

China’s draft State Secrets Law has much revision but no reform, write **Jerome A. Cohen** and **Jeremy Daum**

State of secrecy

When China detained four Shanghai employees of Rio Tinto, a prominent Anglo-Australian mining company, on July 5 on charges involving state secrets, the world immediately took note.

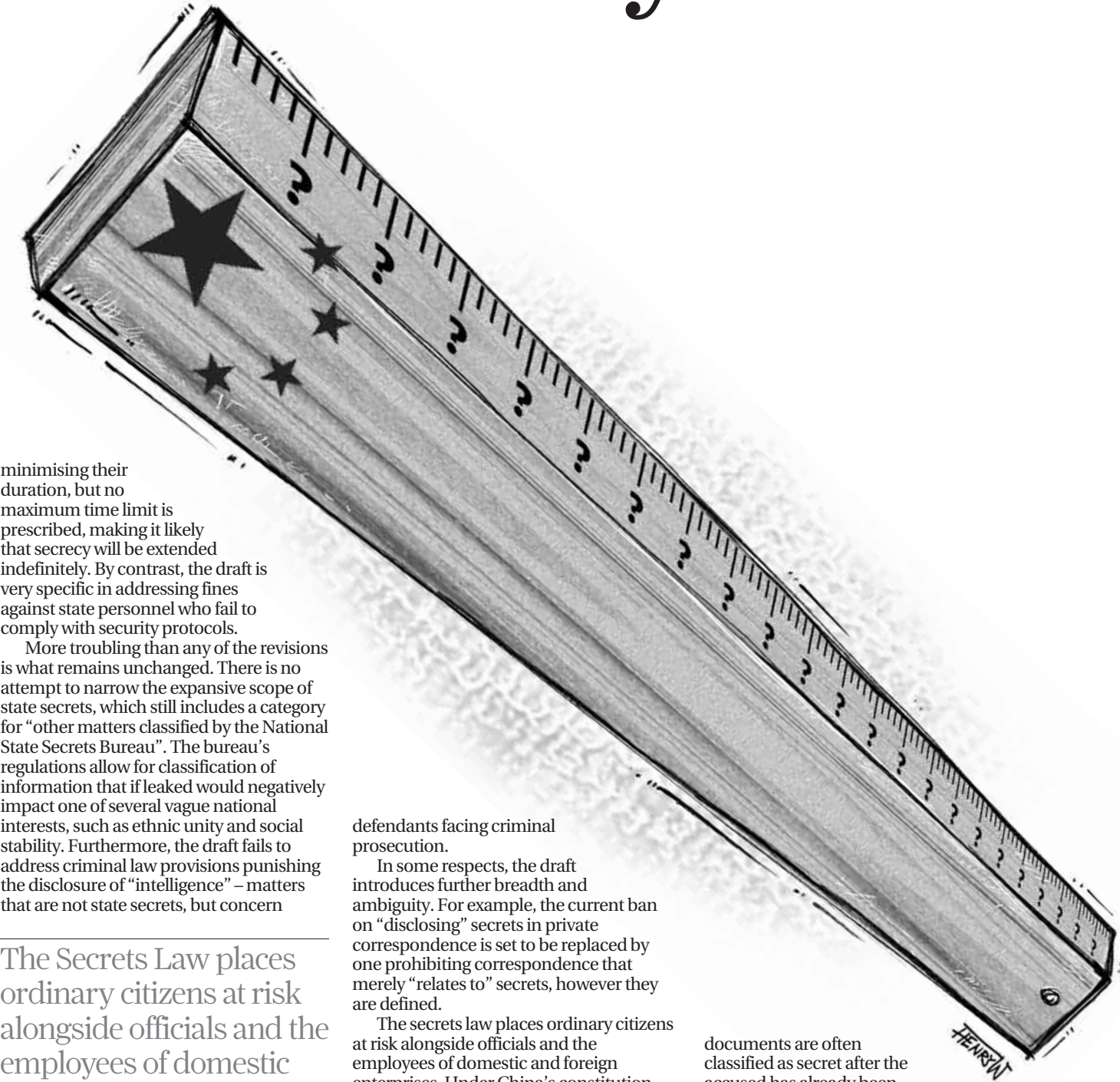
As global media scrambled to decipher the ramifications of invoking “state secrets” under Chinese criminal procedure, a related story was unfolding, with the National People’s Congress releasing a draft revision of its 1989 Law for Protecting State Secrets for public comment.

In the 20 years since the secrets law’s enactment, China has undergone massive social, economic and political transformations, and experience with this law has demonstrated the need for corresponding improvements. Indeed, the open call for comments on the proposed revision reflects a recent trend in China favouring government transparency.

