

CONTROL AT THE GRASSROOTS: CHINA'S NEW TOOLBOX

ABOUT

The Chinese have long been obsessed with strategic culture, power balances and geopolitical shifts. Academic institutions, think tanks, journals and web-based debate are growing in number and quality and give China's foreign policy breadth and depth.

China Analysis, which is published in both French and English, introduces European audiences to these debates inside China's expert and think-tank world and helps the European policy community understand how China's leadership thinks about domestic and foreign policy issues. While freedom of expression and information remain restricted in China's media, these published sources and debates provide an important way of understanding emerging trends within China.

Each issue of China Analysis focuses on a specific theme and draws mainly on Chinese mainland sources. However, it also monitors content in Chinese-language publications from Hong Kong and Taiwan, which occasionally include news and analysis that is not published in the mainland and reflects the diversity of Chinese thinking.

The French version of China Analysis can be accessed online at www.centreasia.eu.

Introduction by François Godement

Although the PRC has perfected its ritual and peaceful public face, Chinese society has often been violent and haunted by the fear of chaos, or *luan*. There were 180,000 "mass incidents" in 2011, defined as outbreaks involving more than 500 people and spilling into public space. Yet the Chinese Communist Party (CCP) has skilfully extended state and party authority further into the grassroots than any previous government in Chinese history. With the decline of ideology-based control and mass movements, the emphasis has shifted to modern substitutes: guidance to the mass media and social networks, which is achieved with a remarkable mixture of political control and commercial or entertainment recipes.

A second tool has been provided by modern technology. China is at the forefront of global producers for communication technologies – including their security applications. It has also been able to benefit from international transfer, especially on the occasion of high-profile events such as the Beijing Olympics, which required advanced surveillance against the possibility of terrorism. In fact, every Chinese citizen will soon have an individual electronic health care card. Through very commendable social care programmes, peasant families will also have their own social care accounts and cards, which will help directly distribute social subsidies and circumvent local graft.

However, these developments also have their negative side. China's authoritarian and secretive government has acquired unprecedented tools for social control and for the prevention of disorder or contamination from local incidents. An extraordinarily high number of people is employed in the preservation of "social stability", or *weiwen*. Like sensors in the ground, these people – informers, activists hired to police the new social media, and a local security network that extends to hired hands and sometimes serves very private purposes – help the government to balance the individualistic and freewheeling Chinese.

China's *weiwen* programme – whose budget is said to even exceed the military budget – is not only about repression. It is also about anticipating and preventing social disorder – in essence, "riding the tiger", as Mao described the party's relation to the people. Much of it also allows the central authorities to have an independent view of what is happening at the grassroots without relying only on sycophantic or biased local authorities. It is also about a flexible response to protest – answering some grievances while picking off natural leaders and activists in a manner that remains consistent with traditional United Front policies.

This issue of *China Analysis* thus provides an explanation of how the soft side of China's authoritarianism works: cautious management of the majority of the people; relentless weeding out of potential activists and, above all, of linkages that would lead to organisations competing with the authority of the party-state. We have added an analysis of this year's debate on the issue of "secret detentions". Included in a review of the country's criminal procedure law that was commendably public, this issue has sparked a debate that presumably reached the top of China's leadership and created an international furor. After all, the fates of the cultural activist Ai Weiwei and dozens of human rights activists and lawyers were a direct outcome of the secret detention practice, which is now becoming a legal provision. The issue embodies the arbitrary power and the party supremacy that remains, even in a state of laws. This is the hard side of the preservation of stability and a major concern for human rights.

1. Enforcing stability by managing social conflicts

by David Péneau

Sources:

Chen Xiaoshu, Xu Kai and Li Wei'ao, "The public security accounts", *Caijing*, 5 May 2011¹.

Sun Liping, "Towards a positive *shehui guanli*", *Shehuixue yanjiu – Sociological studies*, No. 4, July-August 2011².

Xu Kai and Li Wei'ao, "The stability maintenance machine", *Caijing*, 6 June 2011.

Zhou Ruijin, "The history of *shehui guanli*: the current situation and innovations", *Yanhuang chunqiu*, April 2012³.

Since the end of the 1980s, *shehui guanli* (社会管理, social management) has been the central concern of the Chinese Party-State. Conceived as a response to increasing social problems (社会问题, *shehui wenti*) and contradictions within society (社会矛盾, *shehui maodun*), the policy has been criticised for its conservative nature. It has focused on maintaining social stability through public security measures (维护社会稳定, *weihu shehui wending*, often abbreviated to 维稳, *weiwēn*). The policy has become even more important as debate has grown over what innovations are necessary for proper social management (社会管理创新, *shehui guanli chuangxin*). These articles put forward a critical viewpoint on the centrality of the policy of maintaining stability. The commentators criticise the cost of the stability maintenance policy and say it is incapable of dealing with China's current social problems. They question the legitimacy of the state's role as a manager of society. And they reject the idea of limiting social management to the maintenance of the status quo.

