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Members of the Snow Leopard Commando Unit

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In a Fortnight

By Peter Mattis

STATE COUNCIL HIGHLIGHTS CHINA'S INFORMATION SECURITY CHALLENGES

On May 9, Premier Wen Jiabao opened an executive meeting of the State Council on promoting China's development of information technology and information security. The meeting promulgated a new opinion "Vigorously Promote Informatization Development and Earnestly Guarantee Information Security." Premier Wen called for a clear division of labor and assignment of responsibilities as well as increased financial support for informatization (*Shanghai Securities News*, May 10; *Xinhua*, May 9). Recently released figures from Sichuan suggest this support could be substantial, boosting local information security funding nationwide by 30 percent (*Sichuan News Network*, May 8). The State Council meeting and its outcome shows the persistent concern for security that runs throughout Beijing's push to modernize its information technology infrastructure. Beyond cyber security, the involvement of China's foremost reform advocate in security affairs and a related policy initiative by a factional ally suggests a setback for China's security chief, Zhou Yongkang.

The new opinion enumerated the following six points for developing China's information technology infrastructure: expand China's broadband infrastructure and deploy next generation Internet infrastructure; deepen the integration

of industrialization and informatization; accelerate informatization in the social domain, including e-government; improve information services for the agricultural industry; improve information security and management; and accelerate construction of security capabilities. In four of the six categories, information security play a key role, reflecting Beijing's concern that Chinese computers and networks are too vulnerable to attacks and inadvertent leaks—a point echoed during Defense Minister Liang Guanglie's recent visit to Washington (Xinhua, May 9; *China Daily*, May 8; BBC, May 8; *Outlook*, May 6).

In a widely reprinted article in *Outlook*, one analyst observed that as Chinese government organizations depend more on information systems, the challenges of information security multiply. One of the primary concerns is how to educate users on changing their behavior to cut back on inadvertent leaks, e.g. through removable storage media and unauthorized connections between secure and insecure systems (*Outlook*, May 6; April 16). These concerns have generated some novel efforts to improve cadre awareness, so officials do not fall afoul of regulations. Last year on Hainan Island, for example, security authorities led by the local party secretary, Luo Baoming, opened a museum exhibit on information security practices as well as the consequences of poor secrecy protection work. Luo saw the museum exhibit as a way to counteract dereliction of duty, ignorance and negligence as a source of information leaks (*Hainan Daily*, August 23, 2011).

The other part of building a modern, informatized economy is increasing China's domestic production of information technology. Although a robust domestic industry has economic benefits, Beijing in this context is concerned with foreign countries' abilities to build back doors into Chinese government and corporate networks—exploiting the “soft underbelly of supply-chain security.” Currently, China imports 90 percent of its microchips and networking equipment as well as 65 percent of its information security equipment and software—e.g. network firewalls, encryption and network monitoring (*Outlook*, April 16). The State Council's recent meeting expands off of and puts a higher-level imprimatur on a Ministry of Industry and Information Technology directive last fall, entitled “Notice on Strengthening Security Management for Industrial Control Systems,”

that highlighted the need to build security practices into the normal use of corporate and industrial networks (People's Net, October 28, 2011).

Concurrent to the State Council session, the newly-launched “Chengdu Information Security Industry Plan Under the Twelfth Five Year Plan” offers an ambitious expansion of information security and secrecy protection work, aiming to more than double this budget by 2015 (Sichuan News Service, May 8). The ambitious investment program and explicitly competitive nature of Chengdu's plan suggest Chinese information security efforts may suffer from being too localized. Local decisions on technology that is incompatible with other locales' equipment and software has been a problem in the past, even in such areas as integrating public security databases considered a high priority (*China Police Daily*, November 18, 2009). Recent commentaries continue to note the need for greater standardization in both the human and technical elements of integrating and securing an increasingly networked China, especially in the area of information security (*Outlook*, May 6; April 16).

Lastly, there may be a political implication in the State Council announcement. Premier Wen is a curious figure to be announcing such a substantial spending increase on security, even though he has the economic portfolio and informatization has clear implications for the economy. While State Councilor Meng Jianzhu and a key figure behind the public security informatization probably participated in the executive meeting, Zhou Yongkang remained absent from media discussions of information technology and information security as elements of managing stability (Xinhua, May 9). Perhaps not coincidentally, Liu Qibao, the Sichuan Party Secretary with ostensible responsibility for overseeing Chengdu's plan, also was a former senior Communist Youth League official during the 1980s. Liu's background probably aligns him strongly with Hu Jintao's *tuanshipai* faction. This adds to the growing number of reasons to think Zhou has suffered some setbacks as a result of Bo Xilai's misuse of the police force and Chen Guangcheng's escape.

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Chen Guangcheng Fiasco Shows Dim Prospects for Political-Legal Reform

By Willy Lam

The blind lawyer Chen Guangcheng's plight, which piqued much of the world's attention the past fortnight, has fully exposed the shocking failings of China's law-enforcement apparatus. Chen was forced to seek shelter in the U.S. Embassy in Beijing due to the Chinese authorities' systematic violations of his civil liberties. After having served a four-year jail term under the dubious charges of "obstructing traffic and destroying property," Chen was kept under illegal house arrest in his native Dongshigu village, Shandong Province, from 2010 until his daring escape last month. Neither human rights activists nor reporters were allowed to visit him in Dongshigu. As a result of protracted negotiation between the Chinese and U.S. authorities, it seems Chen, who is now recuperating in a Beijing hospital that is heavily guarded by police, will be allowed to go to New York University as a visiting scholar later this year. Yet serious questions remain about the Chinese Communist Party's (CCP) labyrinthine *zhengfa* ("political and legal") bureaucracy, which controls the police and judicial organs. Given the bad publicity that the Chen case has generated, will the new leadership that will be endorsed at the 18th CCP Congress this autumn overhaul this police-state establishment? Or is it more likely that, given the party elite's obsession with *wei-wen* (short for *weihu wending*, or preserving stability), one of the party-state's largest operations will continue to grow in clout and influence?

It is instructive to first take a look at how the law-enforcement apparatus, which is under the leadership of Politburo Standing Committee (PBSC) member Zhou Yongkang, has amassed so much power in the past few years. The Central Political and Legal Commission (CPLC), or *zhengfawei*, which Zhou chairs, is in charge of the Ministry of Public Security (or police), the Ministry of State Security (or secret police), the Procuratorate (or prosecutors' offices) and the courts. In tandem with the Central Military Commission (CMC), the CPLC also exercises control over the people's militia as well as the People's Armed Police, which is a paramilitary unit

charged with tackling riots and disturbances. Additionally, there appears to be unofficial security forces hired by local governments and the center. The *zhengfa* system hires "informants," citizens who are asked to provide information to the police when they spot suspicious characters or hear about "anti-government plots" in the neighborhood. No one knows how many informants there are, but one report suggested a high concentration. In Kailu, an Inner Mongolian county, public security recruited 12,093 informants out of 400,000 inhabitants (*Hong Kong Economic Journal*, February 24; News.China.com (Beijing), January 21; *The Guardian*, February 9, 2010).

