used the following words:

Under the clear-sighted leadership of the Vietnam Workers' Party, the Government of the Democratic Republic of Vietnam and President Ho Chi Minh, our entire people, broadly united within the National United Front, will surely win glorious success in the building of socialism in North Vietnam and the struggle for national unification.¹⁰⁷

In this close relationship, the purpose of the Vietnam Communist Party (New name for the Vietnam Worker's Party) is to lead the revolutionary works and programs related to Socialist renovation and construction. At the same time the working people of Vietnam, through state initiatives, are to become collective masters under the leadership of the working class; and, the State is to manage the society, economy and the life of the people. Leadership by the Party, mastery by the people and management by the State would result in a unified whole fulfilling proletarian dictates and ensuring successful Socialist construction.

The Constitution consists of 147 articles divided into 12 chapters. It deals with numerous subjects, including: political and economic systems;¹⁰⁸ culture, education, defense and basic rights and duties of citizens;¹⁰⁹ the National Assembly (legislature);¹¹⁰ the Council of State;¹¹¹ the Council of Ministers (the executive body);¹¹² People's Councils (the local organs of state authority) and People's Committees (executive organs of the People's Councils);¹¹³ courts and People's Organs of Control;¹¹⁴ and the procedure for amending the Constitution.¹¹⁵

¹⁰⁴ HIEN PHAT (Constitution) para. 10, preamble (Viet-Nam).

¹⁰⁵ HIEN PHAT (Constitution) para. 17, preamble (Viet-Nam).

¹⁰⁶ HIEN PHAT (Constitution) para. 18, preamble (Viet-Nam).

¹⁰⁷ HIEN PHAT (Constitution) preamble (Viet-Nam 1959, amended 1980).

¹⁰⁸ HIEN PHAT (Constitution) arts. 1-36 (Viet-Nam).

¹⁰⁹ HIEN PHAT (Constitution) arts. 38-81 (Viet-Nam).

¹¹⁰ HIEN PHAT (Constitution) arts. 82-97 (Viet-Nam).

¹¹¹ HIEN PHAT (Constitution) arts. 98-103 (Viet-Nam).

¹¹² HIEN PHAT (Constitution) arts. 104-112 (Viet-Nam).

¹¹³ HIEN PHAT (Constitution) arts. 113-126 (Viet-Nam).

¹¹⁴ HIEN PHAT (Constitution) arts. 127-141 (Viet-Nam).

¹¹⁵ HIEN PHAT (Constitution) arts. 146-147 (Viet-Nam).

The Constitution contains a number of features that require extensive analysis. However, this article is specifically concerned with three elements which illustrate Vietnamese constitutional innovation.

The first element concerns the concept of "collective mastery of society."¹¹⁶ The expressions "collective master" and "collective mastery" are used frequently throughout the text of the Constitution.¹¹⁷ The original concept of the collective master as the laboring class was advocated by Le Duan, a leading Vietnamese theoretician.

The concept of collective mastery dictates that "The State insures the continuous perfection and consolidation of the working people's collective mastery in the political, economic, cultural and social fields; collective mastery in the whole country, and in each unit; collective mastery over society, over nature, and over oneself."¹¹⁸ As an example, the collective mastery of those who labor in the political field is to be achieved through the adoption of mass organization as a method by which to conduct state affairs.

According to the Constitution, the Vietnam Fatherland Front, the Vietnam Confederation of Trade Union, the Vietnam Collective Peasants' Union, the Ho Chi Minh Communist Youth Union and the Vietnam Women's Union have the right to introduce legislative bills before the National Assembly.¹¹⁹ It would seem that the concept of a collective mastery of the working people has matured in the process of overcoming the bureaucracy and insufficiency of economic management. The constitutional provision for the active participation of mass organizations in governmental decision-making illustrates the Socialist Vietnamese approach to the idea of popular sovereignty. Indicative of this approach is the Vietnam Confederation of Trade Unions which is constitutionally empowered to undertake the task of drafting legislative bills and to engage in decision-making at the highest administrative organ of the State.¹²⁰ Generally speaking, the trade unions in Vietnam have directed their activities toward resolving difficulties in production and management, consolidating and intensifying labor discipline, guaranteeing adequate working and living conditions to the workers and heightening the workers' cultural and technical standards. These union activities promote the workers' role as masters of their own enterprises and of Socialist collective mastery, both of which are integral parts of a proletarian dictatorship. Regard for the

¹¹⁶ HIEN PHAT (Constitution) para. 4, preamble (Viet-Nam).

