

# CHINA'S NEW COUNTERTERRORISM LEGAL FRAMEWORK IN THE POST-2001 ERA: LEGAL DEVELOPMENT, PENAL CHANGE, AND POLITICAL LEGITIMACY

Enshen Li\*

*Since 2001, terrorism has become a frightening phenomenon, posing major threats to the stability, peace, and security of China. Although much research has been undertaken to understand China's social and public policies of terrorism, little attention has been drawn toward the state's legal response to this emerging threat. This article aims to explore a new legal framework against terrorism the Chinese government has adopted over the last decade or so. It examines the development, formation, and functionality of this mechanism within the context of the state's new political agenda of maintaining social harmony and stability. By assessing the rhetorical and practical changes in China's recent counterterrorism strategies, it concludes that China has begun to implement more punitive laws and punishments to combat terrorism in the post-2001 era than in the reform era (1980s–1990s). This increased level of punitiveness is pursued by countless legislative amendments to criminalize a new suite of terrorist offenses, the expansion of police powers to investigate terrorism and the intensification of punishment and sentencing on terrorist offenders.*

**Keywords:** *China, terrorism, criminalization, punishment, police power*

---

\*Enshen Li is an associate lecturer at the TC Beirne School of Law, University of Queensland. He received his SJD from Latrobe University and PhD in criminology from the University of Queensland. His research interests lie in the fields of comparative criminal justice, theoretical criminology, and socio-legal study of punishment and society. This research is funded by the Early Career Researcher Grant from the University of Queensland. Unless otherwise noted, all translations are his own.

---

*New Criminal Law Review*, Vol. 19, Number 3, pps 344–381. ISSN 1933-4192, electronic ISSN 1933-4206. © 2016 by The Regents of the University of California. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: 10.1525/nclr.2016.19.3.344.

## INTRODUCTION

Over the past few decades, terrorism has become a frightening phenomenon, posing major threats to the stability, peace, and security of the international community.<sup>1</sup> The 9/11 attacks represented one of the most deadly terrorist attacks in recent history, and marked an escalating trend toward the globalization of terrorism and more destructive terrorist attacks on governments and civilians.<sup>2</sup> It is demonstrated by a series of large-scale terrorist attacks that have taken place worldwide following the 9/11 incident, including the one against the commuter train system of Madrid in 2004,<sup>3</sup> the suicide bomb attacks in London in 2005,<sup>4</sup> the hijacking of hostages in Sydney in 2014,<sup>5</sup> and more recently the suicide bombing and gun-shooting attacks in Paris in 2015.<sup>6</sup> These attacks resulted in major fatalities and have provided ongoing evidence that terrorism is a common problem faced by many societies in spite of their political, economic, and cultural divergences.

China is not immune from transnational terrorism.<sup>7</sup> Like many Western countries, China had limited experience with domestic or international

---

1. Jacqueline Carberry, *Terrorism: A Global Phenomenon Mandating a Unified International Response*, 6(2) *IND. J. GLOBAL LEGAL STUD.* 685, 686 (1999); JAMES LUTZ & BRENDA LUTZ, *GLOBAL TERRORISM I* (2008); DAVID WHITTAKER, *TERRORISM: UNDERSTANDING THE GLOBAL THREAT II* (2013).

2. Walter Enders & Todd Sandler, *After 9/11: Is It All Different Now?* 49 (2) *J. CONFLICT RESOL.* 259, 260 (2005).

3. On March 11, 2004, the Madrid train bombings occurred three days before Spain's general election. This incident killed 191 people and injured more than 1,800.

4. On July 7, 2005, a series of suicide bomb attacks occurred in Central London targeting innocent civilians who used the public train service. This incident killed 52 people and injured more than 700.

5. On December 15, 2014, a gunman held hostage 18 people, including customers and employees of a café restaurant in Sydney. This 16-hour hostage crisis led to the death of 3 people including the gunman himself.

6. On November 13, 2015, a series of coordinated terrorist attacks occurred in Paris. Suicide bombings and mass shootings in this incident killed approximately 140 people and injured about 400.

7. It is important to note that an official definition of "terrorism" was not provided until 2015, when the Counter-Terrorism Law was enacted by the Standing Committee of the National People's Congress. This new law defines terrorism as "any proposition or activity—by means of violence, sabotage or threat—[that] generates social panic, undermines public security, infringes on personal and property rights, and menaces government organs and international organizations with the aim to realize certain political and ideological purposes."

terrorism before the 1980s.<sup>8</sup> Over the past three decades, terrorist incidents in China have occurred with increasing frequency as the result of the religious and ethnic conflicts between Uyghurs (residing mostly in Xinjiang Uyghur Autonomous Region) and Han Chinese (the ethnic majority in China).<sup>9</sup> Starting as small-scale protests and demonstrations involving violence, these actions have escalated into serious terrorist attacks in Xinjiang, causing considerable casualties in the ten years from 1990 to 2001.<sup>10</sup>

The level of violence in Xinjiang has increased considerably since 2001. Evidence shows that ethnic separatists and religious extremists,<sup>11</sup> associated with the East Turkistan Islamic Movement (ETIM), an internationally recognized terrorist organization, have carried out more than 200 violent attacks in the last ten years in Xinjiang.<sup>12</sup> In the meantime, China has witnessed a wave of terrorist attacks hitting the areas outside Xinjiang. Some large cities, such as Beijing, Kunming, and Guangzhou, have become the new targets of terrorism.<sup>13</sup> The incident in Beijing's Tiananmen Square,<sup>14</sup> followed by knife-wielding attacks in Kunming and Guangzhou,

---

8. Philip Potter, *Terrorism in China—Growing Threats with Global Implications*, 7(4) STRATEGIC STUD. Q. 70, 71 (2013).

9. For a list of major violent incidents in Xinjiang, see Liza Steele & Raymond Kuo, *Terrorism in Xinjiang?* 6(1) ETHNOPOLITICS 1–19 (2007).

10. Marika Vicziany, *State Responses to Islamic Terrorism in Western China and Their Impact on South Asia*, 12(2) CONTEMP. S. ASIA 243, 244 (2003). It is documented that a campaign of bombing and assassinations initiated by ethnic separatists and religious extremists resulted in approximately 160 deaths and 440 people injured from 1990 to 2001. See Nicolas Becquelin, *Criminalizing Ethnicity: Political Repression in Xinjiang*, 39(1) CHINA RTS. F. I, I (2004).

11. Ethnic separatists, religious extremists, and terrorists are characterized by the Chinese government as the “three evils” responsible for terrorist acts in China. See Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of Shanghai Cooperation Organization* (White Paper, March 2011), [http://www.hrichina.org/sites/default/files/publication\\_pdfs/2011-hric-sco-whitepaper-full.pdf](http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf).

12. Justine Drennan, *Is China Making Its Own Terrorism Problem Worse?* FOREIGN POL'Y, Feb. 9, 2015, <http://foreignpolicy.com/2015/02/09/is-china-making-its-own-terrorism-problem-worse-uyghurs-islamic-state/>.

13. Mark Julienne, Moritz Rudolf, & Johannes Buckow, *Beyond Doubt: The Changing Face of Terrorism in China*, THE DIPLOMAT, May 28, 2015, <http://thediplomat.com/2015/05/beyond-doubt-the-changing-face-of-terrorism-in-china/>.

14. In October 2013, several Uyghur extremists drove a jeep loaded with explosives and crashed into a group of tourists in Beijing Tiananmen Square. This incident killed five people including two tourists. See Emily Rauhala, “*Terror*” in *Tiananmen Square: Beijing*

has alerted the government that a geographical expansion of terrorism has occurred across the country with increased frequency and severity.<sup>15</sup>

What is China's response to the rise of terrorism on its soil? Some scholars claim that the Chinese government's main strategy of countering terrorism before 2001 had been *punitive*.<sup>16</sup> Driven by the state's enactment of the Strike Hard campaigns to combat crime in the reform era (1980s–1990s),<sup>17</sup> punitiveness was relied upon heavily as the primary strategy to maintain public order in Xingjiang.<sup>18</sup> Repressive measures including arbitrary arrests, public sentencing, swift adjudication, and harsh punishment were employed by law enforcement agencies to generate the deterrent effect and to educate the public that terrorism was intolerable in Chinese society.<sup>19</sup>

Punitiveness is a criminological concept of assessing punishment, which can be understood in various ways from many different perspectives. For example, Cohen claims that punitiveness is “characterized by coercion, formalism, moralism and the infliction of pain on individual legal

---

*Police Nab 5 Suspects*, TIME, Oct. 30, 2013, <http://world.time.com/2013/10/30/terror-in-tiananmen-square-beijing-police-nab-5-suspects/> (last visited Mar. 30, 2016).

15. In March 2014, a knife-wielding gang from Xinjiang attacked the Kunming railway station. Described as an “act of terrorism” undertaken by Xinjiang separatist forces, this insurgency killed 31 innocent civilians with more than 140 others injured. Two months later, two members of the Uyghur ethnic minority armed with knives launched a rush hour attack outside the main train station of Guangzhou, the capital of Guangdong. Nine people were injured in this “separatism-driven” action. See Dan Bloom & Kieran Corcoran, *Chinese Authorities Say Two Women Were Part of Knife-Wielding Terror Gang which Left At Least 33 Dead and 143 Wounded after Attacking A Train Station in China*, DAILY MAIL, Mar. 1, 2014, <http://www.dailymail.co.uk/news/article-2570996/At-27-dead-109-injured-gang-knife-wielding-men-attack-train-station-China.html>; Barry Nield, *Kunming Rail Station Attack: China Horrified as Mass Stabbings Leave Dozens Dead*, THE GUARDIAN, Mar. 2, 2014, <http://www.theguardian.com/world/2014/mar/02/china-mass-stabbings-yunnan-kunming-rail-station>.

16. Elizabeth David, *Uyghur Muslim Ethnic Separatism in Xinjiang*, 35(1) ASIAN AFF.: AM. REV. 15, 16 (2008); Martin Wayne, *Inside China's War on Terrorism*, 18(59) J. CONTEMP. CHINA 249, 249–50 (2009); Becquelin, *supra* note 10, at 1. Vicziany, *supra* note 10, at 245; Steele & Kuo, *supra* note 9, at 11–12.

17. During the reform period, three nationwide strike-hard campaigns were initiated in 1983, 1996, and 2001, respectively, with numerous small-scale campaigns launched at the local level.

18. Michael Clarke, *Widening the Net: China's Anti-Terror Laws and Human Rights in the Xinjiang Uyghur Autonomous Region*, 14(4) INT'L. J. HUM. RTS. 542, 545 (2010).