The exact number of official, unofficial and informant personnel under the *zhengfa* apparatus is a state secret. Yet, it is well-known that the budget, staff and power of the law enforcement establishment has grown substantially since 2008, which witnessed not only the Beijing Summer Olympics but also the worst outbreak of rioting in Tibetan areas since the end of the Cultural Revolution. It was also in the same year that CCP authorities employed Mao Zedong's "people's warfare" concept to boost internal security (See "Beijing Revives Mao's 'People's Warfare' to Ensure Trouble-Free Olympics," *China Brief*, July 17, 2008). *Wei-wen* expenditures available to departments under the CPLC grew from 514.0 billion yuan (\$81.3 billion) in 2010 to 624.4 billion yuan (\$98.8 billion) in 2011—and to 701.7 billion yuan (\$111.1 billion) this year. In both 2011 and 2012, the *wei-wen* budget exceeded even that of the publicized outlays of the People's Liberation Army (Reuters, March 4; Ming Pao [Hong Kong], March 4). While Zhou has played a sizeable role in extending his *zhengfa* empire, he enjoys the support of other PBSC members, particularly President Hu Jintao. In numerous speeches the past few years, Hu has called upon central and regional cadres to "consider preserving stability as [their] foremost task" (China.com, March 15; CNTV.com, March 9).

Much of the expansion of the *zhengfa* empire has taken place in the localities. According to Chen Guangcheng, *wei-wen* expenditures for Dongshigu Village and its vicinity were 60 million yuan (\$9.5 million) last year, double the 2008 budget of 30 million yuan (\$4.8 million). A team of at least 200 police and informants were responsible for the "safety" of Chen (*Hong Kong Economic Times*, May 2; *China Times* [Taipei] May 1; *Ming Pao*, May 1).

The apparent overzealousness of many grassroots *wei-wen* units might give rise to the impression that central authorities are not necessarily at fault: the local units might have given excessively draconian interpretations to instructions from on high. As Northwestern University political scientist Victor Shih pointed out, Beijing appears to give local *zhengfa* units some autonomy so that “if they make a mistake, all the blame can be put on local officials without jeopardizing the entire model” [1]. Yet given the national if not international fame of activists such as Chen, it is hard to believe that the CPLC has not explicitly authorized the extra-legal treatment that has been meted out to these thorns in the side of the authorities.

In fact, it is the *zhengfawei*—and its sister unit, the Commission for Social Management and Comprehensive Treatment of Law and Order—which has established a plethora of local-level units for the purpose of ensuring better implementation of central edicts. From the mid-2000s, offices for Upholding Stability and the Comprehensive Treatment of Law and Order began to be set up in every city district and every village town or township (*Southern Weekend* [Guangzhou], August 19, 2010; *Wall Street Journal*, December 9, 2009). That the *zhengfawei* has enhanced its control over grassroots offices—and at the same time expanded its overall national clout—is evidenced by the increasing number of regional law-enforcement chiefs who have been appointed deputy party secretaries of provinces and *zhixiashi* (provincial-level municipalities). In at least five of China’s 31 provinces, autonomous regions and *zhixiashi*, heads of *zhengfa* departments double as deputy party secretaries. These include the Tibet and Inner Mongolia Autonomous Regions—which have high concentrations of ethnic minorities—in addition to Qinghai and Zhejiang Provinces and the Beijing municipality (*Oriental Outlook Weekly* [Beijing], April 16; *Southern Metropolitan News* [Guangzhou], February 18). In the interest of administrative streamlining, the number of deputy party secretaries of provinces and *zhixiashi* has been reduced to two. Without an exception, the governor or mayor occupies one of the two slots of deputy party secretary. That the second deputy party secretary is in charge of law-enforcement testifies to the importance that Beijing has attached to upholding stability. At least theoretically, this also makes it easier for the provincial or municipal *zhengfa* chief to exercise tighter supervision over *wei-wen* units within his or her jurisdiction.

While it is true that quite a number of grassroots *zhengfa* cadres may have exaggerated the dangers of “destabilizing elements” in their localities to get more funding from either the provincial capital or Beijing, many more local cadres are worried about losing their jobs should they be seen as failing to uphold law and order. In most provinces and cities, a grassroots official is liable to be summarily fired if a major destabilizing incident—for example, a riot involving thousands of protestors or the sudden disappearance of an influential human rights activist such as Chen—was to take place (*Yangcheng Evening Post* [Guangzhou] April 10; Chinanews.com, November 16, 2011).

By the same token, a cadre with the reputation of a tough law-and-order enforcer is seen as having a sure-fire ticket for promotion. Before his downfall in March, former Chongqing Party Secretary Bo Xilai became a national hero due to the apparent success of the *dabei* (“crack down on underground gangs”) campaign in his metropolis. Bo’s anti-triad operation, which was run as a Maoist-style political movement, fully illustrated the problems of China’s law enforcement model. Quite a number of the triad bosses were incarcerated on trumped up charges—and without due judicial process. Bo and his power wife, the lawyer-businesswoman Gu Kailai, had a reputation of subjecting their foes to extra-legal punishments such as torture or even murder. In early February, Bo’s former police chief Wang Lijun, the erstwhile “national *dabei* hero,” tried to seek political asylum at the U.S. consulate in nearby Chengdu due to fears that Bo had turned his ire on him (*New York Times*, May 6; *Ming Pao*, May 5; *Wall Street Journal*, April 8).

Not surprisingly, Beijing’s approach to upholding stability has attracted intense criticism from relatively liberal academics and public intellectuals. According to a recent report compiled by the social stability research group at Tsinghua University, the authorities are trapped in a vicious cycle of “society becoming even less stable even as more resources are being devoted to *wei-wen*.” The report added, “Various levels of government have earmarked massive human and material resources for upholding stability, yet the quantity of incidents relating to social contradiction and confrontation has ceaselessly increased” (*People’s Daily*, February 2; *Southern Weekend*, April 15, 2010). According to Wenzhou University social

scientist Wang Yong, “*wei-wen* has exacted huge social costs to which we must pay attention.” For example, since the law-enforcement apparatus has often used political movement-style maneuvers to stamp out the seeds of instability, “normal administrative regulations and the rule of law has been damaged,” according to Professor Wang. Wang also wrote “The [normal] voices of society have disappeared even as the private [social] sphere has shrunken even further” (*Truth Seeking* [Nanchang Journal], February 2012).

Zhou Yongkang, the CPLC chairman since 2007, has taken flak for the Shandong police’s failure to keep a blind man under house-arrest. He also was exposed to ridicule and criticism for the overall lawlessness in Chongqing. There was even innuendo that the PBSC member had conspired with Bo to enable the latter to not only join the PBSC later this year but to eventually become CCP general secretary (*Washington Post*, April 21; *Associated Press*, April 19). Given that Zhou, age 69, is set to retire at the 18th Party Congress, will there be a restructuring of the *zhengfa* bureaucracy—as well as the *wei-wen* mindset—by the next leadership, or at least Zhou’s successor?