¹¹⁷ HIEN PHAT (Constitution) para. 4, preamble, arts. 2,3,9,23,37,39,54,127 (Viet-Nam).

¹¹⁸ HIEN PHAT (Constitution) art. 3 (Viet-Nam).

¹¹⁹ HIEN PHAT (Constitution) art. 86 (Viet-Nam). Article 113, the 1977 U.S.S.R. Constitution, grants public organizations operating throughout the union to have the right to introduce legislative bills.

¹²⁰ HIEN PHAT (Constitution) art. 86 (Viet-Nam).

union position is evident from the provision that the President of the Vietnam Confederation of Trade Unions has a right to attend the meetings of the Council of Ministers.¹²¹

The second element deals with the concept of Socialist legality. This concept mandates that "The State manages society according to law, and constantly strengthens the Socialistic legal system."¹²² Socialist legality can be traced to the Third National Congress of the Vietnam Workers' Party (Communist Party) held in September, 1960. That convention stressed the need to achieve Socialist legality through the State, its organizations and its people.¹²³

The last element creates the Council of State.¹²⁴ This proposal indicates the most significant change in state organs under the Constitution. The Constitution asserts that "The Council of State is the highest continuously functioning body of the National Assembly, and is the collective presidency of the Socialist Republic of Vietnam."¹²⁵ By taking over the functions of the Standing Committee of the National Assembly¹²⁶ and the duties of the President of the Democratic Republic of Vietnam provided for by the 1959 Constitution,¹²⁷ the Council has become a powerful organ and its chairman the head of state.¹²⁸

V. CONCLUSION

The focus of this article has been on the recent developments in Chinese, North Korean and Vietnamese constitutional writing since 1970. Specific attention has been given to illustrating how each State creatively localizes the ideology of Marxism-Leninism to cope with its own national problems.

As an outgrowth of the 1978 Constitution, the currently dominant national ideology of the PRC is Marxism-Leninism-Mao Zedong thought. This ideology, as evidenced by the adoption of Marxism-Leninism, varies from that found in the Soviet Union.

In North Korea, the Juche idea has become the national ideology, as elucidated in the 1972 Constitution. This idea, which may be interpreted as a "Koreanization" of Marxism-Leninism, has been realized through the implementation of such devices as the Chollima Movement, the Chong-san-ri work method and the Taean work system.

¹²¹ HIEN PHAT (Constitution) art. 106 (Viet-Nam).

¹²² HIEN PHAT (Constitution) art. 12 (Viet-Nam).

¹²³ *Id.*

¹²⁴ *See*, HIEN PHAT *supra* note 111.

¹²⁵ HIEN PHAT (Constitution) art. 95 (Viet-Nam).

¹²⁶ HIEN PHAT (Constitution) arts. 51-55 (Viet-Nam 1959, amended 1980).

¹²⁷ HIEN PHAT (Constitution) arts. 61-70 (Viet-Nam).

¹²⁸ *See*, HIEN PHAT *supra* note 111.

In Vietnam, the concept of the collective mastery of the working people has been expressed in the 1980 adoption of that country's Constitution. This concept, a Vietnamese version of the popular sovereignty notion, advocates an active role for the masses so that they may become masters of themselves, as well as achieving mastery of society, mastery of nature, mastery over the whole country, mastery over each locality, and mastery over political, economic, cultural and social fields.

Each of these Constitutions, and the surrounding contexts in which they were passed, are significant as official expressions of state policy. However, to ascertain the extent to which the constitutional documents examined are a social foundation or only a superstructure is an evaluation best left until after a period of practical use, rather than engaging in theoretical speculation.