19. Becquelin, *supra* note 10, at 1.

subjects.”<sup>20</sup> A more commonly recognized ideal of punitiveness is perceived by Matthews, who stresses that the term “punitiveness” refers to connotations of excess—that is, “the pursuit of punishment over and above that which is necessary or appropriate.”<sup>21</sup> Although this aspect of definition is challenged by the fact that normative expectation and public sensibilities related to punishment are constantly changing, the notion of punitiveness suggests a disproportionate use of sanctions and consequently a deviation from the principle of proportionality. In this article, the concept of punitiveness will apply to both laws and punishments in the field of counterterrorism, because counterterrorism legislation and its derivative sanctions should not be considered separately, but seen as related processes to collectively form the legal framework against terrorism. Drawing upon the general understanding of punitiveness, this article perceives punitiveness as the intensification of laws and punishments, both through extending the duration of sentencing in law and increasing the severity of punishment in practice.<sup>22</sup>

How and why has punitiveness continued to be the leading philosophy of dealing with terrorism in post-2001 China? This article will investigate the development, formation, and functionality of a new counterterrorism legal framework adopted by the Chinese government over the last decade. In this article, two questions will be specifically addressed: (1) Has the Strike Hard form of justice dominating the reform era remained the prevailing ideology that influences China’s counterterrorism laws and practices after 2001? (2) If not, how has China adjusted its legal and penal strategies in response to the growing threats posed by more visible and serious terrorism in its territory?

By assessing the rhetorical and practical changes in China’s counterterrorism legal strategy, this article contends that a more punitive counterterrorism legal framework has taken shape in the post-2001 period. More specifically, harsher laws and sanctions have been implemented in the new

---

20. Rogue Matthews, *The Myth of Punitiveness*, 9(2) THEORETICAL CRIMINOLOGY 175, 178 (2005).

21. *Id.* at 179.

22. In many versions of the “punitiveness theories,” the indicator of punitiveness in legal and penal practice has been the incarceration rate or the number of incarcerated inmates. However, in China the access to empirical data on imprisonment is largely limited. This limitation also applies to the scholarly literature, in which statistical resources are basically drawn from the official materials. Therefore, in this article punitiveness is mainly measured by examining policy and practical changes in law and penalty against terrorism at the different historical stages.

era, demonstrated by the criminalization of a new suite of terrorist offenses, the expansion of police powers to investigate terrorism, and the intensification of sentencing on terrorist criminals.

In the past fifteen years, the Chinese government has made strong legislative efforts to extend the scope of counterterrorism laws. Immediately after 9/11, legislatures moved to incorporate a wide range of terrorism-related acts as crimes in the criminal laws and the Counter-Terrorism Law, China's first comprehensive antiterrorism legislation enacted in November 2015. In the meantime, the police have been afforded a great deal of discretionary power to handle terrorism cases, whereas the procedural rights of terrorist suspects are largely limited, if not entirely deprived. These expanded police powers have facilitated an extensive scope of police practices, ranging from preemption of terrorist acts to investigation of terrorist suspects. In punishment, the new counterterrorism mechanism has inherited a high degree of punitiveness from the penal strategy in the Strike Hard era. However, it is more draconian than the campaign-style justice in that harsher sentencing is now imposed in a more legitimate manner, with solid legislative grounds and justified by the state's urgent need to preserve "social harmony and stability."

This article proceeds as follows. It first outlines the rise of terrorism in China and the legal measures by which the Chinese government dealt with this threat in the reform era. It then examines the development of a new counterterrorism legal framework in China's post-2001 period. In particular, the article assesses the recent legislative changes to understand the extent to which counterterrorism laws and policies (including the most recently enacted Counter-Terrorism Law) have been hardened to criminalize terrorism-related acts. It goes on to explore how and why the police are given greater discretion in their practices of investigating and preempting terrorist acts. This article further examines the sentencing and punishment of terrorist defendants to understand the penal transformation in the arena of counterterrorism over the last fifteen years in China.

## **I. TERRORISM IN PRE-2001 CHINA AND THE "STRIKE HARD" STRATEGY**

Terrorism in China became a public concern in the late 1980s. Unlike most Western societies where the entire nation is the target of terrorism (e.g., the United Kingdom), the threat of terrorism in China has been largely limited

to Xinjiang, China's northwestern province where the majority population is Muslim Uyghurs with a sizable group of Han Chinese. In Beijing's parlance, terrorism constitutes one of "three evils," together with extremism and separatism, that are all interconnected threats to China's national security and regional stability.<sup>23</sup> From the mid-1950s, the cultural and religious incompatibility between Uyghurs and Han Chinese has created widespread tension among them. Driven by the grievances over the cultural "invasion" by Han Chinese,<sup>24</sup> some Uyghurs, for the first time, viewed violence as a legitimate avenue through which they can express their anger against Chinese policy toward Muslims in this region.<sup>25</sup> In addition to religious extremism, demands for separation and/or autonomy—namely, separatism—was another root cause of violence in Xinjiang. Culturally leaning toward Central Asian, the Uyghur people have had a long struggle for self-determination and sought independence from mainland China. Evidence shows that from 1990 to 2000, there were about 200 violent incidents initiated by religious extremists and ethnic separatists, resulting in approximately 160 deaths and 400 injuries in this area.<sup>26</sup> Although terrorist violence remained limited in scope and largely confined to Xinjiang during the 1980s and 1990s,<sup>27</sup> it has begun to take shape with very recognizable characteristics that are different from that experienced by its Western counterparts. Three features stand out.

First, terrorist violence in Xinjiang often targeted governmental officials and institutions to incite political response among sympathizers.<sup>28</sup> Apart from the killings of innocent civilians, a large number of terrorist acts were associated with murder of local Party leaders and destruction of

---

23. Chung Chien-peng, *Confronting Terrorism and Other Evils in China: All Quiet on the Western Front?* 4(2) CHINA & EURASIA F.Q. 75, 77 (2006).

24. Cultural "invasion" includes the use of Mandarin Chinese in the education system, limitations on religious authorities and practices, and propagating social norms and standards of Han Chinese. See Potter, *supra* note 8, at 71–72.

25. Steele & Kuo, *supra* note 9, 3.

26. Chen Lan, *1990–2007: Seventy Years of Counterattacking East Turkistan Islamic Movement in China [1990–2007: Zhongguo Fanji Dongtu 17 Nian]*, SOUTH WEEKLY [NANFANG ZHOUMO], Mar. 3, 2014, [http://www.guancha.cn/NanFangZhouMo/2014\\_03\\_03\\_210459.shtml](http://www.guancha.cn/NanFangZhouMo/2014_03_03_210459.shtml).

27. Potter, *supra* note 8, at 72.

28. Hu Pin, *Terrorism in China with Six Chinese Characteristics [Zhongguo Tese Kongbu Zhuyi de Liuda Tese]*, 137 HUM. RTS. CHINA (2015), <http://www.hrichina.org/chs/ren-quan-lun-tan/zhong-guo-te-se-kong-bu-zhu-yi-de-liu-da-te-se>.

infrastructural facilities.<sup>29</sup> For example, in 1996, 22 Uyghur terrorists plotted to assassinate 24 Party cadres and religious elites to incite a large-scale riot in Xinjiang.<sup>30</sup> They managed to severely injure one of the prestigious Muslim imams and his son before they were arrested by local police.<sup>31</sup> Second, terrorist acts prior to 2001 were mostly random, disorganized, and locally driven. In Urumqi and other cities of Xinjiang, the majority of violent incidents were initiated by individual Uyghurs without being carefully coordinated or orchestrated by terrorist organizations. In many cases, culprits were instigated by publications of religious and ethnical extremism, and blindly chose the target to attack.<sup>32</sup> Before 2001, terrorist organizations had not formed a substantial force to systematically lead insurgency in Xinjiang, despite the fact that ETIM had begun to take root in this region in the early 1990s. Third, different from the advanced form of terrorist attacks in the West (e.g., bombings), Uyghur terrorists often used crude tools such as axes, knives, and oil drums to cause violence.<sup>33</sup> It is largely because the Chinese government has a long-existing policy of banning personal possession of weapons of destruction (e.g., guns) and allowing police to routinely search private dwellings for dangerous items.<sup>34</sup> As a result, civilian casualties in terrorist acts prior to 2001 were relatively low, and in many cases, terrorists suffered more fatalities than victims due to the prompt involvement of public security organs.<sup>35</sup>

What was China's legal response to the emergence of terrorism in pre-2001 China? It is observed that throughout the 1990s, the Chinese authorities instituted a series of "Strike Hard campaigns in Xinjiang, focusing on accelerating arrests, trials, and sentencing of Uyghur terrorists, extremists, and separatists."<sup>36</sup> This heavy-handed measure was not a provisional strategy singularly applied to insurgency in Xinjiang. Rather, it was intentionally

---

29. JAMES MILLWARD, *VIOLENT SEPARATISM IN XINJIANG: A CRITICAL ASSESSMENT*, viii (2004).

30. Chen, *supra* note 26.

31. *Id.*

32. Hu, *supra* note 28.

33. *Id.*

34. *Id.*

35. *Id.*

36. Michael Clarke, *China's "War on Terror" in Xinjiang: Human Security and the Causes of Violent Uighur Separatism*, Griffith Asia Institute, Regional Outlook Paper No. 11 (2007), 1, 9, [https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0005/18239/regional-outlook-volume-11.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0005/18239/regional-outlook-volume-11.pdf).

implemented to punish and deter terrorism commensurate with the state's inclination of employing harshness and swiftness to curb crime during the reform period.

Directly initiated by Deng Xiaoping, Strike Hard was a particular type of nationwide anticrime campaign dealing with outbreaks of crime or worrying crime trends in which the police, the procuratorate, and the courts collaborated to handle criminal cases for a specified period of time.<sup>37</sup> Strike Hard was the policy of imposing harsh punishment in a swift manner on criminals who jeopardize public security and social order, such as criminal gang members, kidnappers, murderers, armed robbers, habitual thieves, drug traffickers, and prostitutes.<sup>38</sup> During the crackdowns, harsh punishments such as death penalty and life sentence were often used with little regard to the principle of proportionality and procedural justice.<sup>39</sup> At the same time, substantially stiffer fixed-term sentences were imposed on those who had committed minor offenses.<sup>40</sup> In each campaign, it is not uncommon that the heightened punishment was imposed by the courts on specific campaign targets to reflect the sentencing strategy of severity.<sup>41</sup> Draconian sentencing was rendered faster than the procedures set out in the criminal procedure laws. Law enforcement agencies were required to speed up the criminal procedure to deal with targeted criminals in a timely manner, often within two weeks of their arrest.<sup>42</sup> The police completed their investigations within a short period, and the criminal cases were tried even faster through the judicial process.<sup>43</sup>

---

37. Susan Trevaskes, *Severe and Swift Justice in China*, 7 BRIT. J. CRIMINOLOGY 23, 24 (2007).

38. *Id.* at 23.