Northwestern University’s Shih thinks significant changes in either the clout or the approach of the law enforcement apparatus are unlikely. “The growth of the security apparatus has to do with the rising need of the regime to prevent ‘sudden incidents,’” Shih said, “Any major weakening of this capacity can bring unexpected consequences” [2]. Bo Zhiyue, a veteran analyst of Chinese elite politics at the National University of Singapore, said future developments hinged on which PBSC member would assume the *zhengfa* portfolio after the 18th CCP Congress. “Much depends on who will become the new head the CPLC—and how much this leader is willing to shake up the establishment,” he said. Bo speculated, “The expansion of the *zhengfa* apparatus has been partly due to the division of labor among PBSC members and partly due to the need to maintain stability. If Zhou has a lot of say in choosing his own successor and his successor is loyal to his policies, then there is no hope of fundamental changes. If Zhou’s successor is chosen to shake up the apparatus, there would be substantial changes” [3].

As things stand, there seems to be a strong consensus among the PBSC members—including Xi Jinping and Li Keqiang, who are expected to form the axis of

the upcoming Fifth-Generation leadership—that the leadership must pull out all the stops to boost security and stability. The urge to preserve the Maoist “one voice chamber” has grown in light of fissures at the CCP’s top echelons exposed by the Bo Xilai scandal (“Beijing’s Post-Bo Xilai Loyalty Drive Could Blunt Calls for Reform, *China Brief*, March 30). As was the case in 1989, the party leadership appears anxious to prevent dissidents from exploiting factional strife within the CCP to “make propaganda” for Western-style political reforms. This perhaps explains why, despite Beijing’s pledge to continue “human rights dialogues” with the United States and other Western countries, the *wei-wen* apparatus has been cracking down even harder on so-called destabilizing agents. Several public intellectuals and human rights lawyers who have helped Chen in the past few years have been subjected to brutal treatment. Globally famous activist Hu Jia and his wife have been put under house arrest. Attorney Jiang Tianyong, who tried to visit Chen in the hospital, was badly beaten up by police and prevented from leaving his apartment to seek medical care (CableTV Hong Kong, May 6; Radio Free Asia, May 4). Even as the international media speculates upon whether Beijing would honor promises made to both U.S. officials and Chen about fulfilling his wishes to pursue further studies abroad, China’s *zhengfa* machinery continues in overdrive.

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Notes:

1. Author’s interview with Victor Shih, May 2012.
2. Ibid.
3. Author’s interview with Bo Zhiyue, May 2012.

Exploring Constitutional Reform in the Wake of the Bo Xilai Affair

By Keith Hand

In recent years, China's commitment to "rule in accordance with law" has been called into question as Chinese Communist Party (CCP) leaders have intensified the politicization of legal institutions, de-emphasized judicial professionalism and formal adjudication, and suppressed rights defenders ("CCP Tightens Control over Courts," *China Brief*, June 17, 2011). The fall of Politburo member Bo Xilai and reappraisal of his anti-crime campaign have fueled debate over these trends. While official media have tried to spin Bo's fall as a demonstration that no official is above the law, the incident has intensified public discussion of the excesses of political elites, disregard for the law, and instability and lack of transparency in China's political system. Some analysts argue that the Bo Xilai affair has put CCP conservatives such as Zhou Yongkang on the defensive and reinvigorated a reform faction led by Premier Wen Jiabao (*Washington Post*, April 26).

While such political dynamics are difficult to interpret, recent events raise the possibility that China's leaders could explore political-legal reforms to bolster CCP legitimacy and public confidence in their rule of law narrative. Veteran China watcher Cheng Li suggests the Bo affair could create an opening for constitutional reform (*Financial Times*, April 26). A recent series of state media commentaries calling for political-legal reform also indicate that reform dynamics could be in play (*People's Daily*, April 23; *Xinhua*, April 23; *China Youth Daily*, April 23). The CCP has pursued legal reform in the post-Mao era in part to shore up its governing legitimacy and ease pressures for broader political reform [1]. In this context, it should be noted that both the commentaries and previous leadership statements emphasize reform as a tool to strengthen CCP leadership ("The Limits of Reform: Assaulting the Castle of the Status Quo," *China Brief*, April 26). This article explores three reforms with constitutional dimensions that would be consistent with China's party-state structure and that the Zhongnanhai might represent as steps toward enhancing supervision of state action.

Constitutional Supervision Committee

Under China's Constitution, the National People's Congress (NPC) is the supreme organ of state power. There is no separation of powers under this constitutional structure, which was modeled on that of the Soviet Union. The NPC and its Standing Committee (NPCSC), rather than the courts, are charged with supervising enforcement of the Constitution and annulling regulations that conflict with the Constitution. Even official Chinese sources acknowledge the NPCSC has failed to perform these functions in practice.

To address this dysfunction, legal scholars have pushed for the establishment of a specialized constitutional supervision committee under the NPC. While proposals vary, at minimum such a committee would be empowered to review the constitutionality and legality of some legislative acts [2]. Legal scholar Ji Weidong has proposed a constitutional committee of political and legal figures that would issue rulings on such issues subject to the condition that the NPC could reject them. [3]. Scholars involved in the drafting of the 2000 Legislation Law and the 2006 People's Congress Standing Committee Supervision Law included provisions for a constitutional supervision committee in early drafts of these statutes, but in both cases the provisions were later removed.

There is precedent for such a committee in constitutional system similar to China's. As a component of Mikhail Gorbachev's reforms, the Soviet Union established a Constitutional Supervision Committee under its supreme legislature, the Congress of People's Deputies (CPD), in 1990 [4]. The CPD elected a Committee of more than twenty members from the fields of both politics and law. The Committee was empowered to review the constitutionality and legality of a range of state acts of the USSR and its republics and in most cases could suspend their effect. If the Committee found that a CPD law or a union republic constitution violated the USSR Constitution, however, its ruling was advisory in nature and could be rejected with a two-thirds vote in the CPD. The Committee structure thus respected, at least nominally, the CPD's constitutional supremacy [5].

The life of the Committee was cut short by political events that led to the dissolution of the USSR in 1991. During its brief existence, however, the Committee exhibited

several flashes of independence. In one 1990 case, for example, the Committee reviewed the constitutionality of provisions related to the Soviet internal passport and registration system, which resembled China's *bukou* system. The Committee suspended some of these provisions after finding that they violated fundamental human rights. In another case, the Committee reviewed the constitutionality of a Gorbachev presidential edict that empowered the Soviet Council of Ministers, rather than the Russian Federation, to exercise jurisdiction over the growing number of mass demonstrations in Moscow. To Gorbachev's displeasure, the Committee found the edict to be an unconstitutional exercise of executive authority.

