

REVIEWING A QUARTER CENTURY OF POLITICAL CRIME

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Amendments to China's criminal code transforming counterrevolutionary crimes into crimes against national security have prompted new trends in political prosecutions. In the analysis of one mainland legal expert, the reasons behind the trends are not necessarily what they seem.

China eliminated crimes of counterrevolution through amendment of its criminal code in 1997. Essentially the same crimes still exist, however, under China's current National Security Law and Public Security and Public Order Law, and prisoners previously convicted under counterrevolutionary crimes have not been released for reasons other than completing their original sentence of imprisonment.

The current National Security and Public Security laws are the result of a process that began long before and has continued well after amendments to the criminal code took effect in March 1997. Each stage in the legislative process has been accompanied by new prosecutorial trends to address current social movements.

The criminal code itself is of relatively recent vintage, promulgated on July 1, 1979. In May 1988 China introduced its Protection of State Secrets Law and drafted a revision to its criminal code that would have replaced crimes of counterrevolution with crimes endangering state security. However, due to the political upheavals of that time, the proposed amendments relating to counterrevolutionary crimes were temporarily abandoned. Instead, China implemented its laws on Protection of State Secrets and Publishing of State Secrets in 1990, and did not finish drafting its National Security Law until 1993.

Following adoption of the National Security Law through amendment to the criminal code in March 1997, the Supreme People's Court in January 1998 issued a notice regarding implementation: "All organizations must improve their political responsibility and take the initiative to collect and take notice of enemy powers and enemy elements carrying out subversive activities, espionage, theft of state secrets,

separatism and illegal religious activities. Serious cases should be reported to the Supreme People's Procuratorate."

China's Constitution was amended in March 1999 to reflect the replacement of counterrevolutionary crimes with National Security crimes. Further amendments to the criminal code were finalized on December 29, 2001 for the purpose of prohibiting terrorism, and "to protect the country and the people's life, economic safety, and social stability."

China's current National Security Law has divided the former Counterrevolutionary Crimes into three main categories:

- damaging state power (separatism, subversion, theft of state secrets);
- defection, turning traitor;
- espionage, assisting the enemy.

According to official figures, Chinese courts heard 771 cases involving National Security crimes from 1998-2000. The number of people arrested for such crimes during that period totalled more than 1,900, an increase of more than 500 over the previous period of 1986-1988. The procurator-general of the Supreme People's Procuratorate, Han Zhubin, said in his report to the 10th Party Congress in March this year that during the period 1988-2002 procuratorates across the country authorized the arrest of 3,402 criminal suspects and prosecuted 3,550 on charges of crimes against state security.

Fu Hualing, a Chinese legal scholar currently teaching in Hong Kong University's Faculty of Law, noted in a recent briefing for Hong Kong human rights organizations that some commentators believe the conversion of counterrevolutionary crimes to national security crimes has made prosecutions easier, as it is no longer necessary to demonstrate a political motivation to the alleged crime. However, Professor Fu believes the change has not been significant in practice, as previous prosecutions for counterrevolutionary crimes placed very little reliance on evidence of counterrevolutionary intent.

Professor Fu noted that codification of counterrevolutionary crimes through promulgation of the criminal law in 1979 was actually a step forward, since in the years 1968-1979 almost any crime could be construed as a political crime. But for all that this codification represented progress toward rule of law, implementation has remained closely tied to ongoing political trends.

Prosecutions for counterrevolutionary crimes in the years 1979-1989 were largely in response to democratic movements triggered by the Democracy Wall movement during that period, Professor Fu observed. "Counterrevolutionary propaganda" was the most common charge at that time, even though the writings and pronouncements of such political prisoners as Wei Jingsheng merely called for reform rather than voicing any strong opposition to the government. The other main category targeted was people voicing opposition to the new economic reforms that they saw as a threat to their livelihood under the socialist system. These dissidents were almost always individuals without any formal organization.

When the student opposition movement first began to gear up in 1986, the government, which was undergoing political reform under such leaders as Zhao Zhiyang and Hu Yaobang, arrested few student dissidents. But the protests in Tiananmen Square and elsewhere in mid-June 1989 set off another rash of counterrevolutionary arrests, most of which fell under the crime of subversion.

Professor Fu believed the shift from counterrevolutionary propaganda to subversion occurred largely due to two factors:

- 1) By 1990 the Chinese authorities were tolerating more freedom of expression, and people felt free to criticize the government in their homes. For that reason, arrests for counterrevolutionary propaganda decreased substantially.
- 2) China was establishing rule of law, which brought with it an emphasis on acts rather than merely speech, making subversion preferred as a more substantial crime than propaganda.