Last year’s implementation of the first nationwide Open Government Information (OGI) regulations was an important step – at least in principle – away from China’s traditional culture of official secrecy and towards the evolving notion of citizens’ “right to know”.

The OGI reforms call for government agencies at all levels to facilitate citizen requests for information and make voluntary disclosures of financial reports, emergency plans and supervision arrangements relating to public health, food and drugs. Although the OGI movement recognises the limits imposed on access to information by national security concerns, it demonstrates a great commitment to information freedom, which is intended to serve as a powerful weapon against official corruption. China’s first National Human Rights Action Plan, published this spring, echoes these sentiments, calling for “a comprehensive system ensuring transparency in government affairs”.

In light of this trend, and the flaws in enforcing the secrets law, observers expected the revised law would embody the OGI spirit. The draft, however, is disappointing. The revisions, supposedly the product of 13 years’ preparation, focus on strengthening rules for protecting secrets and supervising their use within government institutions, particularly in areas involving digital media and the internet. They modestly improve arrangements for declassifying secrets and



minimising their duration, but no maximum time limit is prescribed, making it likely that secrecy will be extended indefinitely. By contrast, the draft is very specific in addressing fines against state personnel who fail to comply with security protocols.

More troubling than any of the revisions is what remains unchanged. There is no attempt to narrow the expansive scope of state secrets, which still includes a category for “other matters classified by the National State Secrets Bureau”. The bureau’s regulations allow for classification of information that if leaked would negatively impact one of several vague national interests, such as ethnic unity and social stability. Furthermore, the draft fails to address criminal law provisions punishing the disclosure of “intelligence” – matters that are not state secrets, but concern

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national interests and should not be revealed. The classification process itself remains unclear, unchecked and in the hands of too many levels of authority for standardisation. If officials are punished for disclosing secrets, but not for arbitrary classification, secrecy will be excessive. Some agencies reportedly classify every document they generate. There is no effective mechanism for challenging a determination that information is secret, either for citizens seeking information or

defendants facing criminal prosecution.

In some respects, the draft introduces further breadth and ambiguity. For example, the current ban on “disclosing” secrets in private correspondence is set to be replaced by one prohibiting correspondence that merely “relates to” secrets, however they are defined.

The secrets law places ordinary citizens at risk alongside officials and the employees of domestic and foreign enterprises. Under China’s constitution and the secrets law, citizens have a duty to protect state secrets. Further, the criminal law states that citizens who disclose secrets will be treated the same as officials.

Yet ordinary citizens and foreign business people, if they lack “insider” knowledge, are at a disadvantage in identifying secrets. The law calls for secret documents to be labelled as such, but this offers no guarantee that unmarked documents will not be subsequently declared secret. The Supreme People’s Court endorses prosecutions where the accused “should have known” that an unlabelled document sent abroad would have an impact on state interests. Such

documents are often classified as secret after the accused has already been detained. In such cases, the accused is normally denied access to counsel during the investigation stage, is subjected to a closed trial and cannot effectively challenge the classification. Unfortunately, the draft law ignores these issues of fundamental fairness.

Unless the draft law is significantly modified, the spirit of transparency that animates the OGI cannot be realised.

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Fresh thoughts

Any cross-border clean-up of air pollution must require co-operation among regional authorities. Opportunities for strong collaboration can be created and sustained, but Hong Kong must make this happen. A good place to start is our own government’s consultation on reviewing local air quality standards.

I’m often asked whether people across the border are sufficiently aware about environmental problems to want to do something about them. Studies clearly show a high level of public concern in the Pearl River Delta. In 2001-2002, when Civic Exchange worked with a Shenzhen organisation on the first environmental survey of public attitudes in the PRD, air pollution ranked third among people’s environmental concerns, behind food safety and clean drinking water. At the time there had been a spate of illnesses linked to contaminated food and water.

Further studies since then provide a clearer picture of what our neighbours think. In 2007, the mainland-based Horizon Research Consultancy Group surveyed the environmental attitudes of residents in 10 major cities. Among the nation’s many severe environmental problems, the health affects of air pollution was the leading concern. Urban air pollution was ranked the most urgent national environmental problem by 64 per cent of respondents. These results were corroborated by a Pew Global Attitudes Survey last year that found 74 per cent of Chinese respondents said air pollution was a serious problem.

Curiously, when residents in the 10 cities were asked in 2007 to rate their local air quality, many thought it was good or even very good. This may indicate that people have become accustomed to heavy air pollution and did not have sufficient information to know the severity of pollution. For example, half the residents of Beijing thought their city had moderate air quality, even though available data showed it was poor.

Only 14 per cent said air quality was bad or very bad. In the case of Hong Kong’s neighbour, Guangzhou, 38 per cent thought air quality was good or very good, 32 per cent thought it was “neutral” – neither good nor bad – and only 30 per cent thought it was bad or very bad. Nevertheless, among the 10 mainland cities, Guangzhou residents were the least happy with the local air quality.