39. Bin Liang, *Severe Strike in Campaign in Transitional China*, 33 J. CRIM JUST. 387, 392 (2005). For example, the estimated number of death sentences and executions were 6,000 in 1996 and 4,015 in 2001. The figures of the years from 1995 to 2003 other than 1996 and 2001 were around 1,500. For detailed information about death sentences and executions in the Anti-Crime Campaigns, see AMNESTY INTERNATIONAL, DEATH PENALTY 3 (1996); and AMNESTY INTERNATIONAL, ANNUAL REPORT ON CHINA (1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004).

40. HAROLD TANNER, STRIKE HARD! ANTI-CRIME CAMPAIGNS AND CHINESE CRIMINAL JUSTICE 1979–1985, 45 (1999).

41. *Id.*

42. Trevaskes, *supra* note 37, at 24.

43. Fan Fenglin, *The Study of "Strike Hard" Policy [Lun Yanda Zhengce]*, 4 POLICING STUDIES [GONG'AN JANJIU] 65, 68 (2003).

Although Strike Hard campaigns were carried out principally by law enforcement agencies, they functioned as a dictatorial action to restore public order and maintain the political legitimacy of the Party.<sup>44</sup> This perception was a continuation of the regime's penal philosophy of the people's democratic dictatorship established and developed by Mao Zedong. In the climate of political struggle that dominated the country prior to 1978, "class foes" became the most common and principal target of China's criminal justice system. Harsh sentencing was frequently imposed on political criminals in light of their "antirevolutionary" character, compared to non-antagonistic offenders.<sup>45</sup> In the reform era, this approach has largely formed the theoretical basis of the Strike Hard campaign. In response to the legal authorities' concern over the reinvigoration of dictatorial penal patterns that swept the Maoist society, Deng specified that "in the Strike Hard campaigns, handling serious crimes was to solve the contradictions between the people and the enemy."<sup>46</sup> As such, it is correct and imperative to use the Party's dictatorial strength in the harsh and swift handling of criminals to safeguard the country's social order.<sup>47</sup> Deng's ideal of relying on the Strike Hard campaigns to realize people's dictatorial democracy has been continued by subsequent Party leaders, such as Jiang Zeming, who launched the 1996 and 2001 Strike Hard movements to reassure "the public that the enemies would always be suppressed by the state's enforcement bodies (police and armies) and the people would be well protected."<sup>48</sup>

In this context, campaign-style crackdowns were implemented in Xinjiang as a regular approach against what were termed "violent terrorists," "national separatists," and "illegal religious extremists"—the enemies of the state.<sup>49</sup> From the late 1980s to the early 2000s, the authorities had waged a series of province-wide anticrime campaigns to address terrorism in this Western region.<sup>50</sup> During this period, "several hundred terrorists" were

44. Børge Bakken, *China, A Punitive Society?* 6 ASIAN J. CRIMINOLOGY 33, 44 (2001).

45. For a detailed account of the administration of criminal justice in Maoist political struggles, see LENG SHAO-CHUAN & CHIU HUNGDAH, *CRIMINAL JUSTICE IN POST-MAO CHINA: ANALYSIS AND DOCUMENTS* (1985).

46. 2 DENG XIAOPING, *SELECTED WORKS* 371 (1994).

47. *Id.*

48. JIANG ZEMING, *SELECTED WORKS* 180 (2006).

49. Clarke, *supra* note 36, at 17.

50. For example, the 1996 "Strike Hard" campaign targeted "separatism and illegal religious activities." In 1997, the campaign targeted "rectification of social order." In 1998,

arrested, summarily tried, and harshly punished by local authorities.<sup>51</sup> In these campaigns, the police were required to arrest those suspected of acts associated with terrorism, separatism, and extremism under the principle known as “two basics,” basic truth and basic evidence.<sup>52</sup> As long as the basic truth is clear and the basic evidence is verified, the procuratorates promptly prosecuted suspects and courts expedited the judicial process.<sup>53</sup> Although it lacked official statistical information on the exact number of executed Uyghurs or the general inmate population of Xinjiang,<sup>54</sup> it is believed that thousands of Uyghurs were detained (under both criminal and administrative custodial measures) on suspicion of terrorism-related offenses, of which a large number were sentenced to lengthy imprisonment or executed.<sup>55</sup> For example, the *China Death Penalty Log* published by Amnesty International provides a rough index of the executions of Uyghurs for terrorism, separatism, and/or extremism in 1997, 1998, and 1999. Evidence indicates that in these three years, Uyghurs executed for terrorist crimes accounted for 3.5, 1.27, and 4.43 of all executions, respectively, which exceeded the proportion of Uyghurs in the population of China (less than 1 percent).<sup>56</sup>

Severe punishments were imposed on alleged terrorists, separatists, and extremists,<sup>57</sup> but the legal grounds on which this harsh justice was employed

---

“People’s War” was initiated against “separatists and religious extremists.” In 1999, “special 100 days strike hard fight” and “general campaign against terrorism” were initiated. In 2000, “focused rectification of religious places campaign” was initiated. In 2001, two-year “Strike Hard” campaign was launched with the rest of China to combat crime. For detailed information, see HUMAN RIGHTS WATCH, DEVASTATING BLOWS: RELIGIOUS REPRESSION OF UIGHURS IN XINJIANG 67 (2005).

51. *Id.* at 70.

52. *Id.* at 67.

53. PITMAN POTTER, LAW, POLICY & PRACTICE ON CHINA’S PERIPHERY: SELECTIVE ADAPTATION AND INSTITUTIONAL CAPACITY 45 (2011).

54. The Chinese government considers the numbers of executions and inmates in Xinjiang as state secrets, and such information is inaccessible to the international community.

55. HUMAN RIGHTS WATCH, *supra* note 50, at 67–72; Dana Boehm, *China’s Failed War on Terror, Fanning the Flames of Uighur Separatist Violence*, 2 BERKELEY J. MIDDLE E. & ISLAMIC L. 61, 64 (2009).

56. For a detailed account, see Amnesty International, *People’s Republic of China: Death Penalty Log, January to December 1997, 1998, and 1999*. Also see Vicziany, *supra* note 10, at 246–47.

57. Some argue that some of those sentenced during the Strike Hard campaigns were not violent political activities. See HUMAN RIGHTS WATCH, CHINA: HUMAN RIGHTS CONCERNS IN XINJIANG 5 (2001).

lacked soundness and legitimacy. Given that terrorism was essentially unheard of in China prior to the 1980s, China did not incorporate terrorist crimes into its domestic legislation until 1997. Those who arrested for terrorist, separatist, and/or extremist acts were often charged with the crimes of “disrupting public order,” “endangering state security,” or other individual crime stipulated in the 1979 Criminal Law (e.g., crimes of causing explosions or hijacking motor vehicles). In 1997, the Chinese Criminal Law was significantly amended mainly to satisfy the state’s economic dogma of modernization. In this revised law, terrorism was mentioned for the first time, though only one provision made reference to terrorist offense: Article 120 of the 1997 Criminal Law provided that “whoever organizes, leads, and actively participates in a terrorist organization is to be sentenced to not less than three years but not more than ten years of fixed-term imprisonment; other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control.”<sup>58</sup>

Therefore, during the 1980s and the most of the 1990s, the campaign-style justice against terrorism was in effect directed by Party policies rather than state laws. In many policy statements and official speeches, stringent state controls were prescribed as the principal means to address the concerns about Uyghur separatist activity and Islamic-based terrorism in Xinjiang. This aggressive response to real or potential dissent was reflected in the tone of authorities, which called for “smashing,” “suppressing,” “eliminating,” and “wiping out” unlawful religious activities and “rectifying,” “re-educating,” and “waging war against” nonconforming believers.<sup>59</sup> In accordance with the official rhetoric, only “lawful” religious activities were permitted, whereas “illegal” religious activities should be prohibited and subject to severe administrative and judicial measures for the sake of maintaining social stability in Xinjiang.<sup>60</sup> For example, in 1990, the Xinjiang government enacted the Regulations for Religious Personnel and Regulations on Religious Activities,<sup>61</sup> setting forth the fundamental policy to manage religious activities of Uyghurs in Xinjiang. In this document, a clear line was drawn between lawful and illegal religious activities; lawful

58. Nevertheless, “terrorist organization” was not explicitly defined in the revised Criminal Law, nor was it interpreted in any judicial regulations.

59. HUMAN RIGHTS WATCH, *supra* note 50, at 7.

60. *Id.* at 27.

61. MICHAEL DILLOW, XINJIANG—CHINA’S MUSLIM FAR NORTHWEST 73 (2004).

religious activities were defined as activities that must be sanctioned and controlled by the government, and meet the following criteria:

- belong to one of the five official religions recognized by the government (Buddhism, Taoism, Catholicism, Protestantism, and Islam);
- be carried out by officially accredited religious personnel;
- take place in government-approved places; and
- be compatible with the political ideology of the Chinese Communist Party.<sup>62</sup>

In the meantime, any activity that was not state-sanctioned was viewed as an “illegal religious activity” and was liable to repressive justice. As stressed by Xinjiang’s then-Party Secretary Wang Lequan during one of the government conferences on religious work in 1991, the goal of religious policy in Xinjiang is

(l)etting religions and the socialist society adapt to each other . . . asking religious personnel . . . to subordinate themselves to and serving the highest state interests and overall national interest in the religious activities they undertake . . . opposing all illegal activities that use religion to harm the socialist motherland and the people’s interests.<sup>63</sup>

This official attitude toward “illegal” religious activities was later reflected in Document No. 7, The Meeting Minutes of the Issue on Maintaining Stability in Xinjiang, passed by the Politburo Standing Committee in 1996. In this policy document, the central government attributed the social instability in Xinjiang during the 1980s and 1990s to “ethnic separatism” and “illegal religious activity.”<sup>64</sup> Such statements led the Chinese authorities to believe that religious activities that endangered public safety should be restricted in the interest of national security and public order, and that it was imperative to employ draconian justice and reinforce the military to control terrorism in Xinjiang.<sup>65</sup>

62. HUMAN RIGHTS WATCH, *supra* note 50, at 27.

63. Editorial, XINJIANG DAILY [XINJIANG RIBAO], (Oct. 13, 2002, cited in HUMAN RIGHTS WATCH, *supra* note 50, at 28.

64. Haribala, *Politics in Xinjiang and Ethnical Policy of China* [Xinjiang de Zhengzhi Lixue yue Zhonggong de Minzu Zhence], 109 21ST CENTURY REVIEW [21 SHIJI PINLUN], 26, 28 (Oct. 2008).

65. HUMAN RIGHTS WATCH, *supra* note 50, at 28.

## II. NEW FORMS OF TERRORISM AND COUNTERTERRORISM: LEGAL APPROACHES IN POST-2001 CHINA

Following 2001, the nature of terrorism in China has gradually changed, as has the Chinese government's legal response to the threat. The 9/11 incident in the United States not only marks one of the most deadly terrorist attacks in recent history, but also represents a quick escalation in the scope and severity of terrorism at a global level. Like its Western counterparts, China has become more exposed to terrorism in the past fifteen years. Diverging from terrorist acts conducted in a random and simple fashion in the late twentieth century, terrorist acts in post-2001 have appeared to be more sophisticated and destructive in both method and target. Three new features are worth paying attention to.