Although the Soviet experiment provides a precedent for a constitutional supervision committee in a communist state with a supreme legislature, a risk-averse Chinese regime may have concerns about following this model. The CCP has expended enormous effort to study the collapse of the Soviet Union. Though the Soviet Committee did not play a significant role in these events, Chinese leaders may be reluctant to consider an institutional model that was associated Gorbachev's failed reforms or that demonstrated even limited willingness to constrain central political leaders.

One alternative would be to take modest steps to improve the transparency and effectiveness of existing NPCSC review procedures. Under current law, Chinese citizens have the right to propose that the NPCSC review the constitutionality and legality of some regulations. Although the NPCSC has received over 900 citizen review proposals, it has never issued a formal decision in response. To address criticism related to this institutional silence, the NPCSC procedure could be reformed to require the issuance of formal, public responses on the handling of such proposals and expand the proposal right to include a broader range of state acts. Some provincial procedures for local people's congress supervision over normative documents (official documents with repeat and binding legal effect) already contain such features [6]. Chinese citizens would likely view either the establishment of a constitutional supervision committee or modest improvements to NPCSC procedures as a symbolic step forward in China's constitutional evolution.

Consultative Mechanisms

A second possibility involves the establishment of consultative mechanisms for the resolution of constitutional disputes. Such a mechanism would involve CCP-supervised processes of deliberation, consensus building, and mediation that balance both legal and non-legal considerations. Some Chinese scholars argue that an informal mediation mechanism for resolving constitutional disputes already exists (Zhongguo Xianfa Jiaoxue Wang, Apr. 24, 2004). The process through which the State Council decided to repeal regulations on custody and repatriation in 2003 and to adopt new regulations on urban property expropriations in 2011 provide examples of these consultative dynamics. As an alternative to a formal constitutional supervision committee, the CCP could consider steps to institutionalize consultative practices that are currently employed on an ad hoc or informal basis.

A consultative mechanism could take a number of forms. Proposals for a constitutional supervision committee could be adapted to provide for the establishment of a body with only deliberative and advisory powers, perhaps under the framework of the Chinese People's Political Consultative Conference. Such a body could receive and deliberate on constitutional complaints, mediate intra-state conflicts and make recommendations for corresponding legal and policy reforms to party-state leaders.

China's existing grand mediation system is another consultative mechanism that might be adapted to address sensitive constitutional disputes. Under the grand mediation framework, first introduced in 2002, CCP and state leaders jointly identify collective or sensitive disputes and deploy integrated CCP, state and social resources to resolve them at the local level. Within this framework, judges serve as legal advisors in a multi-party political conference that balances legal, political, and other factors and resolves disputes through mediation and persuasion. An adaptation of grand mediation framework at the national level could provide a mechanism for resolving sensitive and politicized rights claims through a consultative framework.

A consultative mechanism would have several features that might be desirable to the CCP. First, it would

build on practices at the core of existing legislative, policymaking and dispute resolution processes and would reinforce efforts to build controlled channels for citizen participation and supervision. Second, a consultative mechanism might ease concerns about potential threats to CCP power and in turn represent an acceptable compromise for conservatives in a divided leadership. Finally, senior leaders could claim reform progress by arguing that they have taken steps to ensure consideration of constitutional complaints but do so through an indigenous, CCP-supervised mechanism grounded in China's political traditions. While consultative mechanisms could facilitate citizen-state discourse on sensitive constitutional issues, however, the same features that could make them desirable to the CCP also highlight their limitations as mechanisms for constraining party-state power in practice.

Administrative Law Reforms

A third option would be to press forward with administrative law reforms at the national level. Scholars have argued that in the absence of enforceable constitutional law, administrative law has emerged as a partial substitute [7]. Chinese scholars have pushed for the adoption of a comprehensive Administrative Procedure Act (APA) that would establish detailed standards and procedures for the exercise of administrative power. These central efforts have been stalled for over a decade. A decision to press forward with administrative procedure reforms at the national level would address key governance issues and constitute a broad legal reform with constitutional significance.

Central leaders have local models to draw on should they decide to take this path. Facing obstacles at the national level, Chinese scholars turned to provincial-level administrative procedure reforms. Initial efforts focused on Hunan, where governor Zhou Qiang played a key role in pushing through the first provincial-level administrative procedure provisions and several related reforms beginning in 2008. Zhou viewed these reforms as vehicles for imposing greater transparency and checks on administrative decisions that often involve corruption or generate social conflict (Southern Weekend, September 25, 2008). The Hunan provisions subsequently inspired local efforts in Shandong province, Wuhan, Shantou, and other locales. Zhou, a Hu Jintao ally and a lawyer by

training, is rumored to be in play for a Politburo seat at the 18th Party Congress (“Hu Jintao’s Sixth Generation Protégés Play Safe to Ensure Promotion,” *China Brief*, April 26).

The Hunan administrative procedure provisions and related measures establish important rules designed to constrain state action [8]. The provisions more clearly define administrative powers and require the adoption and publication of standards for the exercise of discretionary authority. They enhance citizen supervision and participation by requiring consultation with experts, notice and comment procedures, and public hearings for major administrative decisions and other administrative acts. They also improve transparency and establish procedural protections for citizens subject to or impacted by administrative decisions, adjudication, or enforcement. Finally, the provisions take steps to control normative documents by restricting their scope and providing that they expire automatically after five years.

A push to accelerate administrative procedure reforms at the national level may be the most likely of the three possibilities examined here. Central leaders have drafts of a national APA and local experiences to draw on. Notably, one of the April 23 commentaries on deepening reform included contributions from research centers in Hunan and Shandong, the two provinces that have enacted administrative procedure provisions (*People’s Daily*, April 23). National administrative procedure reforms would address key governance issues such as improving transparency; enhancing public participation and “democratic” supervision; and standardizing administrative practice. Wen Jiabao also emphasized these themes in a recent article that focused on controlling corruption (*Qinshi*, April 26). While arguably enhancing legal constraints on state action, however, such reforms would not directly implicate the sensitive issue of interpreting or enforcing citizen rights enshrined in the Constitution itself.

Conclusion

Although some may question whether significant reforms are feasible when competing CCP factions are engaged in a political transition, China’s last transition highlights just such a possibility. In 2002-03, Hu Jintao and Wen Jiabao took the reins of the party-state apparatus in the

midst of a political debacle that damaged CCP legitimacy (the SARS crisis) and a human rights case that drew attention to local abuses (the death of Sun Zhigang in official custody). The Hu-Wen team responded to these challenges by emphasizing transparency, encouraging reform discourse, and opening the door to modest constitutional-legal reforms. They also leveraged these responses to strengthen their position in an uncertain transition. (*China Leadership Monitor*, Summer and Fall 2003). Similarly, a rising leadership team under Xi Jinping might consider one or more of the reforms discussed here as a tool to restore confidence in China's legal construction project and bolster the legitimacy of both the Party and their own leadership.