Stability maintenance is the main mission of the Central Political and Legislative Affairs Committee, one of the Chinese Communist Party Central Committee's principal bodies. This function is confirmed by the 1991 "Note on strengthening the Central Political and Legislative Affairs Committee's work on social stability maintenance" (关于维护社会稳定加强政法工作的通知, *guanyu weihu shehui weiding jiaqiang zhengfa gongzuo de tongzhi*). In 1991, the Central Committee for Comprehensive Management of Public Security was created within the CPC Central Committee. It has direct links with the Central

1 Chen Xiaoshu, Xu Kai and Li Wei'ao are journalists at *Caijing*.

2 Sun Liping is a professor in the sociology department at Tsinghua University.

3 Zhou Ruijin is the director of research at the Chinese Academy of Social Sciences (CASS). He was previously editor in chief of *Liberation Daily* (*Jiefang ribao*) and associate editor in chief of *People's Daily*.

Political and Legislative Affairs Committee. The policy of social stability maintenance is defined by these two committees, together with a number of working groups. But it is not clear exactly which administrative body is in charge of its implementation. In central government, what Xu Kai and Li Wei'ao refer to as the "stability maintenance machine" (维稳机器, *weiwēn jiqi*) is made up of different ministries and administrations. The composition of this machine is detailed in the figure below. In local administrations, centres for stability maintenance (维稳中心, *weiwēn zhongxin*) are found all the way down to village level in rural areas and to neighbourhood level in urban areas. The structure of social stability maintenance includes the system of "letters and visits" (信访, *xinfang*), a novel administrative system that allows citizens to make complaints about local officials to the highest levels of power. Local administrations are most important in implementing the policy of social stability maintenance. Eighty-four per cent of spending on the policy is concentrated at the local level. Xu Kai and Li Wei'ao say

The more the authorities try to preserve the current social situation, the more they destabilise it.

that social stability maintenance has even surpassed economic development as the main priority of local government.

Public security spending increased by 13.8% between 2010 and 2011. Chen Xiaoshu, Xu Kai and Li Wei'ao estimate that in 2011, it totalled 624 billion yuan, more than China's defence spending for the same period, which was 601 billion yuan. This rise in spending indicates the greater importance of the policy of maintaining social stability. Chen, Xu and Li note that public security spending is divided between several ministries, including the Ministry of Public Security, the Ministry of Railways, the Ministry of Justice, and the General Administration of Civil Aviation of China. Only part of their budget goes on maintaining stability; for example, almost 50% of the Ministry of Public Security's expenditures goes not to public security missions, but to diplomacy, education, and so on. The Chinese government uses this complex situation to blur the distinction between spending that is dedicated to the maintenance of social stability and that which is not. It accuses journalists, especially foreign ones, of overestimating the budget for stability maintenance by confusing it with the public security budget⁴.

In spite of the lack of clarity in the figures, it is true that the public security budget has gone up – especially at the level of central government, where it has risen 68% between 2009 and 2011. Chen, Xu and Li say 77% of this budget goes to the Chinese People's Armed Police (PAP). The rising influence of the PAP confirms the government's increasingly conservative vision of the policy on stability maintenance. The PAP is a special police unit in charge of sensitive affairs

4 David Bandursky, "Making sense of China's 'public safety' spending", *China Media Project*, 7 March 2012, <http://cmp.hku.hk/2012/03/07/20160/>.

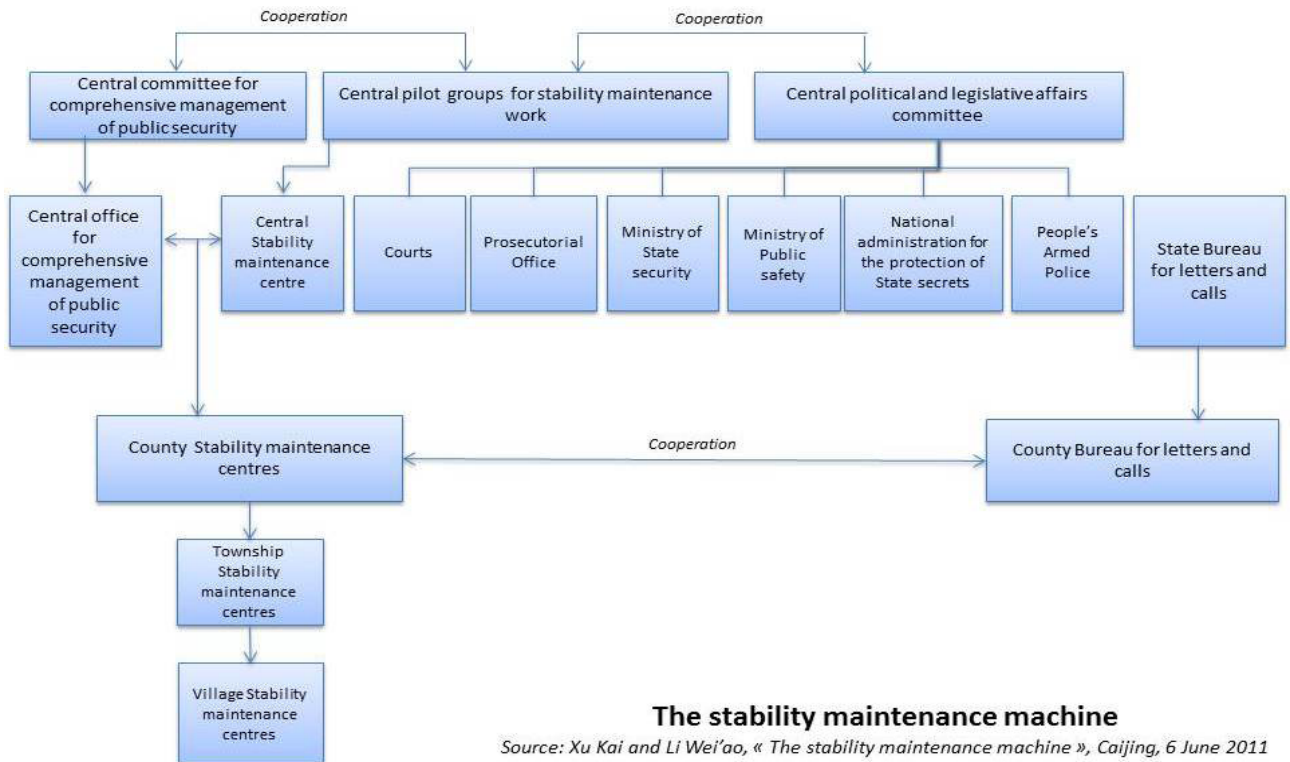
that threaten public order. Its responsibilities include the management of natural disasters and “major mass incidents” (重大群体性事件, *zhongda quntixing shijian*, the term used by the Chinese authorities to indicate social movements such as riots, strikes, and so on)⁵.