First, different from previous terrorist acts in Xinjiang targeting symbols of Beijing's authority, in the past fifteen years terrorist acts have increasingly targeted innocent civilians in crowded public places.<sup>66</sup> This is exemplified by the terrorist attacks in Kunming, Guangzhou, and Beijing after the mid-2000s. In these officially labelled "terrorist attacks," the victims were citizens as opposed to government officials, including dozens of bus and train passengers and tourists. More recently, the number of civilian casualties has mounted dramatically, along with the heightened violence. For example, in March 2014, a terrorist attack in the Kunming Railway Station killed 31 people and injured 141. The following month, a car bomb attack on an open-air market in Urumqi killed 31 people and injured 94.<sup>67</sup> These two incidents resulted in more fatalities than all terrorist attacks in the 1990s combined.

Second, terrorist organizations have been more active, committing terrorist acts beyond Xinjiang 2001. In this new era of Chinese terrorism, terrorist attacks are no longer spontaneous and impulsively initiated by individuals, but often well-organized and led by terrorist organizations. ETIM and other groups such as the Uyghur Liberation Organisation (ULO) have formed and play a leading role in carrying out insurgencies both inside and outside Xinjiang. More financially equipped than individuals, these terrorist organizations have undertaken explosions, assassinations, attacks

66. Julienne, Rudolf, & Buckow, *supra* note 13.

67. *Id.*

on civilians, and crimes of poison and arson, as well as established secret training bases in an attempt to create an atmosphere of terror in China.<sup>68</sup> In 2013 and 2014, ETIM claimed responsibility for the attacks in Beijing's Tiananmen Square, the Kunming Railway Station, and the Urumqi market, which killed more than 70 people in total.<sup>69</sup> Having plotted a series of terrorist attacks in China, ETIM is singled out by the government as the most dangerous terrorist organization, having links to central terrorist groups such as Al Qaeda, Islamic State of Iraq, and the Levant.<sup>70</sup>

Third, Chinese terrorist acts in the wake of 2001 have become considerably more violent, reflected in the growing use of more advanced tools and weapons. Whereas previously most had been knife-wielding attacks, perpetrators have increasingly employed explosives to cause more significant casualties. This was the case with the Urumqi Railway Station attack in April 2014 that killed 3 people and injured 79, and the Luntai attack in September 2014 that killed 50 people and injured 54.<sup>71</sup> In these two incidents, deadly explosives were used together with knives to generate damages to the public. In addition, car bombings (e.g., Beijing's Tiananmen Square attack) and suicide bombings (e.g., Luntai attacks) have followed. The more frequent use of explosives in the recent incidents is in part because perpetrators are now more able to access instructions for building bombs and other explosives (e.g., online videos). More crucially, terrorist organizations have begun to alter their methods to create more terror through heightened destruction and mass fatalities.

The emerging threat of terrorism in the past fifteen years raises the question of whether China has retained its Strike Hard policy or adopted a new strategy in response to more frequent and severe terrorist attacks. In many Western jurisdictions—such as the United States, United Kingdom, and Australia—there has been a clear tendency toward intensification of laws and punishments on terrorism.<sup>72</sup> More specifically, draconian legislation has been gradually promulgated to criminalize acts associated with

68. Clarke, *supra* note 36, at 12.

69. Xinhua, *China Targeting ETIM in Global Counter-Terrorism Cooperation*, CHINA DAILY, Mar. 2 2015, <http://english.cri.cn/12394/2015/03/02/2743s868212.htm>.

70. Clarke, *supra* note 36, at 19.

71. Julienne, Rudolf, & Buckow, *supra* note 13.

72. For a detailed discussion of counterterrorism strategies in Western democracies, see ANDREW LYNCH, NICHOLAS MCGARRITY, & GEORGE WILLIAMS, COUNTER-TERRORISM AND BEYOND: THE CULTURE OF LAW AND JUSTICE AFTER 9/11 (2012).

terrorism, and harsh criminal measures have been increasingly implemented to control and punish terrorists. This trend has seemed to become a global phenomenon, with China moving to harden its counterterrorism legal and penal strategies in the face of growing risks from domestic and international terrorism. A number of harsher laws and regulations have been introduced to support Party policies in the continued crackdown on terrorism. At both policy and practical level, *punitiveness* has been largely increased, typified by the government's actions on criminalizing an array of new terrorist offenses, expanding police powers of investigation and incarceration of terrorist suspects, and intensifying sentencing and punishment of perpetrators.

### A. Criminalization of Terrorism

Despite the vague conception of terrorism in the Chinese legal context, the primary response of the Chinese government to increased terrorism has been the reframing of existing terrorist crimes and, more notably, the criminalizing of a new suite of terrorism-related acts. This has been accomplished through a series of legislative processes. Starting in 2001, China has made several piecemeal amendments to its Criminal Law, Criminal Procedure Law, and a number of administrative laws regarding the regulation of terrorism.<sup>73</sup> However, it was not until 2015 that China passed its first comprehensive Counter-Terrorism Law (CTL 2015) after many years of policy review. The new law took effect in January 2016. On paper, these new counterterrorism laws have created a rigorous legal net that captures a wide range of terrorist offenses—regardless of their ambiguity and broadness that may undermine civil liberties and fundamental human rights. They are discussed in the following.

#### 1. The Criminal Law and administrative regulations

In post-2001 China, the Criminal Law serves as the main piece of legislation that has been reformed to deal with terrorist acts and to control individuals and organizations connected with terrorism. On 29 December 2001, the third Amendment of the Chinese Criminal Law was introduced by the Standing Committee of the National People's Congress with an

73. Li Zhe, *China*, in *COMPARATIVE COUNTER-TERRORISM LAW* 580 (Kent Roach ed., 2015).

explicit theme of “punishing terrorist acts and offenses.”<sup>74</sup> This legal change was purposely made in the context of a universal trend toward intensification of counterterrorism laws in the international community. On 29 September, the U.N. Security Council adopted the Anti-Terrorism Resolution on Suppressing Financing and Improving International Cooperation (Resolution 1373), calling for measures to prevent and eliminate terrorism at a global level. While major Western nations have successively established or enhanced their counterterrorism laws, China has commenced to amend the Criminal Law as a first step in building its idiosyncratic antiterrorism legal framework. In the 2001 Amendment, Article 120 was revised to adjust the sentencing scale for those who organize and lead a terrorist organization:

whoever organizes and leads a terrorist organization is to be sentenced to not less than 10 years to life imprisonment; other active participants are to be sentenced to not less than 3 years but not more than 10 years; other participants are to be sentenced not more than 3 years of fixed-term imprisonment, criminal detention, control or deprivation of political rights.

Compared to the old stipulation under the 1997 Criminal Law, the sentencing spectrum for organizing and leading terrorist organizations is heightened from 3 to 10 years to 10 years and above. Under the same section (Article 120), this offense is punishable with other serious crimes:

Whoever, in addition to the crime mentioned in the preceding paragraph, commits other crimes of homicide, explosion, or kidnap, shall be punished for a term amounting to the total punishment for all crimes committed.

Therefore, although Article 120 does not spell out the upper limit of sentencing with reference to the crime of organizing and leading terrorist organizations, the *ringleader* of a terrorist organization is likely to face the death penalty if homicide, explosion, or kidnap was committed by the terrorist organization. In accordance with Article 26 of the 2001 Criminal Law, a ringleader of the criminal organization is responsible for all offenses committed by the criminal organization, and most violent crimes in the Criminal Law are punishable by the death penalty either immediately or after a two-year suspension.

---

74. Liu Renwen, *The Review of Counter-Terrorism Criminal Legislation in China and Its Evaluation* [Zhongguo Fankong Lifa Jiqi Pingxi] 4 THE JURIST [FAXUEJIA], 45, 48 (2013).

Article 120 of the 2001 Amendment also addressed the government's long-existing concern over the financing of terrorism in China. The revised provision was added to state:

Whoever provides funds to any terrorist organization or individual who engages in terrorism shall be sentenced to fixed-term imprisonment of not more than 5 years, criminal detention, control or deprivation of political rights, and shall also be fined; if the circumstances are serious, he [or she] shall be sentenced to fixed-term imprisonment of not less than 5 years, and he shall also be fined or his property shall be confiscated.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offense shall be punished in accordance with the provisions of the preceding paragraph.

This new stipulation was added to better address the requirement of U.N. Security Council Resolution 1373, which was adopted in September 2001, to stress the salience of financial control of terrorism. Recognized as one of the effective instruments to suppress terrorism, Resolution 1373 called for criminalizing the financing of terrorism. Accordingly, the member states (including China) were required to punish active or passive financial support for terrorists, to expeditiously freeze terrorism funds, and to prohibit any form of financial assistance provided to terrorist acts.<sup>75</sup> This new section held both individuals and units criminally liable for making funds, financial assets, and economic resources available to those who attempt to commit or participate in terrorist acts. "Unit," in this provision, refers to all types of domestic and international entities, including corporations, organs, organizations, and enterprises.<sup>76</sup>

To further restrain the financing of terrorism, the 2001 Amendment revised Article 191 by including terrorism as one of the upstream crimes that can constitute the crime of money-laundering.<sup>77</sup> In the earlier version of Article 191, money-laundering was committed when attempting to cover up or withhold the source or nature of gains obtained from narcotics crimes, organized crimes, or crimes of smuggling. In the 2001 version, the crime of

75. THOMAS BIERSTEKER & SUE ECKERT, *COUNTERING THE FINANCING OF TERRORISM* 4 (2008).

76. The Criminal Law, Art. 30.

77. 3 SHI JICHUN, *RENMIN CHINESE LAW REVIEW: SELECTED PAPERS OF THE JURIST* 124 (2015).

terrorism was added to expand the scope of the upstream crimes of money-laundering, with an attempt to “prevent legitimization of illegal gains derived from terrorist offenses, hence to strike terrorism economically.”<sup>78</sup>

More specific terrorism-related provisions were set out in the Eighth Amendment of the Criminal Law. Passed in February 2011, this Amendment modified Article 66 by incorporating the terrorism-related crime as an offense that triggers special recidivism. Different from ordinary recidivism that applies to all forms of crime prescribed in the Criminal Law, special recidivism in old Article 66 applied only to crimes threatening national security. However, in new Article 66, special recidivists are those committing the crime of terrorism, organized crime, or crime threatening national security if they commit any of the above-mentioned crimes at any time after serving the sentence or being granted an absolution. Clearly, the 2011 Amendment characterized the crime of terrorism as one of the most serious offenses endangering public stability, equivalent to the crime of threatening national security and the organized crime. By widening the legal scope of special recidivism, special recidivists (including those who commit the crime of terrorism as re-offenders) are subject to more stern punishment than ordinary recidivists. In light of revised Article 66, as long as an offender committed *any* of these three crimes before and re-committed *any* of them at *any* time,<sup>79</sup> he/she will be considered a special recidivist facing lengthy imprisonment or capital punishment. In other words, an offender who commits the crime of terrorism can legitimately be prosecuted as a recidivist if he/she previously committed a crime threatening national security or participated in organized crime.