Of course, such reforms would likely impose only limited constraints on the party-state in practice. China has experienced many obstacles in implementing even modest administrative law reforms, and the CCP would undoubtedly maintain tight control over any constitutional supervision or consultation mechanism. The Hu-Wen team's eventual shift away from the reformist rhetoric of 2002-03 and toward efforts to strengthen CCP control over legal institutions and contain the rights defense movement is also a reminder that reform dynamics in China can change rapidly. That said, even superficial or incomplete legal reforms have the potential to raise citizen expectations, create political space for reformers, and provide new platforms that can be used to exert pressure on the party-state. In this respect, they may be useful to reform-minded citizens working to shape China's political environment in ways that would make legal institutions more meaningful over the long term.

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Notes:

1. Randall Peerenboom, *China's Long March Toward Rule of Law*, Cambridge: Cambridge University Press, 2002, pp. 9-26.

2. Zhu Guobin, "Constitutional Review in China: An Unaccomplished Project or a Mirage?" *Suffolk University Law Review*, Vol. 43, No. 1, 2009, pp. 650-53.
3. Ji Weidong, "Hexianxing Shencha Zhidu de 'Liangbu Zou' Silu, [The Two-Step Road for a Constitutional Review System]," *2003 Renda Yanjiu*, No. 7, pp. 10-11.
4. For one account of the Committee, see Joseph Middleton, "The Soviet Experiment with Constitutional Control: The Predictable Failure of the USSR Constitutional Supervision Committee," in *Constitutional Reform and International Law in Central and Eastern Europe*, Kluwer, 1998, pp. 133-48.
5. Prior to 1990 constitutional amendments, the USSR Supreme Soviet was the highest organ of state power.
6. See, e.g., *Zhejiang Sheng Geji Renda Changweihui Guifanxing Wenjian Beian Shencha Guiding* [Zhejiang Province Provisions on Filing and Review of Normative Documents with Local People's Congress Standing Committees at Each Level], Issued Dec. 18, 2007.
7. He Xin, "Administrative Law as a Mechanism for Political Control in Contemporary China," in *Building Constitutionalism in China*, Palgrave, 2009, pp. 160-61; Stanley Lubman, "Citizen Rights, the Constitution, and the Courts," *China Real Time Report*, September 26, 2011.
8. *Hunan Sheng Xingzheng Chengxu Guiding* [Hunan Province Administrative Procedure Provisions], Issued Apr. 17, 2008; *Hunan Sheng Guifan Xingzheng Cailiang Banfa* [Hunan Province Measures on Standardizing Administrative Discretion], Issued April 17, 2010.

Local Government Financing Growing Increasingly Precarious

By Eve Cary

In 2008, China's central government launched its own New Deal, heavily promoting massive infrastructure development after the economic downturn. Local governments were more than happy to take up the banner. Now, they are left with shiny new plazas, towering office buildings, highways to nowhere and a lot of debt—much of it financed through questionable vehicles and backed by land assets. The topic of local debt became popular among Western observers in the summer of 2011, but has become even more salient now. As the real estate market slows, land is losing value, throwing into question the quality of many of these loans. Additionally, an upcoming power transition in the fall of 2012 has made even the most certain policies worthy of re-examination, especially when China seems to be heading down the wrong path.

Cheng Siwei, deputy head of China's 9th National People's Congress, noted China's "version of the U.S. subprime crisis is the lending to local governments, which is causing defaults" (*China Daily*, September 17, 2011). Complex types of financial instruments, including "special purpose vehicles" and the securitization of mortgage loans, have caused problems in the United States. Similar such instruments now are being used by local Chinese governments, but China has not yet felt the effects.

What implications do local government funding instruments have for local governments, or even the central government as a whole? As the land market slips, the precarious nature of local government financing and the lack of proven alternatives may pose a real challenge to economic stability.

The Emergence of Local Government Financing Vehicles

1994 was a landmark year for local government finances. First, fiscal decentralization left local governments with more responsibilities but fewer funds, and second, local governments were forbidden from directly borrowing from banks or issuing loans. As local governments

approached infrastructure development needs with limited resources, another funding method sprang up: local government financing vehicles (LGFVs) or, alternatively, local financing platforms (LFPs).

LGFVs are limited-liability companies financed by local government asset pools (composed mainly of land). Backed by these assets, these companies act as intermediaries by securing bank loans and funneling the money to local governments. LGFVs gained popularity in 2008–2009 in conjunction with the central government's stimulus package, which called for massive infrastructure spending. During that period, the central government decided that local governments would be allowed to run fiscal deficits and that local investment companies and utilities would be allowed to issue enterprise bonds approved by the National Development Research Council. As a result of these policy changes, the National Audit Office of China estimates that by the end of 2010 there were an estimated 6,576 LGFVs [1].

Trust companies also have emerged as financial players. They serve as intermediaries that take bank-raised funds and transfer them to LGFVs as equity investment. This investment allows LGFVs to meet minimum capital requirements to obtain bank loans. Local governments do not have to raise money directly, benefitting smaller localities, even if banks are saddled with increased risk. Additionally, trust companies allow banks to stay within banking regulations by facilitating off-balance sheet loans. The central government has tried to curb this practice through new regulation. In November 2010, the China Banking Regulatory Commission (CBRC) issued regulations on the minimum net capital of trust companies; in 2011, it restricted the sales of trust products that invest in commercial paper; and, in January 2012, the CBRC issued further regulations (*Xinhua*, January 13).

LGFVs Today

So how big is local government debt? According to the National Audit Office of China, local government debt totaled 10.72 trillion yuan (\$1.7 trillion) at the end of 2010. Financial analysts and media research have thrown this number into question. Moody's estimates the local debt burden could be 3.5 trillion yuan (\$554 billion) more than stated by the Audit Office (*Reuters*, July 5, 2011) [2].

In Chongqing, the debt burden is estimated to be 100 percent of gross regional product, compared to the 22 percent average nationwide (*Wall Street Journal*, April 23). This anomaly can be attributed to the social welfare spending of former Chongqing Party Secretary Bo Xilai, the rising star and Mao revivalist who currently is embroiled in a career-ending scandal involving accusations of wiretapping, torture and murder. Massive (and expensive) public housing projects were just one of the ways he attracted attention and public support.

Additionally, surveys by the central bank and the CBRC found that bank loans by the end of 2009 accounted for 240 percent of local government revenue. Of local government debt, debt from LGFVs was 4.97 trillion yuan (\$787 billion), or 46.4 percent of the total. The danger with this is that LGFVs have a number of systemic problems. According to a November 2011 report by the National Audit Office of China, these problems include the following:

- Funds were invested “in projects that are energy-intensive, highly polluting and with excessive production capacities or with low productivity, or in overlapping projects;”
- The funds were “devoid of standardized management” and “their profit-yielding capabilities [were] weak;”
- 1,033 of the companies were guilty of “false-financing, the registered capital [not being paid in], [and] illegal provision of funds and withdrawing them by local governments and departments, involving a sum of 244.15 billion yuan [\$38.7 billion]” [3].