The 2007 survey tested whether residents thought economic growth was more important than

environmental protection. A substantial majority, 77 per cent, favoured environmental protection even if it had negative impacts on the economy. The survey also explored people’s choice if the city were to set up a business that could provide more than 1,000 jobs but would cause pollution at the same time. Sixty-six per cent said they would object to it.

Some may argue that the mainland economy in 2007 was in much better shape and that people might respond differently today. This may be true but the point is the survey tells us mainland city dwellers are willing to consider sacrificing a degree of economic growth for a better environment.

In terms of how to improve environmental conditions, the mainland respondents wanted better public policies, higher penalties for offenders, better environmental technology, and improved laws and regulations. They also thought the most effective way to make their voices heard was through the media, local neighbourhood committees and even complaining directly to the authorities.

These findings provide a useful foundation to move ahead. Hong Kong’s moves to clean up its air through cleaner power plants and factories, integrated land use, cleaner fuels and electric vehicles, improved traffic management and other policies will set the pace for the rest of the nation.

By working closely with Shenzhen and Guangzhou to clean up shipping- and port-related emissions, Hong Kong can help the region adopt green port policies that are on par with those in the US and Europe.

Christine Loh Kung-wai is chief executive of the think-tank Civic Exchange

Other Voices

A free-trade pact in little more than name

Chung-ho Kim and Barun Mitra

India and South Korea will tomorrow sign an agreement they say will cut barriers and boost trade between the two important economies. But the reality of their comprehensive economic partnership agreement (Cepa) is in the fine print. By signing a free-trade agreement that does not actually free trade, both governments are denying themselves the best tools to fight the recession.

Both admit as much by saying it will pave the way to removing more trade barriers in the future, even though this agreement has been in the works for over three years. But with the World Trade Organisation’s Doha Round of trade talks in a coma, both governments are right to seek other ways to boost trade.

Liberating trade between Indians and Koreans makes a lot of sense: India’s massive workforce and emerging globally competitive companies, notably in information management and software, match well with a relatively capital-intensive South Korea that has expertise in information technology, electronics and cars.

South Koreans have long understood the value of trade: in the early 1960s, they had similar living standards to Ghanaians or Kenyans. Now, South Korea is at least 30 times more productive per capita than those two, the most successful economies in West and East Africa.

India’s liberal reforms have made dramatic improvements since they started in 1991 when the average import tariff was 115 per cent. In 2007 it was 15 per cent. India is now the 16th largest trading nation but sixth largest for trade in services.

Trade was the key to growth before the slump and remains the only sustainable route to recovery.

India’s booming car industry shows how. After decades with very few choices, Indian consumers are buying 9 per cent more cars a year, one of the world’s fastest growing markets. Among the many investors is South Korea’s Hyundai, now India’s second-largest carmaker.

Despite all this, the flipside is India’s remaining tariffs on car components, benefiting a tiny minority who fiercely opposed Cepa and got special protection – at the expense of Indian consumers.

India has secured limitations and exceptions in Cepa for other so-called sensitive sectors, such as agriculture and textiles.

In other words, India’s negotiators are preventing Indians from getting cheaper food, better clothes or good Korean cars.

Opposition to free trade is also deeply rooted among South Korea’s rice farmers, who fear competition will erode their 60 per cent grip on their market.

Protection for vested interests means the agreement will be implemented slowly, over 10 years. Why wait to boost two-way trade by what South Korean negotiators calculate as US\$3.3 billion a year?

Both governments will proudly announce the Cepa deal this week as an historic achievement, but we should be worrying more about the contents. Let us sign a free-trade agreement that does what it says on the tin: free trade.

Chung-ho Kim is executive director of the Centre for Free Enterprise in South Korea. Barun Mitra is executive director of India’s Liberty Institute.

Undermining the chief will only damage UN

Tom Plate

Surely the United Nations, terribly flawed though it is, offers the world enough benefit that sensible people should want to contribute to its chances of success. This necessary instinct is particularly palpable in Asia, where the UN’s work in economic and social assistance is viewed as vital, and where it is widely known that the prominent organisation is now headed by a fellow Asian for the first time in decades.

To be sure, no one here is under any opium cloud of delusion that, politically speaking, the UN is the second coming of some institutional Batman. Everyone knows that the cranky Security Council, the UN’s chief political arm, retains its debilitating and antediluvian, second world war genetic inheritance: former powers France and Great Britain, after all, still have veto power, while comparative giants like India, Japan, Brazil and Nigeria do not. How absurd is that!