Perhaps the most significant criminal law reform on counterterrorism is the Ninth Amendment promulgated in November 2014. The highlight of this most recent revision is the inclusion of the doctrine of *preemption*, which advocates the prevention and control of terrorist acts.<sup>80</sup> This new strategy of combating terrorism is pursued through the enactment of a new

---

78. HE BINGSONG, *THE STUDY OF ORGANIZED CRIMES IN CHINA* [ZHONGGUO YOUZUZHIFANZUIYANJIU] 309–II (2009).

79. In the Chinese criminal law, ordinary recidivists must be those who intentionally recommit a crime that amounts to fixed-term imprisonment within five years after serving the sentence or being granted an absolution.

80. For a detailed examination of the preemptive doctrine, see Jude McCulloch & Sharon Pickering, *The Law and Policing of Pre-emption*, in LYNCH, MCGARRITY, & WILLIAMS eds., *supra* note 72, at 13–29.

set of “preparatory” terrorism offenses included in the Criminal Law. To avoid the occurrence of serious terrorist actions, these offenses penalize suspects at a much earlier stage of planning than the ordinary law of criminal attempt. They criminalize behavior not only directed to complete terrorist acts, but also a person’s “thoughts or talk” about terrorism in general. These new terrorism offenses include:

- Preparing weapons, dangerous items, and other tools for undertaking terrorist acts; organizing or actively participating in training connected with terrorist acts; liaising with overseas terrorist organizations or personnel for undertaking terrorist acts; plotting or other preparations for undertaking terrorist acts;<sup>81</sup>
- Propagating terrorism, extremism, or instigating terrorist acts by way of distributing books, videos, audios, or other materials or lecturing, releasing information that promotes terrorism and extremism;<sup>82</sup>
- Coercing the general public to harm the operation of legally established systems of marriage, justice, education, and social management;<sup>83</sup>
- Forcing others to wear or adorn clothes or signs that propagate terrorism or extremism in public places by violence or coercion;<sup>84</sup>
- Illegally possessing books, videos, audios, or other items that propagate terrorism or extremism.<sup>85</sup>

All these new offenses, though criminalizing acts long in advance of a completed terrorist act, nevertheless carried the formal criminal punishments, namely criminal detention, control, and fixed-term imprisonment. Their existence in the Criminal Law functions as a legitimate basis on which Chinese legal authorities are now able to preemptively control and monitor potentially dangerous individuals as they see fit.

The legislative alterations made to criminalize terrorism in the Criminal Law have taken an exceptional step in creating a distinct set of terrorism offenses, with much tougher penalties, constructed around proof of terrorist acts either committed or attempted. In addition to criminal law reform,

---

81. The Criminal Law, Art. 120 (2).

82. *Id.*, Art. 120 (3).

83. *Id.*, Art. 120 (4).

84. *Id.*, Art. 120 (5).

85. *Id.*, Art. 120 (6).

a number of specific laws and relevant administrative regulations have also been established, serving as an ancillary regulatory mechanism to regulate some more particular terrorism-related offenses.<sup>86</sup> For example, the Chinese government passed the Anti-Money Laundering Law in 2006 to address the increasing financial disorder in China since the early 2000s. To be consistent with the Criminal Law, the Anti-Money Laundering Law characterizes the act that attempts to conceal or hide gains derived from terrorist crimes as money laundering and subjects it to administrative control and criminal punishment. Likewise, the *Measure on Managing Suspicious Dealings Related to Terrorist Financing Reported by Financial Institutions* was adopted by China Bank in 2007, which requires financial institutions to report on any doubtful dealings conducted by clients who are suspected of being involved in financial activities related to terrorism.

## 2. The Counter-Terrorism Law

Although the legislative response to the recent emergence of terrorism was swift and massive, China's counterterrorism laws appeared to be fragmented and hazy in the first decade of this century.<sup>87</sup> The concerns over jumbled counterterrorism legal policies and the lack of a specific law have driven the enactment of the Counter-Terrorism Law in 2015 (CTL). Not surprisingly, the promulgation of this new law has been applauded as a significant move to systematize the Chinese legal framework against terrorism with an official ideal of upholding "the Counter-Terrorism Law as the core legislation, the Criminal Law as the principal legislation and other laws as auxiliary legal force to tackle terrorism."<sup>88</sup> Implemented to supplant *The Decision on the Problems Related to Strengthening Counter-Terrorism Work* (issued by the National Council in 2011 as a temporary counterterrorism

---

86. Du Miao, *The Review and Prospect of Counter-Terrorism Lawmaking in China* [Zhongguo Fankong Lifa de Huiyu he Zhanwang], 6 W. L. REV. [XIBU FAXUE PINLUN] 40, 42 (2012).

87. Wang Libing, *The Study on the Perfection of Counter-Terrorism Criminal Law—A Discussion of Systematic Legislation of Counter-Terrorism* [Fan Kongbu Fanzui Xingshifa Wanshan Yanjiu—Jianlun Fan Kongbu Xitonghua Lifa], 10 POL. & L. [ZHENGZHI YU FALV] 75, 76 (2014).

88. Zhao Binzhi & Du Miao, *The Preliminary Formation of Counter-Terrorism Legal Framework in China* [Zhongguo Fankong Falv Tixi de Chubu Xingcheng], LEGAL DAILY [FAZHI RIBAO], Nov. 16, 2011, <http://xbxf.nwupl.cn/Article/xbfkjy/201111/2866.html>.

legal document),<sup>89</sup> the greatest contribution of the CTL is the adoption of an unequivocal definition of terrorism and an exclusive list of terrorism offenses linked, directly or indirectly, to this new definition. Article 3 of the CTL, based on previously inserted terrorist offenses in the Criminal Law and ancillary laws, summarizes that a terrorist act fits in the scope of one of the following categories:

1. Organizing, planning, preparing to implement, implementing, or attempting to cause casualties, the loss of significant properties, the damage of public infrastructure, social disorder, and other activities that endanger the society;
2. Propagating terrorism, inciting implementation of terrorist acts, or illegally possessing items that propagate terrorism, forcing others to wear or adorn clothes or signs that propagate terrorism;
3. Organizing, leading, and participating in terrorist organizations;
4. Providing information, capital, human resources, labor, techniques, and venues to facilitate, assist, and help terrorist organizations, personnel, and the implementation of terrorist acts or training for terrorism;
5. Other terrorist acts.

The CTL increases focus on tackling extremism, and specifically on individuals and organizations that incite extremist acts through advocacy. Although extremism is more a politicized notion appearing in government instruments than a precisely defined legal term,<sup>90</sup> it is linked with terrorism and separatism, which are rhetorically expressed as the “Three Forces” faced by the Chinese government in the 2000s—that is, “ethnic separatist forces, violent terrorist forces, and religious extremist forces.”<sup>91</sup> Over the past decade, extremism has been addressed in very limited domestic

---

89. The *Decision on the Problems Related to Strengthening Counter-Terrorism Work* served as the first comprehensive legal document that regulated the work of counterterrorism in China. It is noted that the *Decision* was not a law, but an administrative regulation issued by the State National Council.

90. Zhang Laney, *Legal Provisions on Fighting Extremism: China* (Law Library of Congress, Apr. 2014), <http://www.loc.gov/law/help/fighting-extremism/fighting-extremism.pdf>.

91. Editorial, *The Sixth Challenge of the Six Untraditional State Security Challenges: Ethnic Separatism* [*Zhongguo Fei Chuantong Anquan de Liuda Tiaozhan Zhi Liu: Minzu Fenlie Zhuyi*], XINHUA, Aug. 10, 2004, [http://news.xinhuanet.com/newscenter/2004-08/10/content\\_1751936.htm](http://news.xinhuanet.com/newscenter/2004-08/10/content_1751936.htm).

legislation, but defined by multilateral and bilateral treaties to which China is a party, for example, the *Shanghai Convention on Combating Terrorism, Separatism and Extremism* (2001).<sup>92</sup> Even though the CTL has again failed to present a clear definition of extremism, an array of extremist offenses is incorporated and punishable either criminally or administratively in this new law. Specifically, in light of Article 81, criminal/administrative detention and fine will be imposed on those who take advantage of extremism to disrupt social and public order. Major perpetrations include, but are not limited to (1) coercing others to participate in religious activities or to provide religious venues and personnel financial or labor assistance; (2) expelling people of other religions or ethnicities from their residences through intimidation or harassment; and (3) inciting and forcing others to replace registration of marriage and divorce with religious ritual.<sup>93</sup> These acts are deemed to involve the intention of inciting extremism. As indicated in Article 81, the punishment of these acts is imprisonment if the circumstances are serious, or administrative detention if the circumstances are minor (e.g., 5–15 days of incarceration in public order detention centers).<sup>94</sup>

The criminalization of a wider range of terrorism- and extremism-related offenses in the CTL is also a result of the new law's focus on preemption. The preemptive ideology, which was first reflected in the 2014 Amendment of the Criminal Law, has developed to become a dominant philosophy of the CTL. However, unlike the 2014 Amendment, which focuses on preparatory acts of terrorism, the CTL goes one step further to penalize grassroots organizations and civilians who do not cooperate with the authorities in the prevention of terrorist acts. One example is the Backdoor Provisions.

To preempt terrorism in a high-tech era, telecommunication service operators and internet service providers (ISPs) in China are now required to “provide technical interfaces, decryption and other technical support, and

---

92. A definition of “extremism” is provided in Article 1 of the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001): “‘Extremism’ is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.”

93. The CTL, Art. 81.

94. However, the extent to which an act is considered serious lacks clear legal explanations in the CTL.

assistance to public security organs and state security organs undertaking investigation of terrorist acts in accordance with the law.”<sup>95</sup> Pursuant to Article 19, ISPs are further required to “put into practice network security systems and information content monitoring systems, technical prevention and safety measures, to avoid the dissemination of information with terrorist or extremist content.” These new legal duties are required of China-based technology companies, in particular those invested by the United States, United Kingdom, and other developed states. Whereas the Western countries have expressed strong resistance to the new cyber security rules due to their worries over customers’ privacy and national security,<sup>96</sup> noncompliance with such legal obligations, in accordance with Article 84, bears the legal consequences of having (foreign) technology companies heavily fined and those in charge of companies facing up to fifteen days of administrative detention.<sup>97</sup>

In Articles 85–93, the CTL sets forth a series of other circumstances under which the general public and specific organizations and institutions are required to assist public security agencies with surveillance and control measures to prevent terrorist acts. For instance, transport logistic operators will be held legally responsible if they (1) have failed to check the identification of clients according to security examination rules, or have failed to carry out security checks and open inspections on goods and cargo; (2) transport and post goods that contain potential major security issues or are from clients who refuse security examination; and (3) have failed to adhere to the registration requirement to record client identification and information about goods. By the same token, service providers in the internet, telecommunication, finance, accommodation, and car rental industries are mandated always to undertake ID check on clients. Those who have failed to do so either intentionally or negligently will be subject to both heavy fines (up to 200,000 RMB) and administrative detention (up to 15 days).<sup>98</sup>

## B. The Expansion of Police Power

If criminalizing a sweeping range of terrorist offenses can be seen as strong evidence of China’s counterterrorism legal framework shifting toward

95. The CTL, Art. 18.

96. Catherine Wong, *China’s Counterterrorism Law: An Internal Matter*, GLOBAL TIMES, Mar. 4, 2015, <http://www.globaltimes.cn/content/910039.shtml>.