The radicalisation of the stability maintenance policy can also be seen in the emergence in 2008 of a debate on innovation in *shehui guanli*. Zhou Ruijin says the new interpretation of *shehui guanli* allowed the government to place stricter controls on new technologies. This entailed exercising control over the Internet, including blogs and online news sites, as well as monitoring mobile networks. The development of the Internet in China could enable minor events to escalate into situations that endanger public stability. Local governments have often had no special training in public relations and communication to help them deal with this kind of situation. But Zhou says that the government’s attitude to the Internet is inappropriate and anachronistic: instead of adding extra restrictions, the government should learn how to communicate with the media.

Xu Kai and Li Wei’ao think that the government is too preoccupied with social stability and has allowed the stability maintenance machine to expand far too much. They say that the more the authorities try to preserve the current social situation, the more they destabilise it (越维稳越不稳, *yue wei yue bu wen*).

The system of letters and visits, for example, was created to help citizens express complaints about their government leaders. But instead, it has become a system for suppressing and papering over social discontent⁶. Xu and Li say the vicious cycle must be broken (打破怪圈, *dapo guaiquan*), because it only causes more and more constraints on society. Maintaining stability should not be the only objective of social management.

Zhou Ruijin says the state’s role in *shehui guanli* should be subject to a system of checks and balances. He points out that many states do not exercise a monopoly on social management, but instead allow society to manage itself. Sun Liping sees two models of *shehui guanli*, one positive and the other negative. A negative *shehui guanli* is a static *shehui guanli*, in which the government’s priority is keeping the status quo. This helps to create a stable society that has good conditions for economic development. This negative *shehui guanli* is the model currently in use in China, and, Sun says, it confirms the essentially conservative nature of the policy and its makers. But the Chinese government’s emphasis on economic development is no longer acceptable; Sun believes people will no longer accept living conditions aimed only at “surviving” (生存状况, *shengcun zhuangkuang*) in the service of economic development. Thirty years after Deng Xiaoping’s reforms, China needs a second transformation (变化, *bianhua*). The central concern of governance must be individuals, their rights, and their liberties, and citizens’ “happiness” must be a fundamental objective.



The stability maintenance machine

Source: Xu Kai and Li Wei’ao, « The stability maintenance machine », *Caijing*, 6 June 2011

5 For more on the PAP, see the article by Emmanuel Puig in this issue of *China Analysis*.

6 For more information about the letters and visits system, see the article by Jérôme Doyon in this issue of *China Analysis*.

A positive *shehui guanli* would mean building a dynamic social management strategy that is based on achieving “happiness” for society.

Zhou, along with Xu Kai and Li Wei’ao, thinks that non-governmental social organisations (社会组织, *shehui zuzhi*) can and should participate alongside government in *shehui guanli*. They could play the primary mediating role in incidents of social conflict. Zhou says that *shehui guanli* only makes sense if it takes place within a spirit of reform (在改革精神统领下, *zai gaige jingshen tongling xia*) – as opposed to the current *shehui guanli*, which is static because it is governed by the needs of stability maintenance.

2. Subcontracting *weiwen* to private firms

by Jérôme Doyon

Sources:

Xu Kai and Li Wei’ao, “The stability maintaining machine”, *Caijing*, 6 June 2011⁷.

Zhong Weijun, “The ‘zero-incident’ logic of local governments in maintaining stability: an analytical framework”, *Zhejiang shehui kexue – Zhejiang social sciences*, No. 9, September 2011⁸.

Gao Jun, “The trap of maintaining stability and how to avoid it”, *Lilun daokan*, No. 11, 2011⁹.

Xia Nan, “*The alienation of weiwen*”, *Caijing*, 12 October 2011¹⁰.

Zhang Qianfan, “The origin and disruption of the system for petitioning the higher authorities”, *Tansuo yu zhengming – Exploration and free views*, 10 May 2012.¹¹

In 1994, the Chinese government carried out a tax reform that limited the revenues of local governments and made them dependent for funding on central authorities. Since then, local governments have been caught between the people, who want more social policies that local authorities cannot afford, and central government, which is focused on maintaining social stability. Xu Kai and Li Wei’ao and Xi Nan say that social stability has become the main priority of local governments. So, for example, in Yun’an district in the province of Guangdong, out of 6,700 people on the public authorities’ payroll, 1,800 have jobs related to maintaining stability.

