



# THE SOUL OF THE CHINESE MILITARY: GOOD ORDER AND DISCIPLINE IN THE PEOPLE'S LIBERATION ARMY

---

**Captain Paul A. Stempel\***

## I. INTRODUCTION: THE IMPORTANCE OF STUDYING CHINESE MILITARY LAW

Lieutenant General Richard Harding, a Judge Advocate General of the United States Air Force, published an article in 2010 in which he argued for renewed emphasis on military discipline, which he ranked alongside quality personnel, training, and equipment as one of the four pillars of military strength.<sup>1</sup> “Discipline,” he wrote, “is a force multiplier.”<sup>2</sup> As Lt. Gen. Harding noted, such sentiments call to mind then-Colonel George Washington’s timeless conviction that “discipline is the soul of the army,” and the only way to truly understand a military is to study its discipline.<sup>3</sup> Today, few militaries’ “souls” capture the

---

\* Captain Stempel (B.A., Vanderbilt University; J.D., University of Iowa) wrote this article while Assistant Staff Judge Advocate, Office of the Staff Judge Advocate, Fort George G. Meade, Maryland. He speaks Mandarin Chinese, having lived and worked in the People’s Republic of China, and is a member of the Virginia State Bar. The views expressed in this article are those of the author and do not reflect an official position of the Department of the Air Force, Department of Defense or any other government agency or institution.

<sup>1</sup> Lieutenant Gen. Richard C. Harding, *A Revival in Military Justice*, 37 REPORTER 4 (2010).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 5; see also 1 THE WRITINGS OF GEORGE WASHINGTON, 1748-1757, at 470 (Worthington Chauncey Ford ed., New York, G.P. Putnam’s Sons 1889).

imagination of the Western world more than that of the People's Republic of China, yet the disciplinary system of China's People's Liberation Army (PLA) remains largely overlooked and misunderstood in Western literature.<sup>4</sup> This article attempts to bridge this knowledge gap, providing an introductory look at good order and discipline in the PLA.

Bridging the Sino-American knowledge gap has received considerable high-level military and diplomatic support in recent years. From the American perspective, the reasons are clearly strategic. Given China's rise as a power broker in the Asia-Pacific theatre and beyond, the future demands that the U.S. military acclimate to a new geopolitical climate, one in which common security threats require Sino-American cooperation and mutual understanding.<sup>5</sup> Both the U.S. and China fight a war on terror; both combat piracy; both purport to desire stability in Central Asia and elsewhere; both seek a peaceful resolution on the Korean peninsula; and both actively participate in humanitarian missions worldwide.<sup>6</sup>

To this end, the two powers held their sixth Defense Policy Coordination Talks in 2009 and their 11th Defense Consultative Talks in 2010.<sup>7</sup> The trend continued in 2011 and 2012, when Admiral Michael

---

<sup>4</sup> For a Cold War-era effort to explain Chinese military law, discussed in greater detail below in Section II, see Captain David C. Rodearmel, *Military Law in Communist China: Development, Structure and Function*, 119 MIL. L. REV. 1 (Winter 1988); see also Zhang Chi Sun, *Chinese Military Law: A Brief Commentary on Captain Rodearmel's Article*, 129 MIL. L. REV. 31, 34 (1990).

<sup>5</sup> OFFICE OF THE SEC'Y OF DEF., ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA 12-14 (2012) [hereinafter ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING CHINA], available at [www.defense.gov/pubs/pdfs/2012\\_CMPR\\_Final.pdf](http://www.defense.gov/pubs/pdfs/2012_CMPR_Final.pdf).

<sup>6</sup> Info. Office of the State Council of China, *China's National Defense in 2010* (2011) [hereinafter *China's National Defense in 2010*], available at [http://www.china.org.cn/government/whitepaper/node\\_7114675.htm](http://www.china.org.cn/government/whitepaper/node_7114675.htm) ("China and the United States maintain consultations on such issues as non-proliferation, counter-terrorism, and bilateral military and security cooperation."); see also ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 5 (listing various areas of common interest between U.S. and Chinese militaries).

<sup>7</sup> *China's National Defense in 2010*, *supra* note 6.