97. The CTL, Art. 84.

98. *Id.*, Arts. 86–93.

a more punitive strategy, the enhanced enforcement activity of the policy has also contributed to the increased punitiveness of this new legal system. Since 2001, the Chinese government has amended and introduced legislation to expand police power to interrogate, detain, and control terror suspects. These powers are often exercised without due process, in that the procedural rights of suspects that should be otherwise guaranteed to challenge police powers are in fact constrained to the point that there is an imbalance between security and liberty in Chinese counterterrorism laws.

### 1. The Criminal Procedure Law

In March, 2012, the third amended version of the Chinese Criminal Procedure Law was passed by the National People's Congress. This revised law set out seven new provisions relating to terrorism offenses, introducing a number of special measures the police may adopt to handle suspected terrorists. Article 148 first allows the use of "technical investigation" by police in terrorism cases:

After the public security organ has filed a case, it may, insofar as required for investigation and after passing strict approval, take measures of technical investigation for cases involving crimes endangering state security, crimes of terrorism, organized crimes with characters of the underworld, major drug-related crimes, or other crimes that pose a serious threat to society.

Often referred to as "secret investigation,"<sup>99</sup> technical investigation includes measures such as electronic monitoring, phone surveillance, mobile positioning, email examination, secret photography, undercover investigation, and other secret approaches undertaken without suspects' permission and awareness.<sup>100</sup> In spite of the fact that the lawfulness of technical investigation is questionable due to the ambiguous legality of its application,<sup>101</sup> the 2012 Criminal Procedure Law recognizes materials collected through technical investigatory measures as valid, incriminating evidence against

99. There has been debate over what constitutes technical investigation in the Chinese criminal justice system. For a detailed discussion, see Lan Yuejun, *The Measures of Technical Investigation from a Comparative Perspective (Bijiaofa Shiyezhong de Jishu Zhencha Cuoshi)*, 1 CHINESE CRIMINAL SCIENCE [ZHONGGUO XINGSHIFA ZAZHI] 66, 66–67 (2013).

100. The National Security Law of the People's Republic of China, Art. 10; The People's Police Law of the People's Republic of China, Art. 16.

101. Lan, *supra* note 99, at 69.

suspects in the criminal process.<sup>102</sup> This wording differs from previous stipulations, which provided that materials derived from technical investigatory instruments can be used only to aid police investigation, but not as evidence to evidence in criminalize prosecutions.<sup>103</sup>

Perhaps one of the most controversial powers afforded to the police was the discretion to detain suspects of crimes related to terrorism incommunicado and in secret locations. Article 83 of the 2012 Criminal Procedure Law provides:

After being taken into custody . . . the family members of the detained person should be informed within 24 hours, except for situations in which it is impossible to issue a notice or the detained person is suspected of committing crimes endangering state security or crimes of terrorism and family notification may impede the investigation.

This section allows “secret detention” of suspects, raising doubts about its legality and compatibility with the rule of law.<sup>104</sup> Although the 2012 revision allows notification of pretrial detention to be waived in cases “involving state secrets” or when “notification would interfere with the investigation,” the wording of the clause was vague, leaving much room for authorities’ overuse of their detention power. The lack of a clear definition for “impediment of investigation” in law, as well as judicial interpretations, can lead to the virtual disappearance of criminal suspects.<sup>105</sup> In the 2012 revision, the detention power is further extended to another form of incarcerative instrument, namely, residential surveillance (essentially house arrest). According to Article 73, the police are granted the discretion to place a suspect under residential surveillance at a designated location other than his/her domicile if residential surveillance at the suspect’s domicile may impede the investigation of cases connected with terrorism. Under residential surveillance, approaches such as electronic monitoring, irregular inspections, and other surveillance means may be imposed by police, and

102. The 2012 Criminal Procedure Law, Art. 152.

103. Liu, *supra* note 74, at 51.

104. See *China’s New Criminal Procedure Law: “Disappearance Clause” Revised*, HUM. RTS. J. [DUI JUA], Mar. 19, 2012, <http://www.duihuahrjournal.org/2012/03/chinas-new-criminal-procedure-law.html>.

105. Stanley Lubman, *China’s Criminal Procedure Law: Good, Bad and Ugly*, WALL ST. J., Mar. 21, 2012, <http://blogs.wsj.com/chinarealtime/2012/03/21/chinas-criminal-procedure-law-good-bad-and-ugly/>.

suspects' telecommunication may be overseen by law enforcement agencies during investigation.<sup>106</sup>

As police powers are broadened, terrorist suspects are not given sufficient legal rights to guarantee equal litigant capacity in the criminal justice process. One example is the limited access of suspects to legal counsel during the investigatory stage. Article 33 of the 2012 Criminal Procedure Law states that "a suspect has the right to entrust a defense lawyer when being interrogated for the first time or placed under any custodial measures by investigative organs." However, this legal entitlement does not apply to suspects of terrorism. According to Article 37, a suspect's request to meet with his/her defense lawyer in cases involving national security, serious bribery, and terrorism ought to be approved by investigative organs. As one of "three major difficulties" frequently encountered by Chinese lawyers when representing their clients,<sup>107</sup> attorneys attempting to visit suspects in detention are faced with immense obstacles created by the police. These obstacles are worse when detainees are suspected of terrorist crimes, given the sensitivity of cases and the relevance with national security. Not surprisingly, scholars have questioned the extent to which the police will misuse this power to minimize the contact between lawyers and suspects to facilitate secret investigation.<sup>108</sup>

For many decades, lawyers have also had limited capability of obtaining case-related documents from legal authorities, and collecting written and oral evidence from witnesses and other relevant individuals.<sup>109</sup> In general, these efforts have been undermined by either the procedural limitations of China's criminal justice system or noncooperation of law enforcement agencies and witnesses.<sup>110</sup> This plight has not improved with the enactment of the 2012 Criminal Procedure Law, especially when the case involves terrorism crimes. Article 62 of the 2012 revision indicates:

---

106. The CTL, Art. 76.

107. For a detailed discussion of Chinese defense lawyers' "Three Difficulties," see Enshen Li, *The Li Zhuang Case: Examining the Challenges Facing Criminal Defense Lawyers in China*, 24(1) COLUM. J. ASIAN L. 129–69 (2010).

108. Liu, *supra* note 74, at 51.

109. Yu Ping, *Glittery Promise vs. Dismal Reality: The Role of A Criminal Lawyer in the People's Republic of China after the 1996 Revision of the Criminal Procedure Law*, 35 VAND. J. TRANSNAT'L L. 827, 848 (2003).

110. *Id.* at 848–52.

In cases involving . . . crimes of terrorism . . . where the personal safety of witnesses or victims or their close relatives is at risk because of their testimony in a trial, the people's court, the people's prosecutor's office, and the public security organ should take any or several of the following protective measures:

- (1) withholding personal information such as real name, address, and place of work;
- (2) withholding the appearance and real voice of a witness in giving testimony at court;
- (3) prohibiting certain persons to be in contact with the witness or the victim and his/her close relatives;
- (4) providing special personal and residential protection;
- (5) providing any other necessary protective measures.

Because it lacks a clear legal boundary of "risk," the application of the protective measures under Article 62 appears to be subject to the interpretation of the police. The circumstances under which witnesses and victims should be distanced from defense lawyers are legally ambiguous, hence making the collection of evidence by defense lawyers hard, if not impossible.

## 2. The CTL

In addition to the Criminal Procedure Law, the CTL has further extended police powers in a wide range of areas. Unlike the Criminal Procedure Law granting the police the *ex post* powers to investigate terrorism cases that have already occurred, the CTL focus on the authorization of preemptive discretion for the police to be proactive in response to terrorism. In other words, the preemptive rationale allows the police to take immediate lethal action in the face of an imminent violent act and, more significantly, to impose preventive detention and control orders on persons who pose a risk (however remote) to public safety and whose liberty could be curtailed to prevent terrorist acts.

For example, Article 26 of the CTL specifically legalizes the use of weapons in a terrorist incident. This section permits the police, the military, and others legally allowed to carry weapons for law enforcement purposes to use weapons on those who are committing or attempt to commit violent acts with guns, knives, or other dangerous instruments after a warning is given. In

an urgent situation or where more serious consequences may arise after a warning is given, the above-mentioned personnel can use weapons immediately, without prior warning.<sup>111</sup> In some Western jurisdictions (e.g., Australia), the military is authorized preemptively to shoot down hijacked aircraft posing a threat to civilian populations or critical infrastructure and is granted wide legal immunity.<sup>112</sup> Similarly, the Chinese police (military) are legally authorized to use fatal force if it is to stop an ongoing terrorist act or to prevent a foreseeable terrorist act. Drawing from the previous experiences in which fatalities were massive in terrorist attacks because of the legal authorities' lack of power to shoot, the new law not only authorizes, but requires the security forces to take necessary preventive action against suspected terrorists with the goal of protecting the greater interests of the public.

Prevention in the CTL ushers in a host of “pre-crime” measures that permit the state to intervene and restrain an individual on the basis of an anticipated further harm, rather than past wrongdoing. In the United States, United Kingdom, and elsewhere, prevention by liberty restraint is a feature of many antiterrorism initiatives, most notably preventive detention and control orders. These measures deviate from the traditional retrospective and post-crime orientation of the criminal justice system, under which the state reacts and responds to harm by prosecuting and punishing criminal acts on the basis of evidence gathered about past events. In the Western legal system, pre-crime measures are predictive and rely upon intelligence about future threats to security gathered through surveillance practices and pre-crime policing.

Like its Western counterparts, China, in the CTL, empowers the police to use control orders over the course of investigating suspected terrorist activities. In light of Article 53, suspected terrorists, upon the approval of the head of public security organs above the county level, should be subject to one or several restrictive measures depending upon the level of their dangerousness. More precisely, those suspected of terrorist acts are:

- (1) not allowed to leave the residential city, county, or the designated residence without the approval of the police;

---

III. The CTL, Art. 26.

112. See Part IIIAAA of the Defence Act 1903 (Cth), discussed in S. Bronitt and D. Stephens, “Flying under the Radar”—*The Use of Lethal Force Against Hijacked Aircraft: Recent Australian Developments*, 7(2) OXFORD U. COMMONWEALTH L. REV. 265–77 (2007).