Local administrations’ success is evaluated largely on their ability to maintain social stability. In 2009, “The temporary provision on the enforcement of the responsibilities of Party leaders and the State” (关于实行党政领导干部问责的暂行规定, *guanyu shixing dangzheng lingdao ganbu wenze de zanxing guiding*) reaffirmed local government’s responsibility for incidents that threaten stability, with particular reference to riots and other mass demonstrations. These articles show that this method of evaluation puts pressure on local governments. The central authorities have said that they want to develop the system of “letters and visits” (信访, *xinfang*), as reaffirmed in 2005’s “Regulations on letters and visits” (信访条例, *xinfang tiaoli*).

7 Xu Kai and Li Wei’ao are journalists at *Caijing*.

8 Zhong Weijun is an associate professor at the School of Political Science and Public Management at the Zhejiang Institute of Technology.

9 Gao Jun is a professor at the School of Humanities and Social Sciences at Jiangsu Teachers University of Technology.

10 Xia Nan is a lawyer in the Beijing law firm, Hua Yi.

11 Zhang Qianfan is a professor at Peking University Law School.

This administrative practice exists parallel to the judiciary system; it allows citizens to appeal local decisions by presenting a petition to central authorities. But evaluating local administrations on the basis of social stability maintenance undermines the system of letters and visits.

So as to appear to be making progress on social stability, local governments have adopted a logic of “zero incidents” (不出事逻辑, *buchushi luoji*).¹² Whatever the cost, they have to make sure they present an image of stability – even at the risk of not addressing the root causes of various problems. Zhong Weijun and Gao Jun say this logic forces the local authorities to deal with problems in a very superficial way. They spend more time trying to stop the authorities in charge of their evaluation from finding out about problems than they do on actually resolving them. The seriousness of a problem is judged only in terms of how higher authorities will perceive it. Zhong says this has contributed to a deterioration of relations between local authorities and citizens, as

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the relationship between the two has moved from one of service to one of “seizure” (攫取, *juequ*).

Under the system of letters and visits, local governments are supposed to contact and meet with petitioners (接访, *jiefang*). Xu Kai and Li Wei’ao show how, in practice, petitioners are obstructed to keep local government evaluations artificially high. Local authorities use several different tactics to “buy peace” (花钱买平安, *huaqian mai ping’an*). Petitioners’ names are deleted from the official registers (销号, *xiaohao*). These lists of complainants are kept by central government, and the evaluation of local authorities is partly based on them. Because of corruption and complicity between the local authorities and their direct superiors, the names of many petitioners are either not registered at all or are wiped off official registers in return for kickbacks. The *Caijing* journalists say that this turns the political problem of government evaluation into an economic cost.

Another option for local authorities is to arrest petitioners. This can be done locally, through the “centres for maintaining stability” (维稳办, *weiwen ban*) that are present at every administrative level. Local governments set up watch lists of likely nuisances, especially at times of important local festivals or around the annual plenary sessions of “the two assemblies” (the National People’s Congress and the Chinese People’s Political Consultative Conference) in Beijing. Gao Jun says that the political

fallout from an incident on one of these occasions would be extremely serious. Xia Nan says local authorities have been known to issue fines or to illegally detain petitioners, sending them to work camps or psychiatric hospitals, in order to keep them from appealing to higher authorities. To encourage administration staff to take action in this way, local governments have established a system of bonuses. Xu Kai and Li Wei’ao say functionaries who resolved an “incident” at the village level earned bonuses of 50 or 100 yuan in 2011 and the reward is even greater for people further up the administrative ladder. Xu and Li say that the budget for “bonuses” in the Yun’an district of Guangdong in 2010 was 20,000 yuan – extremely cost-effective compared with the potential political and economic cost of even one petitioner lodging a successful complaint in Beijing.

Local authorities can also carry out judgements on petitioners in Beijing through liaison offices (驻京办事处, *zhujing banshichu*). The president of a local court told the *Caijing* journalists that all young male judges are obliged to work in the Beijing liaison office of their locality, and that their main job is to be present at the High Court so as to keep petitioners from lodging complaints. Serious corruption is endemic in these liaison offices, since their main objective is to ingratiate themselves with the central authorities to win benefits for the locality they represent. Zhang Qianfan says that a corruption scandal in 2009 caused the central authorities to close many of these offices. Xu and Li say that in mid-2011, 625 liaison offices were closed, including 50 offices of provinces or special economic zones and 296 city offices.

But Beijing’s decision to close the liaison offices only forced local governments to find another way to obstruct petitioners. Zhang says that even if the government shuts down one of ways of blocking the petitioners, good evaluations for local authorities still depend on a lack of complaints reaching the central government. Local authorities therefore still need to find ways to prevent petitions from being lodged. One way to do this is to hire private companies to arrest the petitioners. As of mid-2011, the Beijing security company, Anyuanding, had signed contracts with 19 provinces to turn away, arrest, or detain petitioners in illegal detention centres, or black jails (黑监狱, *hei jianyu*). Zhang sees it as the height of cynicism that the effect of closing liaison offices was to enable these sordid enterprises to get rich.