Another important factor, Professor Fu believed, was that counterrevolutionary propaganda did not carry the death penalty, but subversion did. For that reason the courts tended to hand down convictions for subversion against activists engaged in pro-democracy propaganda.

Now there are signs that subversion is losing its place as the preferred prosecutorial tool for political crime, Professor Fu observes. As a counterrevolutionary crime subversion was positioned second only to treason; now under China's post-1997 National Security Law it ranks fourth after treason, separatism and armed rebellion.

Professor Fu believes that in the first decade of the new century, the prosecutorial emphasis on subversion will gradually shift to crimes such as separatism, theft of state secrets and espionage, in response to rising oppositional activity coupled with increasing use of resources from the outside world. Professor Fu anticipates that authorities will place particular emphasis on these crimes and terrorism in minority areas such as Tibet and Xinjiang that enjoy substantial support outside of China.

Professor Fu observed that in one prison in Guangdong province, out of 10,000 prisoners, 17 had been convicted of National Security crimes after 1997 – and 13 of those were convicted of espionage or procuring state secrets for outside organizations. These crimes under National Security law don't require identification of a state secret, but simply proof that "intelligence" was provided to an outside agency.

Professor Fu further noted the "downgrading" of religious crime from a counterrevolutionary political crime to a crime of public order in the 1997 amendments. He did not see this as a softening of the government's stance, however, but only as a smarter approach to the problem of unauthorized religious groups. Prosecuting religious dissidents under political crimes only raised stronger support for them within society and internationally. By prosecuting participants of unauthorized religious groups for crimes such as fraud and illicit sex, the authorities degrade their activity from counterrevolution to counterculture and deprived the groups of their moral advantage.

Future trends in prosecutions will arise in response to increasing political discussion and activism, Professor Fu believes. The Tiananmen Mothers bringing a lawsuit against Li Peng is something that would have been unimaginable in China ten years ago, Professor Fu noted. But it is possible that if an increase in non-violent opposition is seen to be ineffective, it may be followed by more extreme methods such as organization of new opposition parties, and this will set the tone for future prosecutorial trends in political crime.

Following is a chart comparing the changes that took effect when counterrevolutionary crimes were replaced with crimes of National Security and Public Security.

NATIONAL SECURITY CRIMES REPLACING COUNTERREVOLUTIONARY CRIMES		
Crime	Counterrevolutionary Crime	National Security Crime
Collusion	Article 91. Colluding with foreign states in plotting to harm the sovereignty, territorial integrity and security of the motherland.	Article 102. Extends criminality to collusion with institutions, organization, or individuals outside the country. Sentence: life imprisonment or not less than ten years of fixed-term imprisonment.
Separatism, Inciting Separatism	Article 91. Colluding with foreign states in plotting to harm the sovereignty, territorial integrity and security of the motherland.	Article 103. Organizing, plotting, acting or instigating to split the country or undermine national unification. Sentence: ringleader - life imprisonment or not less than ten years of fixed-term imprisonment; active participants - 3 to 10 years imprisonment; others - up to three years of imprisonment; instigator - five years imprisonment.

Crime	Counterrevolutionary Crime	National Security Crime
Armed Rebellions, Armed Riots	Article 95. Leading or actively participating in armed mass rebellion. Article 93. Instigating, luring or bribing state personnel, members of the armed forces, people's police or people's militia to defect to the enemy and turn traitor or to rise in rebellion.	Article 104. Organizing, scheming or carrying out armed rebellion or armed riots. Instigating, coercing, luring and bribing state personnel, members of the armed forces, people's police or people's militia to carry out armed rebellion or armed riot. Revised law allows shorter sentences of three years or less for minor participants.
Defection & Turning Traitor	Article 94. Defecting to the enemy and turning traitor, leading members of the armed forces, police or militia to defect and turn traitor. Article 93. Instigating, luring or bribing state personnel, members of the armed forces, people's police or people's militia to defect to the enemy and turn traitor or to rise in rebellion.	Article 108. Defecting to the enemy and turning traitor. Penalty reduced to ten years imprisonment, or life in serious cases involving military or police officers. Article 109. A state employee leaves his post without authorization while on public service and defects from the country; or defects when outside the country, thereby endangering the PRC's national security. Sentence: 5-10 years imprisonment, or heavier if defecting with state secrets.
Subverting State Power, Inciting Subversion of State Power	Article 90. Acting to overthrow the political power of the dictatorship of the proletariat and the socialist system. Article 92. Plotting to subvert the government or dismember the state. Article 98. Organizing, leading, or actively participating in a counterrevolutionary group. Article 102. Inciting the overthrow of the state power through counterrevolutionary propaganda.	Article 105. Organizing, scheming or acting to subvert the political power of the state and overthrow the socialist system. Expands definition of propaganda to "spreading rumors, slandering or other ways." Death penalty is removed for this offense, which now carries maximum sentence of life imprisonment.
Foreign collusion in Separatism, Armed Rebellion, Subversion	Nothing comparable	Article 106. Collusion with institutions, organizations, or individuals outside the country to commit crimes stipulated in Articles 103, 104 and 105 of this chapter will be more heavily punished.
Financial support for Collusion, Separatism, Armed Rebellion, Subversion.	Nothing comparable	Article 107. Institutions, organizations, or individuals inside or outside of China providing financial support for organizations or individuals in China to commit the crimes stipulated in Articles 102, 103, 104 and 105. Sentence: 5 years imprisonment for persons with direct responsibility.
Espionage	Article 97. Secretly gathering or providing intelligence for an enemy; supplying arms and ammunition or other military materials to an enemy, or taking part in a secret service or espionage organization or accepting a mission assigned by an enemy.	Article 110. Joining an espionage organization or accepting a mission assigned by it or its agent; or pointing out bombing or shelling targets to the enemy. Sentence: 10 years - life; 3-10 years for minor cases.
Procuring State Secrets for Outside Organizations	Article 97; State Secrets Law, Article 32	Article 111. Stealing, secretly gathering, purchasing or illegally providing state secrets or intelligence for an organization, institution or person outside the country. Inclusion of "intelligence" expands scope of materials covered under State Secrets Law. Sentence: 5-10 years, 10 years-life for serious cases.