Additionally, the audit found 73.2 billion yuan (\$11.6 billion) of loans with improper collateral, 131.98 billion yuan (\$20.9 billion) of funds not used in a “timely manner” and 46.5 billion yuan (\$7.4 billion) of illegal funding guarantees (*Wall Street Journal*, January 4).

There are inherent characteristics of LGFVs that have made them dangerous to China’s economic system, including their credit worthiness. Banking analyst Michael Werner notes there is a mismatch between the duration of the liabilities and the return on investment, since the funds are being used for long-term infrastructure projects: “If you’re building a railroad or a highway, it takes several years and you’re not going to get direct revenues” (Bloomberg,

December 18, 2011). Additionally, the asset backbone of many LGFVs is land. The Audit Office found that at the end of 2010, “the debt balances whose sources of repayment were revenues from land sales ran to 2.547351 trillion yuan (\$403 billion), covering 12 provincial, 307 municipal and 1,131 county governments” [4].

There is significant doubt that land prices and values will be able to keep up with loan payments. Land prices and real estate values have fallen precipitously since the implementation of increased tightening measures (including restricted credit and more regulations on home purchases) in the fall of 2011. From a peak nationwide average land price per square meter of 2,307 yuan (\$365) in September 2009, land prices fell to 1,384 yuan (\$219) in October 2011, according to real estate agency Soufun. In the midst of the current decreases in land and real estate prices, Chinese officials have been quoted as saying that real estate prices would have to fall by a further 20 percent in order to be reasonable, and all signs point to a continuance of central government tightening measures. Stephen Green of Standard Chartered stated: “It’s a huge myth that land sales are going to be able to even support the interest payments let alone the principal payments,” noting that at least four to six trillion yuan (\$633–950 billion) of local government loans—possibly much more—will not be repaid by the projects (*Seattle Times*, July 23, 2011).

Central government policies also have led to a credit crunch among developers—leading to a number of bankruptcies—which will have a further downward impact on land prices. At the same time, debt continues to come due. According to the head of the CBRC, Shang Fulin, 35 percent of the current debt of LGFVs will come due in the next three years (Dow Jones, March 18). In response, LGFVs have been servicing debt by taking on more loans. In 2009, a major investment company in Wuhan borrowed \$230 million and used almost a third to repay bank loans (*New York Times*, July 6, 2011). According to the Audit Office report, in 2011, 358 LGFVs repaid existing debts by acquiring new debt, to the tune of almost 106 billion yuan (\$16.8 billion) [5].

The outstanding levels of debt certainly have consequences for the nation’s banks, primarily in the form of non-performing loans (NPLs). Banks are involved heavily in LGFVs. The CBRC noted that 17 percent of total bank

lending in 2009 went to LGFVs for a total of 7.4 trillion yuan (\$1.2 trillion). By the end of 2010, bank lending to LGFVs accounted for 9.1 trillion yuan (\$1.4 trillion) [6]. This also may be only the tip of the iceberg. In December 2011, Bloomberg did an extensive study on LGFV loans and found that the debt of just 231 LGFVs (out of a total of 6,576 LGFVs) comprised more than 75 percent of the total debt load reported by the National Audit Office. This indicates there are most likely vast sums not accounted for in the NAO's official figures (Bloomberg, December 18, 2011).

It is difficult to gauge the impact of local government debt on banks. In March, China Development Bank Corporation Vice President Wang Yongsheng reported that “almost none” of the bank's loans to LGFV had gone bad. Additionally, Yang Kaisheng, president of the Industrial and Commercial Bank of China (China's biggest commercial lender), said the bank's LGFV loans had a non-performing rate of 0.73 percent, compared to an overall rate of 0.94 percent (China Business Newswire, March 7).

A number of Western analysts however have taken a different view of the banking situation, one perhaps less biased than that of Chinese banks. UBS has estimated that over the next few years, LGFVs could produce \$460 billion in loan defaults, a larger percentage of China's GDP than the recent U.S. bailout program (*New York Times*, July 6, 2011). In January 2012, Standard & Poor's indicated that 30 percent of loans issued to LGFVs may become non-performing (China Business Newswire, January 13). A report by Moody's last summer noted potential NPLs could reach eight to 12 percent (Moody's, July 5, 2011). In an October 2011 report, Credit Suisse estimated that real estate, manufacturing, local government and SME loans account for more than half of the loan portfolio, but will contribute more than 80 percent of NPLs, creating an overall NPL ratio of eight to 12 percent (Credit Suisse, October 12, 2011).

Financing LGFVs and other alternative sources of local government debt damages China's banking culture, as Tsinghua professor Patrick Chovanec points out. He writes that, while Chinese banks have been trying to become “viable commercial entities,” as a result of the stimulus plan and the pressures to loan indiscriminately, they “reverted to being slush funds for government

largesse” (chovanec.wordpress.com, June 2, 2011). Government control of banking has created a system that is not allowed to focus on profitability, but must instead respond to central government orders.

Responding to LGFVs

In 2010, the CBRC took a number of steps to correct these problems, including the following measures: requiring banks to analyze LGFV loans through “stringent classification of loans, clarification of debt repayment parties, enhanced cushion, sufficient provisioning and prompt write-offs”; requiring banks to “classify their LGFV exposures through diligent cash flow analysis, and take ex ante remedial actions to mitigate the associated credit risks”; and recommending the re-categorization of LGFV loans into corporate loans if they met cash flow standards and were verified by the funding platform, lender and local government (*CBRC Annual Report 2010*, pp. 47, 56).

Attempts to correct the problem continued in 2011 and 2012. In May 2011, Chinese banks launched a major reorganization of the system, which shifted 2-3 trillion yuan (\$316–475 billion) of debt from local governments onto state banks. The banks will most likely shift them off their balance sheets as asset management company (AMC) bonds (Reuters, May 31, 2011). To prevent defaults, in October 2011, CBRC Vice Chairman Zhou Mubing announced LGFVs meeting collateral requirements would be allowed a one-time extension on their loans. In February 2012, Caixin reported banks also were going to adjust repayment schedules and let borrowers roll over existing debt into new loans (Caixin, February 26; *China Daily*, December 26, 2011). Finally, in March, the CBRC asked banks not to lend money to LGFVs, report on their current loans to LGFVs and work out a plan for covering LGFV debt, including raising cash (*China Daily*, March 2).

At the National People's Congress in March of this year, Premier Wen Jiabao announced that the central government would monitor levels of local government debt, including it in the central government's fiscal budget, and would “impose greater discipline and scrutiny on local government investment and borrowing plans” (*Shanghai Daily*, March 20).

Moving Forward on Local Government Financing

In the future, we can expect real estate prices (and accordingly, land prices) to continue to drop. The leadership transition this fall will bring in new faces, but most likely, not new policies where real estate/land policy is concerned, leading to continued restrictions on lending and borrowing. Local state interests are becoming more powerful, and efforts to create more sustainable types of growth (at the expense of quick, profitable growth) may encounter increasing resistance. At the heart of this issue is the problem of moral hazard: local governments feel comfortable borrowing excessive funds and racking up impressive deficits, assuming that the central government will not let them fail. They are also relying on the continuance of the “growth at all costs” policy that has been at the forefront for the last decade, and doing so because of their significant revenue constraints and expenditure requirements. The response of local governments will be a significant challenge for the new party leadership, which is expected to be weaker than even the current leadership.