Between wiping names from official registers, issuing bonuses to local staff for resolving “incidents”, and hiring private enterprises to stop petitioners, a national market for stability maintenance is opening up. Zhang and the *Caijing* journalists see this market as the natural consequence of the current structure of stability maintenance and the method used to evaluate local governments. Zhang points out some positive developments, such as the closure of the liaison offices in Beijing and some innovations in the letters and visits system in Shenyang in Liaoning province, where petitioners’ cases are publicly heard in front of experts

¹² Zhong Weijun attributes this concept to He Xuefeng and Liu Yue. See He Xuefeng and Liu Yue, “The ‘zero-incident’ logic in local management”, *Xueshu Yanjiu – Academic research*, No. 6, June 2010.

and deputies of the local People's Assembly and Political Consultative Conference. But Zhang says that measures like the simple reform of the rules surrounding letters and visits cannot resolve these problems, which have their roots in the power relations of the petitioning system. As illustrated by the use of private enterprises to obstruct petitioners, local authorities can always just pretend to follow any new orders (阳奉阴违, *yangfeng yinwei*). Zhang criticises the letters and visits system as intrinsically unsuited for resolving local problems. He says that even if it were the concern of the central authorities to resolve local problems, they would need material and human resources that they simply do not have. As it stands, the system is structured so that citizens voice their problems and then go home – as if simply articulating them will somehow make them go away.

The system costs local governments a lot, in terms of both legitimacy and financial resources. Xia Nan says it is a vicious cycle that serves to reinforce the dual pressure on local governments, coming from the people and from central authorities. The “mafiasation” (黑色化, *heisehua*) of the practices associated with maintaining social stability increases tensions between government and the people. And the cost of these practices further financially weakens localities, and thus can affect local governments' evaluation by the central authorities. Xia says that in the long term, the most serious concern is the deterioration of the authorities' relations with the people, as well as relations among the people. He points to the poisonous climate these methods create, giving the example of an old man denounced by the employees of a photocopy shop in Shanxi when they discovered he was preparing a petition file. After ten years, the current policy of maintaining stability has resulted in untenable fiscal practices and inconsistent results.

3. The challenges of transforming People's Armed Police

by Emmanuel Puig

Sources:

Yuan Tao, “Joint simulated military exercises between the ‘six forces’ of the People's Armed Police take place in Jinan”, *Dazhong ribao*, 17 April 2012.¹³

Ning Zhihua and Xie Feng, “A detailed analysis of training in the context of enhancing the informatisation of the People's Armed Police”, *Guofang – National Defense*, September 2011.

Yu Jianwei, “Providing strong human resources support for building a modern armed police force”, *Qiushi*, No. 24, December 2011¹⁴.

Feng Xuan, Yan Xiaoxian et al., “Scrutinising strategic studies on the People's Armed Police: A review of presentations given at the research symposium on issues concerning the People's Armed Police”, *Renmin wujing bao*, 20 December 2011¹⁵.

The People's Armed Police (PAP), which was established in 1982, plays a central role in maintaining public order in China. Its range of responsibilities is extremely broad. The PAP carries out counter-insurgency measures in the autonomous regions, leads the fight against terrorism, and coordinates disaster response teams. Under the supervision of the Central Military Commission and the Ministry of Public Security, it also protects China's forests, water resources, public transportation and gold mining. A decade ago, the PAP was simply a paramilitary force for maintaining public security, but its new role is far more diverse. Nowadays PAP has to deal with new forms of social uprisings, terrorism, maritime issues, piracy as well as disaster relief. To ensure it can adequately fulfil its new responsibilities, the PAP needs to undertake a major overhaul of the way it manages its forces, as well as a serious upgrading of those forces' capabilities. Modernisation will mean changing recruitment methods, training troops better, designating responsibilities more appropriately, and improving equipment. The PAP's new “six forces” policy (六种力量, *liu zhong lilian*) indicates that the PAP is in the process of adapting its outlook in order to become a modern, integrated, and multitasking force. In this transition period, academics and PAP officials are debating the future direction that the force should take. Their assessments of PAP's strengths and weaknesses are sometimes severe.

13 Yuan Tao is a journalist.

14 General Yu Jianwei is the director of the PAP's political department.

15 Feng Xuan is a lecturer at the Shanxi PAP Corps Training Centre, Taiyuan, and Yan Xiaoxian is professor of political theory in the political science department of Shanxi PAP Corps Training Centre, Taiyuan.

Changing missions and goals

At a symposium at the end of 2011, the director of the PAP officers' academy, Commander Xia He, outlined the strategic changes facing the PAP. He said that traditional and non-traditional security issues are becoming interlinked because of the interaction between national and international security (国际与国内安全问题互动, *guoji yu guonei anquan wenti hudong*). As traditional boundaries are eroded, the role of the PAP needs to change. PAP's fundamental purpose is to "defend national security and maintain social stability" (维护国家安全和社会稳定, *weihu guojia anquan he shehui wending*). It must therefore adapt to new threats by developing its capacity for strategic analysis as well as its available modes of action. The PAP has to consider new enforcement mechanisms to deal with transnational threats, especially terrorism, even if that means expanding its traditional prerogatives. The PAP's missions are also becoming more complex and more technical. From counter-insurgency manoeuvres to disaster relief missions, the evolution and scale of the situations that must be managed require the PAP to expand its capability to act and its systems of coordination.