Crime	Counterrevolutionary Crime	National Security Crime
Assisting the Enemy	Article 97.	Article 112. Supplying arms and ammunition or other military materials to an enemy during war time. Sentence: 10 years - life; 3-10 years for minor cases.
Application of death penalty and confiscation of property	Article 103. Whoever commits any of the crimes of counterrevolution, except those in Articles 98, 99 and 102, may be sentenced to death when the harm to the state and the people is especially serious and the circumstances especially odious. Article 104. Whoever commits any of the crimes of counterrevolution may in addition be sentenced to confiscation of property.	Article 113. Death penalty is not applied in cases of separatism, defection of state employee, subversion or financial support for National Security crimes. As with Counterrevolutionary crimes, the death penalty is still applicable to other National Security Crimes where the circumstances are "particularly vile" and harmful to the country and the people. Confiscation of property may also still be imposed.

PUBLIC SECURITY AND PUBLIC ORDER CRIMES REPLACING COUNTERREVOLUTIONARY CRIMES		
Crime	Counterrevolutionary Crime	Public Security Crime
Using religion to break down social order or commit fraud	Article 99. Organizing or using feudal superstition or superstitious sects and secret societies to carry on counterrevolutionary activities.	Article 300. Organizing and utilizing superstitious sects, secret societies, and evil religious organizations to commit the following acts: Sabotaging the implementation of the state's laws and executive regulations; Cheating others and thereby giving rise to the death of people; Having illicit sexual relations with women, defrauding money and property by utilizing superstition. Downgraded from National Security to Public Security crime.
Stealing state secrets for internal circulation		Article 282. Illegally acquiring state secrets; possessing secret documents or information and refusing to state their origins or use. Separated from "procuring state secrets for use outside of China" and downgraded to Public Security Crime.
Destruction or disruption of public facilities, hijacking, illegal arms trade	Article 101. For the purpose of counterrevolution spreads poisons, disseminates germs or by other means kills or injures people. Article 100. For the purpose of counterrevolution: destruction of military or public facilities; robbery from state or public property; hijacking; identifies bombing targets to the enemy; manufactures, seizes or steals guns or ammunition.	Article 114, 115. Endangering life and public security through poisoning or through negligence or sabotage to public or private property. Article 116-199. Sabotage of public transport or utilities. Article 121-123. Hijacking. Article 124. Sabotage of telecommunications facilities. Articles 125-130. Illegal manufacture, trade, possession, or transport of weapons. Downgraded from National Security to Public Security crime.
Terrorism	Articles 100 and 101 do not specifically mention organized activity.	Article 120. Organizing, leading or actively participates in a terrorist organization, or committing murder, explosion, or kidnapping while participating in a terrorist organization.
Mass prison raid	Article 96. Leading or organizing a mass prison raid or jailbreak.	Article 317. Organizing or participating in an attempt or riot to escape from a prison or assembling a crowd to open a prison with tools. Downgraded from National Security to Public Security crime.

Sources for chart: HRIC and Human Rights Watch, "Whose Security? 'State Security' in China's New Criminal Code," April 1997; Chinalaw Web site, "Laws and Regulations of the PRC" (<http://www.qis.net/chinalaw/prclaw10.htm>)