The central government, however, has signaled that there will be more of an emphasis on sustainable growth in the future. At the National People’s Congress in March, Premier Wen’s annual work report called for a new growth target of 7.5 percent, deviating from the long-held 8 percent target. His remarks focused on promoting more sustainable development, including encouraging domestic consumption and managing inflation. It is difficult to tell whether this policy will be able to trickle down to the local governments, or if it will override certain institutional policies that have continued to promote growth (such as cadre promotion based on growth figures).

The needs of local governments mean that the future will depend on the development of alternate sources of income for local governments. There have been concrete steps toward this goal. First, in October 2011, the Ministry of Finance launched a trial bond program, which allowed the cities of Shanghai and Shenzhen as well as the provinces of Zhejiang and Guangdong to issue municipal bonds. Second, a trial property tax was launched in Shanghai and Chongqing in January 2011 (“China’s New Property Tax: Toward a Stable Financial Future for Local Government?” *China Brief*, March 2). Though these programs face tremendous implementation hurdles, there

has been talk of expanding them to additional cities and provinces, suggesting Beijing believes they have promise. These programs will help fill the revenue needs of local governments, hopefully transitioning them to more sustainable forms of income that would make them less reliant on risky financing schemes like LGFVs.

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Notes:

1. Walter, Carl E. and Fraser J.T. Howie, *Red Capitalism: The Fragile Financial Foundation of China’s Extraordinary Rise*, Hoboken, NJ: John Wiley & Sons, 2011; Audit Findings on China’s Local Government Debts, No.35 of 2011 (General Serial No. 104), National Audit Office of China, November 16, 2011.
2. Audit Findings on China’s Local Government Debts, No.35 of 2011 (General Serial No. 104), National Audit Office of China, November 16, 2011.
3. Ibid.
4. Ibid.
5. Ibid.
6. Kai Yuen Tsui, “China’s Infrastructure Investment Boom and Local Debt Crisis,” *Eurasian Geography and Economics*, Vol. 52 No. 5, 2011, 52, pp. 686–711, 702.

Assessing China’s Response Options to Kidnappings Abroad

By Daniel Houpt

In late April 2012, South Sudanese President Salva Kiir Mayardit visited China and met with a number of top officials, including Chinese President Hu Jintao. After these meetings, China offered South Sudan \$8 billion in development funding, along with an important message from Vice Premier Li Keqiang: ensuring the security of

employees of Chinese companies and their properties is an essential step in bringing further investment to the country (Xinhua, April 25). This has become an increasingly common message from Beijing to African nations as Chinese personnel in Africa have begun to face greater threats. From the beginning of 2007 until February 2012, Chinese citizens were involved in at least 14 separate kidnapping incidents that led to 15 deaths (*China Daily*, February 22; February 16; *Global Times*, February 1). The rise in kidnappings involving Chinese, including a recent case, which involved the capture of 29 Chinese workers in Sudan, has brought to the fore concerns about China's ability to protect its citizens overseas. The default policy response has been to try and forge better relationships with local police forces around Africa and better educate Chinese workers abroad on the threats to their safety. The increasing rate of kidnappings, however, suggests this route alone is insufficient.

China has two primary means to independently respond to kidnappings abroad: People's Liberation Army (PLA) Special Forces and private security firms. For these options to be viable they must have both the capability and the will to use force in overseas operations. Unfortunately for China, neither option fully meets these criteria. PLA Special Forces seem both capable and willing to conduct some kidnapping response missions, but are limited to sea-based contingencies in a contained area—not operations that may take them deep into foreign territory. Chinese private security firms, on the other hand, lack both the capability and will to engage in overseas kidnapping response operations and face a number of barriers before these become a realistic option. For now, China will be forced to increase diplomatically and economically its efforts to induce an increased commitment by local security forces to protect Chinese citizens in their country.

Chinese Special Forces

China's Special Forces were founded in the 1980s and are one of the newest branches of the PLA (*China Daily*, September 8, 2009). Since their inception, the Special Forces have developed into a respectable institution, even outperforming Western counterparts in Special Forces competitions. At the 14th Annual International Military Competition held in 2009, a Chinese Special Operations unit from the Jinan Military Area Command ranked first both in the number of gold medals and the total

number of medals presented in individual competitions, beating out U.S. and UK competitors and setting six new records (*PLA Daily*, February 23, 2010; July 8, 2009). To reach this level of performance, PLA Special Forces go through rigorous all-weather, all-terrain training to develop physical and mental strength.

In an article for the *PLA Daily*, Wang Junxian, commander of a Special Forces group known as "Sirius," described his training routine that includes winter survival missions lasting ten days in which troops must carry more than 75 pounds on their backs for nearly 50 miles a day. With only three hot meals provided for the entire length of the mission, the men find their own food and do things like cook congee using the foraged seeds of camel thorns. At night, when temperatures can reach -20 degrees Celsius, they either pitch a one-man tent and sleep in an open snowfield or, on occasion, are forced to march an extra 25 miles. Wang has also led groups into the Kunlun Mountains for over 100 days where they eat wild vegetables and test more than 100 pieces of light and heavy weaponry. Aside from these more grueling missions, each Special Operations member must be able to parachute jump, fire live ammunition, conduct demolition blasting and master "at least one set of special skills" (*PLA Daily*, April 10).

Chinese Special Forces also train extensively in contingencies that would support an overseas hostage rescue. For example, multiple exercises have taken place in the Gulf of Aden, simulating anti-piracy operations that, in a real-life scenario, could involve hostage rescue. In February 2012, the destroyer *Haikou* and the depot ship *Qinghai Lake* of the 10th Chinese naval escort taskforce conducted a live-fire exercise for its Special Operations sailors. The focus of this training included moving-target shooting, long-range blocking and attacking, barrage firing and shooting by skiff as well as disguised approaching, quick boarding and other maritime rescue tactics (*PLA Daily*, February 7). Such skills would be critical for situations in which the PLA was asked to respond to a ship crew kidnapped by pirates and suggests China is aiming to be prepared for just such missions.

In fact, Special Forces are already active in broader anti-piracy and escort missions in the Gulf of Aden, reflecting an implicit willingness at the political and operational level to intervene if Chinese goods and citizens in transit are

threatened. According to Chinese sources, from the time of its first operation in the Gulf of Aden in December 2008 until the end of 2011, the PLA Navy conducted nearly 400 missions along the Gulf of Aden, escorting 4,379 Chinese and foreign ships through dangerous areas, including helping 50 ships that had been attacked or come into contact with pirates. Over 700 Special Operations Forces participated in these missions and seem to play an essential role in response missions (CNTV, December 27, 2011). For example, on a single day in April 2010, Special Forces soldiers from China's 5th escort flotilla boarded four separate merchant ships to ensure their safe passage and deter pirates (Xinhua, April 11, 2010).