- (2) not allowed to participate in large public functions or special events;
- (3) not allowed to take public transportation or enter into special venues without the approval of the police;
- (4) not allowed to meet or communicate with certain designated persons;
- (5) required to report to the police on daily activities on a routine basis;
- (6) required to hand in passport, identification card, and drivers' license for the police to keep.

For the first two types of control listed above, their duration should not exceed three months.<sup>113</sup> Additionally, electronic supervision and routine checks may be applied to monitor whether suspects are in conformity with the legal requirements of above-mentioned restrictive measures.<sup>114</sup>

This new form of control represents China's continuous reliance upon draconian justice to manage and control the risk posed to the state and its security. In implementing control orders, harshness and arbitrariness are likely to arise in two aspects. Foremost, the power to issue control orders in China is concentrated in the hands of the police (the head of public security organs) without the supervision of procuratorates and courts. It shows a clear contrast to the control order scheme in the United States, United Kingdom, and Australia, where the prosecutor must seek a written control order from the court.<sup>115</sup> To successfully apply for a control order, in Australia, for example, relevant documentation should be submitted by the police to the attorney general, including a draft copy of the proposed interim control order, a statement of relevant facts including any previous history of control orders or preventative detention of the individual concerned, an explanation of why each of the obligations, prohibitions, and restrictions is being sought, and a summary of the grounds on which the order should be made.<sup>116</sup> In this regard, the court is able to examine the range of probable threat and ensure that the control order would substantially assist in preventing a terrorist attack.

---

113. The CTL, Art. 53.

114. *Id.*

115. Bronwen Jagers, *Anti-Terrorism Control Orders in Australia and the United Kingdom: A Comparison*, Research Paper No. 28, Laws and Bills Digest Section (2008), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP0708/08rp28](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp28).

116. *Id.*

On the contrary, the criteria for issuing Chinese control orders lack lucidity and transparency. Akin to many custodial measures in the Chinese criminal justice system, the imposition of control orders is not a neutral judicial decision, but a result of the police exercise of detention power. This arrangement reflects the Chinese legal tradition that the police are the sole interpreter of ambiguous legal provisions in relation to incarceration. Thus, the controversy that can result from these control order provisions reflects the unfairness of their application when the level of a controlee's risk is subjectively determined by the police with little regard to scientific evidence.

Furthermore, the police issuance of control orders in China cannot be either internally or externally challenged. In the control order systems of the United States, United Kingdom, and Australia, despite the fact that procedural justice in control order hearings has been questioned,<sup>117</sup> certain protections are afforded to suspects to ensure a fair outcome. For instance, in deciding whether a control order should be issued, the suspect is represented by a lawyer in the hearing process (e.g., a system of Special Advocates in Australia).<sup>118</sup> Likewise, a person subject to a control order can apply for its revocation or variation at any time (Australia) or when it is renewed (United Kingdom) by outlining the reasons in writing to the police (Australia) or the court (United Kingdom).<sup>119</sup>

Such procedural safeguards, however, seem nonexistent when a control order is being considered by the Chinese police. The controlee's access to legal counsel is totally ignored by legislators, and the checks and balances mechanism that may defy the disproportionality of control orders does not exist in the law. After a control order is given, neither the CTL nor the Criminal Procedure Law provides a remedial system in which the legality of control orders can be independently and impartially reviewed. Needless to say, the lack of a human rights act in the Chinese legal system exposes controlees' the heightened risk of being abused by a miscarriage of justice.

---

117. SUSAN DONKIN, PREVENTING TERRORISM AND CONTROLLING RISK: A COMPARATIVE ANALYSIS OF CONTROL ORDERS IN THE UK AND AUSTRALIA 15 (2014).

118. For a detailed discussion of procedural justice of control orders, see Aileen Kavanagh, *Special Advocates, Control Orders and the Right to a Fair Trial*, 73(5) MOD. L. REV. 824-57 (2010).

119. Donkin, *supra* note 117, at 35.

### C. Harsher Punishment and Sentencing

If countless legislative amendments have been China's first defense against terrorism, the sentencing of terrorists has served its the second defense, applying harsh justice to terrorism at a practical level. In the last decade or so, the punishment of perpetrators connected with terrorism has appeared to be more draconian than that in the pre-2001 period. This is not only exemplified by the courts' increased imposition of severest sanctions (e.g., the death penalty and life imprisonment) in the context of the state's pursuit of "social harmony" by adopting the Combining Leniency and Harshness policy, but also demonstrated by the ways in which terrorist offenders are essentially tried and sentenced in the adjudicative process.

Since the middle of the last decade, a new crime control strategy known as Balancing Leniency and Harshness has been introduced and promoted by the Chinese Supreme Court as the foundational criminal justice policy in China. This rationale is premised on the idea of tempering harsh punishment for a minority of extremely serious crimes with lenient treatment for the majority of crimes, which were minor or carried mitigating circumstances.<sup>120</sup> One of the stated goals of this policy is to mitigate potential social instability created by the effects of the state's harsh punishment tendency over the last thirty years.<sup>121</sup> Changes include, but are not limited to, the adoption of community corrections, community drug detoxification, and criminal reconciliation, which is the Chinese version of a victim-offender reconciliation program.<sup>122</sup>

The increased use of soft penalty does not necessarily indicate the reduced application of heavy punishment. Rather, the debate about heavy punishment shifted to the question of *whom* to strike hard—that is, to confine severe punishment to a smaller group of the "most serious criminals."<sup>123</sup> Although the criminal laws lack an exclusive list of most heinous crimes, harsh sanctions are reserved for criminals who have committed

---

120. Dai Yuzhong, *The Pursuit of Criminal Justice, in CHINA'S JOURNEY TOWARD THE RULE OF LAW* 197 (Cai Dingjian & Wang Chenguang eds., 2010).

121. Susan Trevaskes, *The Shifting Sands of Punishment in China in the Era of "Harmonious Society,"* 32(3) *LAW & POL'Y* 332, 333 (2010).

122. For a detailed discussion on China's practice of community-based measures, see Enshen Li, *Towards the Lenient Justice? A Rise of "Harmonious" Penalty in Contemporary China,* 10(4) *ASIAN J. CRIMINOLOGY* 307–23 (2015).

123. Trevaskes, *supra* note 121, at 341.

offenses endangering the core interests of the state.<sup>124</sup> As such, on the one hand, the government has begun to downplay harsh justice, demonstrated by the limited use of the death penalty in certain crimes (e.g., economic and white-collar crimes), as well as the abolition of two notorious coercive measures in administrative justice, namely, custody and repatriation and reeducation through labor.<sup>125</sup> On the other hand, draconian sanctions have been not only retained but upgraded to deal with terrorism-related crimes owing to their heinous nature and the threat posed to national security. Across a number of terrorist cases handled over the past fifteen years, it is apparent that the courts have consistently applied harsh sentencing to defendants accused of terrorist offenses. They are either executed or sentenced to lengthy incarceration. The uniform sentencing mode is no longer driven by local Party directives to call for harsh justice as seen in the Strike Hard period, but rather results from heightened sentencing rules standardized across the country to continue the practice of crackdown on terrorism in the new era.

A brief review of two high-profile cases tried in the 1990s and 2000s can shed some light on this change. Prior to 2001, the Yining Incident in 1997 was recorded as the most severe violent attack in China.<sup>126</sup> Officially characterized as a riot instigated by the East Turkistan Islamic Party of Allah and some other terrorist organizations, the Yining Incident witnessed the demonstration of as many as a thousand young Uyghurs who sought to establish an independent state, the Islamic Kingdom.<sup>127</sup> On May 2, 1997, they confronted the local policy attempting to control the uprising by beating, smashing, and looting on the streets, which led to more than 200 casualties of innocent Han civilians.<sup>128</sup> Following 2001, similar incidents have taken place in more frequently in Xinjiang. On July 5, 2009, it is reported that in Urumqi, about a thousand Uyghurs initiated a protest against the local government, calling for a full investigation into the death of two Uyghurs killed earlier in Shaoguan, a city in Guangdong

---

124. Benjamin Lubman, *Leniency in Chinese Criminal Law? Everyday Justice in Henan*, 33 BERKELEY J. INT'L L. 153, 189 (2015).

125. For a detailed discussion on China's penal shift in the 2000s, see Li Enshen, *The Cultural Idiosyncrasy of Penal Populism—The Case of Contemporary China*, 55 BRIT. J. CRIMINOLOGY 146–63 (2015); Trevaskes, *supra* note 121.

126. BENJAMIN COLE, CONFLICT, TERRORISM AND MEDIA IN ASIA 13 (2006).

127. Millward, *supra* note 29.

128. Clarke, *supra* note 36, at 14.

province.<sup>129</sup> After the fierce confrontation with the police, who were accused of using excessive force,<sup>130</sup> the demonstrations escalated into serious riots with Uyghur protesters hurling rocks, smashing vehicles, breaking into shops,<sup>131</sup> and attacking Han civilians. This incident lasted several days and resulted in approximately 197 deaths and 1,700 others injured.<sup>132</sup> On many occasions, the Chinese government refers to the July 5th Urumqi riots as the most serious violent crime in the history of Xinjiang, organized and committed by the forces of “extremism, terrorism, and separatism.”<sup>133</sup>

Although both riots generated massive fatalities, the sentencing of rioters in each case seems to differ. In several aspects, punishment in the 2009 Urumqi Incident appears to be much more severe than that in the 1997 Yining Incident. First, compared to the 1997 Incident where only main rioters were criminalized, nearly all participants in the 2009 Incident were targeted by the state’s criminal justice procedure in one way or another. Urged by the then-President Jiang Zemin, the violent attacks involved in the Yining Incident were directly investigated by the national public security bureaus to reflect the central government’s call for “striking hard on *ringleaders* of ethnical separatism, violent terrorism, and religious extremism.”<sup>134</sup> Accordingly, among a large number of rioters, only those who played a major role in undertaking violent acts were arrested and prosecuted. On April 24, 1997, a total of 30 individuals were tried by the Yining Intermediate Court in 18 cases of murder, assault, arson, damage to public property, and endangerment of national security.

129. Edward Wong, *Riots in Western China amid Ethnic Tension*, N.Y. TIMES, July 6, 2009, [http://www.nytimes.com/2009/07/06/world/asia/06china.html?\\_r=0](http://www.nytimes.com/2009/07/06/world/asia/06china.html?_r=0).

130. Simon Elegant & Austin Ramzy, *China’s War in the West*, TIME, July 20, 2009, <http://content.time.com/time/magazine/article/0,9171,1909460,00.html>.