Nevertheless, the UN still counts for something. And, in 2007, it perhaps meant a little more than usual in Asia. For the first time since the Vietnam war days of U Thant, then from Burma, the organisation has an Asian as secretary general. He is Ban Ki-moon, the UN’s eighth secretary general and a proud South Korean.

Mr Ban was a very sensible and, at the end of the selection process, very unanimous choice. The respected and hard-working career diplomat rose through the ranks of Asian diplomacy to become his nation’s foreign minister. And South Korea is not just some pretty Asiatic stamp collection of a country: It is one of the world’s

most industrialised states, with an increasingly modern economy and a key geopolitical role to play as a close neighbour of China while also remaining a long-time ally of the US.

As foreign minister, Mr Ban proved the diplomat’s decorous diplomat: never the showboat or the outspoken scold or the headline-seeker – but always the behind-the-scenes consensus-cooker. It was these qualities, among others, that so impressed Beijing and Washington,

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which had grown to loathe his predecessor, the charismatic but maverick Kofi Annan.

But now Mr Ban, at the halfway mark of his five-year term, finds the prospect of a second term mysteriously up in the air. In effect, the general criticism at UN headquarters in New York is that Mr Ban is, well, too much the humble secretary and not enough the hard-charging general. He is under fire for not being more like Mr Annan, which is to say that Mr Ban is being slammed for being more or less exactly what the twin towers of China and the US thought the UN most needed.

What’s worse, Mr Ban is being unfairly tarnished not by any actual evidence of performance deficiencies, but by the UN’s (widely acknowl-

edged) institutional defects that transcend individual and personality.

Many of the criticisms against Mr Ban are unfair, says George Yeo Yong Boon, Singapore’s foreign minister: “He can only do what is within the limits of his powers. He is not the emperor of the world. He has to take into account the views of the permanent members of the Security Council.”

In many respects Mr Ban, with his extensive diplomatic background, may well be the most qualified man ever to get the job. His steely integrity in this age of official corruption is a powerful attribute; and his indefatigable globe-trotting energy ought to be celebrated for its commitment and stoicism, not denigrated as “UN Headquarters absenteeism”, a knock heard in some circles.

There’s something about the Ban criticism that is creepy and uncomfortable. For if you sincerely support the UN and care about its future, why not get behind Mr Ban and watch his back, rather than bash and push him from behind. It’s past time to give this decent and hard-driving man some breathing room and respect.

Undermining Mr Ban with corrosively poisonous criticism could set in motion an acidic chemistry that winds up eating away at the UN itself.

Tom Plate is a syndicated columnist. Copyright: Pacific Perspective Media Centre



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European Union can emerge even stronger

Thomas Mirow

This could have been a year of joy for Europe. The 20th anniversary of the fall of the Berlin Wall will be commemorated in November, and it has been five years since the European Union’s “Big Bang” enlargement. The cold war division of Europe is well and truly over.

But, instead of setting off fireworks, the EU finds itself under fire, as the global economic crisis confronts it with the greatest challenge it has seen since 1989. After years of strong growth and remarkable resilience, the union’s new member states in the east are being hit hard by the economic turmoil that started in the west.

Integration into the global economy – a crucial source of capital, stability and innovation – has become a threat to many of these countries. This is true both of the region’s financial sectors and its real economies.

But the tough question that has to be asked is whether the crisis could lead to the unravelling of European integration. There are four key issues that need to be tackled.

The first concerns the continuation of enlargement. The EU is an indisputable success, the largest integrated economic area in the world, accounting for more than 30 per cent of world gross domestic product and about 17 per cent of world trade. Even with this year’s marked contraction of some central and eastern European countries’ economies, their accession to the EU boosted its overall economic growth.

But EU membership has always been about more than economic integration and trade flows.

The second key issue concerns the EU’s internal structure. The Lisbon Treaty offers a fundamental redesign of how the union works, but, despite the pressing need to enhance EU institutions’ mobility and flexibility, it is still awaiting ratification. The economic crisis makes it more important than ever to introduce these reforms.

Third, there is the euro. The 12 new member states that joined the EU in 2004 and 2007 committed themselves to its adoption, but with no set date. Expansion of the euro zone has been slow, especially in central and eastern Europe. But the euro’s increasingly important role brings stability, something that is essential in times of upheaval.

The final issue is European solidarity. EU enlargement brought greater prosperity. But many of the older member states also benefited, and not only in economically measurable ways. The growing together of people, regions and countries underpins the foundations on which Europe rests.

The EU drew the right conclusions when it stressed that national bank rescue packages must not be designed in ways that starved subsidiaries, and also by doubling – to €50 billion (HK\$558 billion) – the crisis funds available to EU countries outside the euro zone. The EU must not stand aside when solidarity is needed.

By taking the right steps, the EU is laying the foundations that will enable it to emerge from today’s crisis stronger and more united.

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