The PAP and the People's Liberation Army (PLA) cooperate on trans-border issues, but now their relationship appears to be evolving towards other forms of coordination. Feng Xuan and Yan Xiaoxian say that the PAP could in future deal with maritime security. The Chinese naval forces (PLA) could be integrated with the coastguard (PAP), similar to the model in the United States¹⁶. This kind of interoperability is becoming more frequent in China, allowing as it does for the coordination of internal missions allocated to the police and external missions allocated to the military. Feng and Yan say that at the moment, the situation on Chinese maritime rights and interests is worrying (especially as regard to territorial claims). They believe that the PAP could play a vital role in protecting and defending national interests in sovereignty and maritime territorial disputes, much as the US Coastguard does in the United States. This should be done in cooperation with the PLA, while at the same time maintaining the PAP's independence. Xia He says that even though the PAP is an independent force with different missions to the PLA, cooperation between the two organisations is crucial in responding to regional security issues. But in this area, it hasn't been implemented yet.

Improving training and recruitment

Along with the changing nature of the missions, new developments in the security environment (安全环境, *anquan huanjing*) mean that education, training and recruitment of PAP personnel must be upgraded. The director of the political department of the PAP, General Yu Jianwei, says that the key to making the PAP a professional

¹⁶ For more information on the maritime missions of the PLA and PAP, see Alexandre Sheldon-Duplaix, "The PLA by 2020", *China Analysis*, March 2011.

and specialised force is reforming human resources and troop training. Yu says the PAP's human resources are seriously limited. Despite improvements in qualifications among PAP troops, the scientific literacy of officers and upper ranks is low (官兵的科学文化素质不高, *guanbing de kexue wenhua suzhi bugao*). Training in information technology is also inadequate (特别是信息化素质整体偏低, *tebie shi xinxihua sushu zhengti piandi*). Even more serious is the absence of specialised training for officers. Yu says that although the PAP has many qualified administrators, few of its officers are experienced in managing personnel. Yu also underlined that promotions should be decided on a more meritocratic basis, or the talent pool will be depleted.

Recruitment is another problem. The PAP has struggled to attract qualified personnel, particularly students with a scientific background, who could drive scientific and technological modernisation. General Yu believes that raising the general competency level of the troops is directly

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dependent on producing highly trained officers. The quality of the officers' intellectual training has a great influence on the preparedness

and capabilities of combat troops. The increasingly technical nature of PAP missions requires an improvement in training across the board. Ning Zhihua and Xie Feng agree with General Yu's comments on changing combat conditions and the effect of information technology on armed interventions. Training conditions have to be rethought and the "informatisation" (信息化, *xinxihua*) of the PAP must be speeded up. The authors are a little imprecise about the shape of this "informatisation", which would seem to include improved telecommunications, intervention techniques, and simulations for use in training exercises. But they agree with Yu that troops must be better trained and training centres must be modernised. So far, PAP training has not changed along with its missions. Even though problems have been identified, the PAP has been very slow to implement solutions.

Greater operational integration of PAP forces

The PAP has begun integrating its forces to improve operational coordination and efficiency. On 16 April 2012, at the end of joint drills between PAP units in Shandong, PAP Commander-in-Chief Wang Jianping said the PAP must form a joint force as soon as possible (尽快形成合力, *jinkuai xincheng heli*). In his speech, Wang mentioned the "six forces" integration exercise for the first time. This modernisation programme is designed to help the PAP respond to new security threats. It will provide a structure for bringing together and coordinating different elements of the PAP in crisis situations. The PAP intends to develop

this embryonic coordinated response system as a model of internal interoperability. No specific details on the “six forces” plan have been released, but Xinhua has reported that the integrated force will be made up of counter-insurgency forces, anti-terrorism forces, emergency first aid and rescue teams, and forest fire fighting forces.

This new development shows that there is strong political will to reform the PAP and its capabilities. The “six forces” system is designed to decompartmentalise the PAP’s various elements to develop its capacity for action and improve performance. As has often been the case with modernisations in the PLA and the PAP, the launch of a new strategic initiative is intended to set off an institutional chain reaction and promote coordinated development of capacities throughout the system. Wang Jianping has said that this new initiative depends for its success on personnel reform and improved training. Here, he agrees with General Yu, who says the “six forces” system can only work if it includes a reinforcement of training and education of the troops, and Ning and Xie, who say it must also include improvement of and training in new equipment. At the same joint drill exercise in April 2012, Jiang Daming, governor of Shandong province, outlined the administrative repercussions of the “six forces” plan. He said the PAP must optimise its structure (结构优化, *jiegou youhua*) and streamline its organisation (编成合理, *biancheng heli*) to improve its capacity for action.

The PAP plays a central role in ensuring China’s internal security. The evolution of its duties and prerogatives reflects a change in policy in addressing public security. There is no doubt that PAP leaders are willing to meet new security challenges in a changing security environment. But the technical evolution of the missions necessitates reform of training and new management of PAP forces. In this regard, increasing interoperability should lead to an improvement in equipment. But the necessity of these changes has only recently been acknowledged, and new reforms in China are often stalled by long-term institutional traditions. It will take some years before the changes currently under way can be properly assessed.

4. The controversy over secret detention

by Hugo Winckler

Sources:

Wang Jianxun, “The provisions of the reform of criminal procedural law legalising secret investigations are a step backwards”, *Caijing wang*, 5 September 2011¹⁷.

Chen Youxi, “The legalisation of secret investigations is an important violation of political integrity”, *Zhongguo wangluo dianshitai – CNTV web site*, Opinion section, 27 November 2011¹⁸.

Wu Zhehua, “Chen Weidong discusses reform of the criminal procedure law: Behind each article there is a story”, *Zhongguo guangbo wang*, 8 March 2012¹⁹.