131. Shen Zhang, Miao Xu, Xueting Li, Huizhen Fang, Shengming Yang, & Jia Liu, *Implicit Trust between the Uyghur and the Han in Xinjiang, China*, 8(8) PLOS ONE (2013), doi: 10.1371/journal.pone.0071829.

132. Editorial, *The Urumqi 7/5 Incident Caused 197 Deaths, 156 Are Innocent Citizens* [*Wurumuqi 7/5 Shijian Zhi 197 Ren Siwang, 156 Ming wei Wugu Qunzhong*], XINHUA, Aug. 5, 2009, <http://news.163.com/09/0805/22/5G05GIT2000120GU.html>.

133. Editorial, *140 Deaths in the Urumqi Violent Incident, Hundreds of Suspected Arrest* [*Wurumuqi Baoli Shijian Yizhi 140 Ren Siwang, Shubai Yifan Beizhua*], XINHUA, Aug. 6, 2009, <http://news.sina.com.cn/c/2009-07-06/190318165293.shtml>.

134. Nuer Baikeli, *The Speech on the Meeting of Xinjiang Autonomous Region Cadres* [*Zai Zizhiqu Ganbu Dahui Shang de Jianghua*], 18 TODAY’S XINJIANG [JINRI XINJIANG], 5, 6 (2008).

A different criminal justice approach was implemented in the 2009 Urumqi Incident. When the riots began to break out in Urumqi, the law enforcement agencies and the military immediately arrested about 1,500 people associated with protests and demonstrations.<sup>135</sup> In the wake of the riots, more people were detained and interrogated over the course of the wide-ranging police searches in Urumqi and nearby cities.<sup>136</sup> Though some of rioters were released by August 2009, the majority remained incarcerated, and more than 400 faced criminal charges.<sup>137</sup> As disclosed by Nuer Baikeli, then-President of Xinjiang Uyghur Autonomous Region, in the next six months 97 cases were adjudicated by the courts at all levels in Xinjiang and 198 individuals were convicted of crimes.<sup>138</sup> This handling strategy shows a stark contrast to that used in the Yining Incident: that is, a catch-all legal net was in place to disperse harsh and swift justice across all Uyghur and Han rioters who committed violent actions.

The second index of intensified punitiveness in the 2009 Urumqi Incident is the increased use of extreme penalties in the sentencing process. In the 1997 Yining Incident, of the 30 defendants tried by the court, three were sentenced to the death penalty, one was sentenced to life imprisonment, and the rest were sentenced to 7–18 years of imprisonment.<sup>139</sup> Although the seriousness of crimes committed in these two incidents varies, which may have affected the sentencing scales and decisions to some extent, defendants in the Urumqi Incident were more harshly punished, as evidenced by the rapid and excessive imposition of capital punishment and life imprisonment across a series of judicial trials. For example, on October 30, 2009, the Urumqi Intermediate Court adjudicated the first 10 criminal cases connected with the riots: 35 suspects were charged for serious violent crimes committed during the demonstrations and protests, including

---

135. AMNESTY INTERNATIONAL, JUSTICE, JUSTICE: THE PROTEST IN XINJIANG [ZHENGYI, ZHENGYI: 2009 NIAN 7 YUE ZHONGGUO XINJIANG DE KONGYI HUODONG] 17 (2010).

136. *Id.*

137. Cui Jia, *Riot Woman Sentenced to Death for Killing*, CHINA DAILY, Dec. 5, 2009, [http://china.org.cn/china/2009-12/05/content\\_19012714.htm](http://china.org.cn/china/2009-12/05/content_19012714.htm).

138. Editorial, *Xinjiang Official Stresses Fighting Separatism, Says 198 Sentenced for Deadly Riot*, XINHUA (2010), [http://news.xinhuanet.com/english2010/china/2010-03/07/c\\_13201007.htm](http://news.xinhuanet.com/english2010/china/2010-03/07/c_13201007.htm).

139. Editorial, *The Report on Major Political Events [Zhongda Zhengju Baodao]*, YAXIN [YAXIN WANG], June 24, 2008, [http://www.yaxin.com/aboutus/content/2008-06/24/content\\_189262\\_6.htm](http://www.yaxin.com/aboutus/content/2008-06/24/content_189262_6.htm).

murder, arson, robbery, and intentional damage to property. Of these prosecuted rioters, 26 defendants were sentenced to the death penalty with either immediate execution (9 people) or two-year suspension (16 people),<sup>140</sup> 6 were sentenced to life imprisonment, and the rest facing lengthy imprisonment ranging from 15 to 18 years.<sup>141</sup> In the following trials, the death penalty and life imprisonment remained the most common sentencing options in the Urumqi courts.

Along with harsher punishment applied to terrorism-related cases in China in recent years, judgment and sentencing of convicted terrorist suspects or groups have been carried out in a more draconian manner. In Xinjiang, the local government is now more inclined to adjudicate terrorism cases in a public forum where defendants are convicted and sentenced in front of the general public. Indeed, the public sentencing rally is not new, but a common form of judicial practice widely employed in the Strike Hard era. One of its major functions was to “provide a symbolic reassurance of the capacity of the State both to protect its citizens and to reflect the prevailing moral order.”<sup>142</sup> However, different from mass trials in the administration of campaign-style justice, which were barely applied to terrorist suspects due to the stated sensitivity of the offense, public sentencing of terrorism cases has become growingly visible and popular in the post-2001 period. For example, on September 18, 2008, the Supreme Court of Yili Autonomous Prefecture in Xinjiang publicly tried cases involving offenses committed by 6 terrorist organizations. Twelve individuals were convicted of committing violent crimes to interrupt the opening of the Beijing Olympic Games.<sup>143</sup> These public trials took place in a football stadium, attended by thousands of citizens.<sup>144</sup> Such sentencing rallies were periodically repeated in Yili, with the biggest one being held on

---

140. AMNESTY INTERNATIONAL, *supra* note 135, at 19.

141. Editorial, *The Urumqi Intermediate Court Convicted 5 Cases Involved in the 5 July Incident, 3 Sentenced to the Death Penalty* [Wulumuqi Zhongyuan Xuanpan 5 Qi 7-5 Shijian Fanzuian, 3 Ren Huo Sixing], XINHUA, Dec. 4, 2009, <http://news.qq.com/a/20091204/002709.htm>.

142. Susan Treveskes, *Public Sentencing Rallies in China: The Symbolizing of Punishment and Justice in A Socialist State*, 39(4) CRIME, L. & SOC. CHANGE 359, 362 (2003).

143. Editorial, *6 Violent Terrorist Organizations were combated This Year in Yili, Xinjiang* [Xinjiang Yili jinnian Dadiao 6 Ge Baoli Kongbu Tuanhuo], BEIJING NEWS [XINJING BAO], Sept. 23, 2008, <http://news.sina.com.cn/c/1/2008-09-23/015916335970.shtml>.

144. *Id.*

May 27, 2014, where 55 defendants charged with murder, the offense of splitting the state, and leading, organizing, and participating in terrorist acts were sentenced to death.<sup>145</sup> Over the last ten years, this model has been duplicated across Xinjiang, in Urumqi, Akesu, Keshi, and Hetian—the areas where terrorist attacks have been rampant in recent years.<sup>146</sup>

Public sentencing conveys the punitive intent that goes beyond simple retribution and claims to protect the public and reduce crime by utilizing forms of cruelty where the objective is to take delight in the pain of others, whether that pain is physical, mental, or social. Conviction of terrorist suspects in the public arena has become a kind of therapeutic theatre in which offenders publicly express feelings of moral shame and social indignation. This sentencing style, reminiscent of mass trials in the Maoist and reform eras, represents a ritualistic form of justice in which terrorist offenders are presented as legitimate targets for public vigilance.

## CONCLUSION

9/11 marked a watershed moment, followed by a significant increase in the level of terrorist violence in China. In many respects, China's response to the emerging threat of terrorism has paralleled that of its Western counterparts—that is, a move toward the building of a systematic and comprehensive legal framework against terrorism. This new counterterrorism arena contains a series of novel strategies that directly or indirectly represent the state's increasingly harsher attitude toward terrorism. Developed from the Strike Hard campaign in the 1990s, China's current counterterrorism laws and punishments have shifted to focus on more punitive treatment of terrorism.

This article has identified three significant paradigm transformations to reflect this tougher legal response to terrorism: the shift to criminalize a new

---

145. Editorial, *Public Trials of 55 Defendants in Xinjiang Yili, the Death Penalty Given to 3 Who Killed a Family of 4* [Xinjiang Yilizhou Gongshen 55 Beigao, 3 Ren Shahai Yijia Sikou Huo Sixing], XINHUA, May 27, 2014, <http://news.163.com/14/0527/2019T9E85UV0001124.html>.

146. Editorial, *Xinjiang Courts Publicly Tried 23 Cases, 9 People Sentenced to Death* [Xinjiang Fayuan Gongkai Xuanpan 23 Qi Anjian, Panchu 9 Ren Sixing], FREE ASIAN STATION, June 5, 2014, <http://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/nu-06052014110800.html>.

suite of terrorism crimes, the expansion of police power in handling suspected terrorists, and an increased harshness in sentencing and punishing terrorist perpetrators. With counterterrorism laws evolving in both dramatic and incremental ways since 2001, these shifts may represent the gradual legitimization of a new legal norm for counterterrorism. In other words, counterterrorism laws are no longer the temporary provisions envisaged by scattered legislative or policy documents; they are abiding features of the legal and political landscape in China.

What does the future hold for China's counterterrorism legal strategies? While expanding the existing laws and writing new counterterrorism laws, there has been a worrying trend in Chinese legal policy to over-criminalize terrorist offenses. In the context of the preemptive rationale and a new definition of terrorism in the CTL, many activities that may fall within the scope of legitimate religious practices in other jurisdictions are otherwise rendered as criminal acts in China. This can be attributed to the state's prioritized commitment to maintaining social harmony by preemptive investigation and prosecution, as well as a widened definition of terrorism that covers extremism and separatism. Assuming that radical reform of terrorism laws is unlikely in the near future, there is evidently a need to develop guidelines governing the application of criminal law and CTL provisions that criminalize terrorist offenses. Such guidelines should serve to guide police and prosecutors in the process of investigating terrorism, as well as to distinguish rightful ethnical and religious acts from terrorist acts.

By expanding police powers to combat terrorism, choices between competing values—liberty versus security—cannot be avoided. It is particularly the case when the Chinese police are capable of freely exercising unfettered discretion to handle terrorism cases in the administration of criminal justice. As noted in the preceding analysis, the effect is that fairness and lawfulness in the exercise of control orders and other custodial measures rests heavily in the hands of the police. The question as to whether the incarceration decision made by the police is able to meet the minimum requirements of justness and reasonableness may be challenged not only by concerned individuals but also by the wider legal community. Therefore, it is essential both to establish an operational system of procedural safeguards and to subject it to rigorous scrutiny to determine whether those safeguards are effective in preventing, identifying, and remedying abuse of powers.