China's domestic security force, the People's Armed Police, also has special operations groups that, although more analogous to SWAT teams, could provide training and know-how for foreign operations. For example, a group known as the Snow Leopard Commando Unit, which specializes in counterterrorism operations, has engaged in training with Russian forces, was in charge of protecting the 2008 Olympics from terrorist attacks and has been sent at least once to Xinjiang in response to local attacks. Unbiased analysis of their performance is unavailable, but given the significance of their assigned missions, there is reason to believe they are trusted by China's leaders (*China Daily*, August 13, 2011). They also seemed to have captured the attention of the wider Chinese populace; one blog post re-posted in a *Global Times* article called by name for the Snow Leopards to be sent to Sudan to rescue a group of 29 kidnapped Chinese.

Taken together, the training scenarios and active response missions already underway suggest PLA Special Forces have both the means and will to respond to kidnappings—at least at sea. The main limitation of this response option is that PLA Special Forces show no inclination to conduct land operations inside a foreign country. Indeed, the escort taskforces in place are not equipped to take on such missions, lacking sufficient air lift capacity and manpower, and are severely limited in their inland reach. Furthermore, the political blowback, both at home and abroad, that could be caused by China conducting a military operation inside foreign borders could be enough to give its political leaders serious pause—an issue discussed more below. Therefore, unless responding to vessels overcome by pirates near the Gulf

of Aden, PLA Special Forces are not yet a realistic option for responding to the hostage rescue problem currently facing Beijing.

China's Private Security Firms

Private security firms are not new to China, though the idea of operating outside Chinese borders has been broached only recently. Many, if not most, Chinese companies operating overseas in Africa and elsewhere have hired local security. Firsthand accounts however suggest these guards are not reliable enough to trust in a crisis situation and, according to one Chinese worker in Tanzania, local guards have trouble stopping even petty thefts. (*China Daily*, February 22). As kidnappings have increased and local security forces have proven to be inefficient, contracted security firms have become part of the discourse on how to protect Chinese citizens abroad. Private security personnel would serve primarily to deter would-be kidnappers, but since these forces would be the closest responsible party under Chinese direction able to respond to active kidnappings, they could conceivably be called on for quick-response operations. Unfortunately, both the capability and will of Chinese private security firms currently are found wanting and face significant barriers before becoming a viable option.

The main barrier to success is that there are currently no Chinese security firms with significant overseas experience. The Manager of the Overseas Affairs Branch of the Beijing General Security Service Fu Shen has said there are few companies in China that offer overseas security and that Chinese guards “are far from the level of private security contractors like Academi [formerly known as Xe Services LLC and Blackwater USA] in the [United States].” Indeed, Chinese companies have themselves acknowledged that they are far from prepared for overseas operations (*China Daily*, February 22). According to one analysis, Shandong Huawei Security Group seems to be one of the only companies looking to break into the international security business, and it is targeting Iraq, not Africa, where kidnappings of Chinese are most prevalent (*The Diplomat*, February 21).

Deputy Director of the Foreign Affairs Committee of the CPPCC Han Fangming has urged Chinese security firms to expand their presence outside of China and learn from

their international counterparts (*Global Times*, March 12). His critics, however, have pointed out that there are a number of barriers facing companies interested in overseas security. Deputy Foreign Minister Zhang Zhijun has cited legal issues involved with overseas security firms and highlighted controversial incidents involving U.S. firms in Iraq and Afghanistan to argue security issues should be resolved through government-to-government negotiations (*China Daily*, March 3). Echoing these sentiments, Feng Xia, an international law professor at China University of Political Science and Law, has said that local police and embassies are responsible for the safety of Chinese citizens abroad and that “[b]ased on international law, it is inappropriate to send security guards overseas because that shows a lack of trust in the other country’s own security capacity” (*China Daily*, February 22).

Although not legally binding, another aspect of China’s use of private security firms is that it has agreed to the “Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict” [1]. This document sets forth a number of best practices for sending private security firms overseas, including agreements to properly vet companies, ensure transparency and supervision in selecting contractors, and to respond with appropriate legal measures for contractors that break international and national laws. Given the lack of private Chinese security firms operating overseas, there is little way for China to properly vet how their companies will conduct business abroad by doing things like obtaining “references from clients for whom the PMSC [private military security company] has previously provided similar services to...” As with all signatories, there also is a degree of political risk in hiring contractors because the conduct of security firms abroad are attributable to the contracting state, in this case China, who “then must assume responsibility for any wrongdoing on the part of the” contractor. U.S. firms in Iraq and Afghanistan have shown that incidents involving contractor misconduct are not uncommon—a point surely not lost on Beijing.

Other Limitations

There are still a number of other limitations facing China’s

response operations abroad, including international law and potential violations of sovereignty that could stem from China using force in a foreign country. Perhaps most difficult for China to overcome, though, would be its own aversion to getting embroiled in actions directly counter to its stated foreign policy. Three of the main principles of China’s foreign policy are mutual respect for sovereignty and territorial integrity, mutual non-aggression, and non-interference in internal affairs—all of which could be violated if China took kidnapping response into its own hands. This policy stems from its own history of having Western powers invade to quell the Boxer Rebellion and defend colonial interests and, thus, has a strong historical underpinning that would be difficult to overcome. Furthermore, reiterating this policy in January 2012, Chairman of the National Committee of the Chinese People’s Political Consultative Conference Jia Qinglin gave a speech at the African Union summit in which he said: “Interference in Africa’s internal affairs by outside forces out of selfish motives can only complicate the efforts to resolve issues in Africa” (Xinhua, January 29).

Conclusion

Although the current practice of relying on host country forces to protect Chinese workers has not been promising, this will remain the primary option moving forward as China grapples with the operational and political limits on its ability to respond to kidnappings in Africa and elsewhere. China’s government or Chinese corporations operating in Africa could look to contract foreign-based security firms with greater capability and experience to serve as an interim response, though it may implicitly show a level of weakness on China’s part.

What will likely change in the near-term is China’s direct contribution to local police and domestic security forces. China has provided billions of dollars in economic assistance and infrastructure development across the developing world, sometimes with the explicit message to protect Chinese citizens, as it just did with South Sudan. Few reports however suggest there has been noteworthy funding earmarked directly for police or non-military security forces with the intention of creating a safer environment for Chinese workers. Funding, loans and other contributions from Beijing meant to enhance

domestic security forces in some countries (or at the very least buy the favor of political leaders) will surely increase, as will expectations of these countries' dedication to the safety of Chinese citizens. It is difficult to know how long it will take for China to overcome the barriers on its independent options, but, if kidnappings continue to occur, there will be growing pressure to work quickly through a variety of constraints currently holding Beijing back.

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Notes:

1. Text of the Montreux Document is available online, <http://www.eda.admin.ch/psc>.