Chen Guangzhong, “The provisions of the great reform of [China’s] criminal procedure law represent progress”, *Beijing shibao – Beijing Times*, 9 March 2012²⁰.

Xie Doudou, Wang Heyan, “The vicissitudes of the clause on secret detention”, *Caixin wang*, 12 March 2012²¹.

“A focus on the great reform of criminal procedure law: important perspectives on the ‘little constitution’”, *Banyuetan wang*, 13 March 2012²².

Li Xiangning and Xu Kai, “Criminal procedure law amendment passes amid controversy”, *Caijing*, 25 March 2012²³.

Yao Dongxing, “Behind the scenes of the ‘great reform’: four protagonists’ narratives about ten years of power games”, *Zhongguo jingji zhoukan – China Economic Weekly*, 27 March 2012²⁴.

On 14 March 2012, the PRC adopted a draft amendment to its criminal procedure law (CPL), bringing an end to a

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18 Chen Youxi is a well-known lawyer famous for his defence of Li Zhuang, a lawyer from the city of Chongqing who faced criminal charges while defending a local mafia boss. For more details about this affair, see Jean-Pierre Cabestan, “The implication of the Chongqing Model for the reform of China’s legal system”, *China Analysis*, November 2011.

19 Chen Weidong is professor of law at Renmin University of China (RUC).

20 Chen Guangzhong is a law professor who is considered to be one of the founding fathers of modern criminal procedure law in China.

21 Xie Doudou and Wang Heyan are both journalists for *Caixin*.

22 This article contains a series of opinions from people who participated in the reform.

23 Li Xiangning and Xu Kai are both journalists for *Caijing*.

24 Yao Dongxing is a journalist at *Zhongguo jingji zhoukan*.

process of reform begun in 2009. In that year, the National People's Congress created a task force to conduct a national survey on the proposed amendment. This committee interviewed legal professionals from all levels of the judicial system, and in doing so, began a wide-ranging debate on legal reform. The revised law will enter into force on 1 January 2013, and the consultative process involved in its preparation shows that China's political leadership wants to be seen as listening to the people.

Over the last few years, the Chinese media has carried news of a series of highly publicised criminal cases. Yao Dongxing says that the public was allowed to express opinions on each of these cases and that people took an active interest in the legal proceedings. Wang Jianxun says the use of illegal methods to collect evidence led to several unfair convictions (冤错案件, *yuancuo anjian*). These miscarriages of justice caused a public outcry and a dramatic drop in confidence in the authorities. The crisis of confidence in the judicial system is frequently discussed in the Chinese media. The way the amendment to CPL was presented to the public was therefore as important as its substance: reform was seen as a step towards regaining public confidence. This meant the Chinese press had an important role to play in explaining and justifying the new law. The framers of the law hoped to find a balance between giving concessions to the public and maintaining the judicial system as a tool of control over Chinese society.

A new discourse on criminal procedure law

The media coverage of the new law shows a shift in perspective on the role of criminal procedure law in China. CPL is no longer presented as a tool of the authorities for bringing criminals to justice. Instead, the law is described as guaranteeing individuals' fundamental freedoms, but with a necessary trade-off between respect for those freedoms and the requirements of justice. This conception of the spirit of CPL is very different from the Maoist interpretation. The transition took place in stages. CPL was enacted in 1976 and amended for the first time in 1996. The 2012 reform will be its second revision. Yao Dongxing says the evolution of CPL reflects increasing public awareness of fundamental individual freedoms. Including individual rights in the text made CPL a "mini-constitution" (小宪法, *xiaoxianfa*). This is a real breakthrough, since judicial application of constitutional provisions remains limited and uncertain. And unlike a constitution, CPL is fixed and is applied every day in all criminal cases at every level of the judicial system.

All the authors say that, by reaffirming the basic rights of the individual, CPL sets a limit on the powers of government and a limit to the use of public power. CPL is less concerned with investigating, pursuing, and judging criminals than with avoiding abuses of power. Its objective is to balance the administration's right to use legitimate force with the right of individuals to have their fundamental liberties respected. But this idealised balance between protection and

repression is in practice impossible, and so the debate has centred on the best way to reform. Commentators talking about CPL are increasingly speaking up for telling the truth about the protection of liberties in the constitution, whether they genuinely support this sort of openness or not. Most of the articles written in support of the reform are intended to inform people about the amendment rather than to analyse it. The writers explain the role of CPL in protecting the individual and try to inspire renewed confidence in the judicial system. The amended law is described as "a great reform", and its results are presented in such a way as to gain public support.

But under CPL, the legal system is split in two. In some (mostly) serious criminal offences, such as organised crime and terrorism, civil liberty protections do not apply. Commentators disagree about the rationale for this dual-speed regime and are concerned about the scope of the cases in which civil liberties can be ignored.

The initial stages of debate

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The first stage of the reform process began in 2009 and resulted in two draft proposals. From

the very beginning, intellectuals – mainly lawyers from the universities and the courts – gave their opinions and their fears about the draft proposals on the Internet and in the press. These commentators provide a legal perspective on the law's deficiencies and its risks of infringing on basic freedoms. They could have been even harsher in their criticism; they could have spoken out against the government or denounced the cases of abuse that were reported in the media. But the legal commentators stuck to discussing the proposals in terms of their legal merits and highlighting the risk of abuse of constitutional guarantees. Chen Youxi's article is a good example of this kind of criticism. He is disappointed that the law has retained provisions giving extraordinary powers of investigation to the administration. He says that this, in effect, legalises covert investigations and secret detention.

