

New rules for China's war on terror?

25th October, 2014

Author: Kendrick Kuo, Johns Hopkins

After a very violent year, officials in China's western province of Xinjiang announced in March 2014 that they were considering an anti-terror law for the region. The law would ostensibly fill the gaps in the national criminal law by addressing the unique challenges of terrorism. But do laws really matter in an authoritarian state and in a region as militarised as Xinjiang?



The 1997 Criminal Law was the first legal recognition — albeit rudimentary — of terrorist crimes, listing them among other crimes that endanger public security. After the 9/11 terrorist attacks against the United States, China amended the law to include punishment for financial supporters of terrorism and harsher punishment for acts of terror. Yet the legal definition of 'terrorism', 'terrorist organisation', and 'terrorist crime' remained obscure, thus allowing broader interpretations to include a variety of groups. As if highlighting this ambiguity, Xinjiang Party Chief Wang Lequan in December 2001 described staging riots and beating, smashing and looting as terrorist activities.

The Criminal Law is only one part of a complex network of overlapping security-related legislation that form China's legal approach to national security, all of which have implications for China's war on terror. The State Security Law, adopted in 1993, parallels the Criminal Law, but focuses on collusion with foreigners to organise and carry out espionage, separatist conspiracies and terrorist activities — it was invoked earlier this year to prevent [Uyghur professor Ilham Tohti](#) ^[1] from accessing his lawyer. Legal ambiguity pervades the entire apparatus of national security laws, as there is no legislation tailored to addressing terrorism.

Since the Kunming attack in March 2014, the Chinese public has become more aware of the limits of the criminal law provisions to support anti-terror efforts. Beijing [faces mounting pressure](#)

^[2] for legislation tailored to handle attacks. The complexity of terrorism issues ensures that a national anti-terror law will take years to achieve. The announcement that Xinjiang was going to draft a regional law came with the qualifier that this was only the first step in a multiyear process of getting legislation passed.

China still lacks national anti-terror legislation, but Beijing has taken steps to remove legal ambiguity. In 2011, the Standing Committee of the National People's Congress passed the Decision on Issues Related to Strengthening Anti-Terrorism Work, which [described terrorist activity](#) ^[3] as 'activities that severely endanger society that have the goal of creating terror in society, endangering public security, or threatening state organs and international organisations'. The decision also defined terrorist organisations and terrorists and explained the procedure for listing them.

While human rights organisations may see legal ambiguity surrounding counterterrorism as a boon to a Chinese regime intent on maintaining stability at all costs, Beijing may actually view it as an obstacle to legitimacy and to effective counterterrorism, undermining Beijing's long-term project of 'legalisation'.

Rather than just defending the Communist Party's claim to the rule of law, national security laws can be instrumental in winning support for an expanded scope of state authority. China adopted the 1996 Martial Law in response to criticism of the decision in 1989 to declare martial law. The legislation allows the government to declare martial law and suspend a number of legal rights to restore order. It would be put to the test if the situation in Xinjiang deteriorates.

After the spate of attacks earlier this year, including the Kunming and Urumqi station attacks, the Higher People's Court of Xinjiang executed 13 people on terrorism charges. Others received delayed death penalties and lengthy prison terms. The aftermath of terror attacks in China, though not given much media attention in the United States, is an important part of Beijing's strategy. The announcement of indictments and punishments are important for China's push for political legitimacy through rule of law. Authorities in Xinjiang have also used sentencing rallies, where mass trials are conducted with thousands in the audience. In May 2014, [55 people were sentenced](#) ^[4] on charges of terrorism, separatism and murder. While this model of mass sentencing is undoubtedly a [show of force and political theatre](#) ^[5], there is also an element of demonstrating the law at work.

Political legitimacy is not the only reason for the passing and implementing of improved national security laws. Broad and ambiguous laws may allow for abuse under the guise of legality, but they also limit the effectiveness of security personnel. Since Chinese criminal law does not offer specific regulations on terrorism, terrorist acts are treated under the category of ordinary crime where criminal liability is based on the type of criminal action as opposed to terrorist intent. For example, threatening the government with violence is not considered a terrorist crime under the criminal law. Chinese legal analysts thus see the lack of clear and precise terrorism-specific legislation as detrimental to national security.

Specific legislation that grants special authority in counterterrorist activities allows security personnel to supersede restrictions imposed by ordinary criminal cases. After the [July 2009](#)

[incident in Urumqi](#) ^[6], the National People's Congress passed the People's Armed Police Law, giving the People's Armed Police greater authority to detain and investigate in order to handle riots, rebellions, terrorist attacks and other serious crimes. A national anti-terror law would potentially define responsibilities of different law enforcement agencies and also procedures for activating emergency measures.

Decentralisation of authority has also been an obstacle for effective, coordinated counterterrorism. Domestically, this concern was reflected recently in Xinjiang party chief Zhang Chunxian's [announcement](#) ^[7] that 'we will properly conduct our work in Xinjiang under the leadership of the National Security Commission'. The simultaneous [push for rule of law](#) ^[8] and the elevation of Xi Jinping as a visionary and charismatic leader are reconciled in the more encompassing drive to recentralise authority. The rule of law is another instrument to ensure that decisions made in Beijing are executed properly.

In this way China's war on terror is likely to be disciplined and so accrue legitimacy. It will also, importantly, be effective.

Kendrick Kuo is a China specialist pursuing graduate studies at the Johns Hopkins School of Advanced International Studies.

Article from the East Asia Forum: <http://www.eastasiaforum.org>

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[1] Uyghur professor Ilham Tohti:

<http://www.abc.net.au/news/2014-02-28/chinese-dissident-may-face-death-penalty-for-separatism-charges/5289644>

[2] faces mounting pressure:

<http://www.scmp.com/news/china/article/1447369/new-anti-terror-laws-must-protect-human-right-say-legal-experts>

[3] described terrorist activity:

http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402874_text

[4] 55 people were sentenced:

<http://www.npr.org/blogs/thetwo-way/2014/05/28/316721271/55-convicted-in-public-trial-in-chinas-northwest>

[5] show of force and political theatre: <http://www.bbc.com/news/world-asia-china-27600397>

[6] July 2009 incident in Urumqi:

<http://www.eastasiaforum.org/2009/09/17/xinjiang-riots-a-jaundiced-hacks-eye-view/>

[7] announcement:

<http://www.scmp.com/news/china/article/1442255/xinjiang-work-national-security-commission-curb-violence-zhang-chunxian>

[8] push for rule of law:

<http://www.eastasiaforum.org/2014/06/16/chinas-ethnic-policies-short-on-evidence/>