Covert investigation and secret detention

Some of the most controversial provisions in the law concern covert investigations (秘密侦察, *mimi zhencha*) and secret detention (秘密拘留, *mimi juliu*). These methods were both in place before the law was written, so they had precedent in practice and basis in law. The reform legislated for both covert investigation and secret detention, and so ensured their continued existence – but at the same time, it exposed these practices to public scrutiny.

Covert investigation involves using technology to gather evidence (技术侦察, *jishu zhencha*). This includes bugging

for sound, phone tapping, and intercepting private mail and email. The first draft of the amendment gave a very broad definition of the conditions under which this kind of surveillance would be allowed. The law states that covert investigation can be used “in any other offense affecting national security” (其他严重危害社会的犯罪 *qita yanzhong weihai shehui de fanzui*). Chen Youxi points out that this provision means covert surveillance could potentially be used in any circumstance. But criticism made no difference: the final draft included the provision as it appeared in the first draft. The police can use technological surveillance at their discretion, which seriously compromises the individual’s right to privacy.

The provisions on detention were equally contentious. Article 73 of the revised law, also known as the “extra-legal detention clause”, says a suspect can be placed in a location other than his home, without that location having to be officially designated as a detention centre. Article 83, also called the “secret arrest clause”, says the detainee’s relatives must be informed within 24 hours of the suspect’s detention, unless informing them would impede the investigation or they cannot be located. The first draft of the revised law said article 83 could be applied in cases of “criminal acts which threaten national security (危害国家安全犯罪, *weihai guojia anquan fanzui*), terrorist activities (恐怖活动犯罪, *kongbu huodong fanzui*), risk of impeding the investigation (可能有碍侦查, *keneng you’ai zhencha*)”. In this version, there were three cases in which secret arrests could be made. But in the final draft, a comma was deleted between “terrorist activities” and “risk of impeding the investigation”.

Thus the three exceptions in which relatives did not have to be informed were reduced to two. The third exception, “risk of impeding the investigation”, was neutralised and became just a complement to the other two, as Xie Doudou and Wang Heyan say. Chen Guangzhong says that this revision meant the removal of the exception to informing a suspects’ relatives within 24 hours where a risk of impeding an investigation was deemed to exist. Secret detention is therefore still allowed, but only within limits – it is only acceptable in cases that represent a threat to national security or in investigating acts of terrorism, and only when dictated by the requirements of the investigation. This example shows that the debate did lead to substantive modifications to the final draft, even if it did not get rid of all the controversial provisions.

The death penalty

The law’s critics did not argue for a removal of the death sentence, but there was considerable debate over the procedural safeguards needed in capital trials. The main issue was an amendment to the law that says that if an appeal to a death sentence is registered, the Supreme Court “may” hear the accused. The debate led to a change in the draft legislation that replaced “may” (可以, *keyi*)

with “should” (应当, *yingdang*). This gives people who have been sentenced to death one last chance to explain the circumstances of their case or to plead their innocence. The change illustrates the negotiation process that went on during the drafting of the amendment. Wu Zhehua says the Supreme People’s Court was not initially in favour of the provision, but the length of the debate and the number of people arguing for the change made them reconsider, and the amendment was adopted.

Power games between state organs

Throughout the discussion process and in the presentation of the final draft of the law, the authorities showed a clear desire to communicate and to educate and a genuine will to advance human rights. Public opinion was taken into account through the interviews conducted by the working committee with members of the legal profession. But participation in the actual reform discussions was limited mainly to national and local experts, and the general public was not consulted. As Li Xiangning and Xu Kai wrote in *Caijing* and Yao Dongxing said in *Zhongguo jingji zhoukan*, the majority of the legislative process was focused on power games between different state organs: the Supreme Court, the legislature, the Ministry of Public Security, the public prosecutors, the Ministry of Justice, and other branches of government. The official narrative of reform emphasised public participation, but the real debate took place mostly at the state level. However, the reform committee did at least involve stakeholders in the judicial system in the formulation of reform.

The Ministry of Public Security was quick to get involved in the debate, issuing a series of proposals that were mainly aimed at strengthening the powers of the police. Not all of these proposals were adopted. Li Xiangning and Xu Kai say that no state organ managed to take complete control of the process, and the final version was a compromise between the viewpoints of the legislature (立法部门, *lifabu men*), the judiciary, and the police (司法执法部门, *sifa zhifa bumen*). Their dialogue showed they recognised “the logic of negotiation” (谈判的逻辑, *tanpan de luoji*). Debate did take place among various public actors, but few of them were outside state organs; experts were really only consulted in an advisory capacity.

The conclusion of the reform process saw the end of the debate. Critical articles were published only while the law was still under discussion. Articles published after the adoption of the law ignored any remaining misgivings, and instead mostly highlighted the advances made in protecting fundamental freedoms.

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ECFR is backed by the Soros Foundations Network, the Spanish foundation FRIDE

(La Fundación para las Relaciones Internacionales y el Diálogo Exterior), the Bulgarian Communitas Foundation, the Italian UniCredit group and the Stiftung Mercator. ECFR works in partnership with other organisations but does not make grants to individuals or institutions.

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This issue of China analysis was produced with the support of Stiftung Mercator.

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