Mullen, the Chairman of the Joint Chiefs of Staff and the highest ranking officer in the U.S. military, visited China, followed by a visit to the U.S. by Defense Minister General Liang Guanglie, China's highest ranking military officer.<sup>8</sup> Both called for combined efforts targeting piracy, medical assistance, and disaster relief.<sup>9</sup> Given such high level efforts at cooperation, it is not unforeseeable that the coming decades will find American troops working side-by-side with their Chinese counterparts.<sup>10</sup>

Such mutual interest prompted American policymakers to study foreign military law in the past. In 2002, the *Air Force Law Review* published an edition dedicated to foreign military law that included articles on the British, Australian, Canadian, Israeli, and Russian military legal systems.<sup>11</sup> In that edition's foreword, the then-Judge Advocate General of the Air Force lamented, "we do not understand enough about how [other countries'] military justice systems operate."<sup>12</sup> He noted that such understanding is "extremely valuable when we are evaluating the opportunities for improving our own system," and can even be "vital when we are working with coalition partners in multinational

---

<sup>8</sup> SHIRLEY A. KAN, CONG. RESEARCH SERV., RL32496, US-CHINA MILITARY CONTACTS: ISSUES FOR CONGRESS 71-72 (2012); Cheryl Pellarin, *Panetta: U.S.-China Relationship One of World's Most Critical*, AM. FORCES PRESS SERV., May 7, 2012, available at <http://www.defense.gov/News/NewsArticle.aspx?ID=116234> (quoting Chinese Def. Minister Gen. Liang Guanglie: "At present, China-U.S. bilateral relationship is on a new starting line in history . . . to build a new kind of military relationship based on equality, cooperation and mutual benefit.").

<sup>9</sup> Pellarin, *supra* note 8.

<sup>10</sup> Secretary of Defense Robert Gates drove this point home in early 2011, when he travelled to China to meet with Chinese President and Communist Party Secretary Hu Jintao and PLA leadership. *Defense Secretary Robert Gates and Chinese Minister for National Defense Gen. Liang Guanglie Hold a Joint Press Conference from Beijing, China*, CQ Cap. Transcripts, Jan. 10, 2011, available at 2011 WLNR 550659. In China, Secretary Gates called for increased cooperation and exchanges to improve mutual understanding. *Id.* See also ANNUAL REPORT TO CONGRESS: MILITARY AND SECURITY DEVELOPMENTS INVOLVING CHINA, *supra* note 5 ("A strong U.S.-China bilateral relationship includes a healthy, stable, reliable and continuous military relationship. . . . This type of engagement enables both militaries to build habits of cooperation and work toward greater mutual understanding.").

<sup>11</sup> 52 A.F. L. REV. i-ii (2002).

<sup>12</sup> *Id.* at v.

operations.”<sup>13</sup> In this regard, comparative studies in military law can be understood to serve immediate and tangible national security interests.

Academic interests are served as well. Comparative law scholars are driven by various aims—understanding similarities and differences across cultures, elucidating transcendent principles of justice, even the pursuit of truth itself. Konrad Zweigert and Hein Kötz, whose textbook *An Introduction to Comparative Law* stands as one of the preminent treatises in the field, wrote of comparative law:

[B]y the international exchanges which it requires, comparative law procures the gradual approximation of viewpoints, the abandonment of deadly complacency, and the relaxation of fixed dogma. It affords us a glimpse into the form and formation of legal institutions which develop in parallel, possibly in accordance with laws yet to be determined, and permits us to catch sight, through the differences in detail, of the grand similarities and so to deepen our belief in the existence of a unitary sense of justice.<sup>14</sup>

Comparison of U.S. and Chinese systems of military law does indeed reveal certain “grand similarities” that are in- and of-themselves noteworthy, and given the dramatically different lineages of the two militaries, it might come as something of a surprise that the Chinese and American military justice systems have much in common. In many ways, the two systems are, as the Chinese would say, “in harmony,” and it can be said that the two share the type of “common core” often sought by scholars in the field of comparative law.<sup>15</sup> At the same time, “differences in detail” do exist. These attributes are explored in this article.

The future might very well bring Chinese and American troops together, for good or ill. And when they meet, they might find that they have more in common than first thought. How better, then, to prepare for an era of increased Sino-American military interaction than by studying the disciplinary system—the “soul”—of the PLA?

---

<sup>13</sup> *Id.*

<sup>14</sup> KONRAD ZWIEGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 3 (Tony Weir trans., 3d rev. ed. 1988).

<sup>15</sup> John Reitz, *How To Do Comparative Law*, 46 AM. J. COMP. L. 617, 625 (1998).

---

## II. THEY STUDY US, WE SHOULD STUDY THEM

Perusing a Chinese language textbook entitled *The Study of Chinese Military Law*—and particularly one published by the Chinese government-sanctioned publishing house China Legal Publishing House—one might be surprised to find a chapter devoted entirely to explaining the *American* system of military justice,<sup>16</sup> particularly amid what is otherwise a survey of *Chinese* military law.<sup>17</sup> The author, legal scholar Yu Enzhi, focuses on the U.S. military’s Uniform Code of Military Justice (hereinafter UCMJ), which he lauds as “one of the best in the world” due to its emphasis on procedural justice and the rights of the accused.<sup>18</sup> China, the author contends, would do well to learn from the “scientific and comprehensive” American model of military justice.<sup>19</sup> To put it another way, the Chinese study the “soul” of the American military, and they might borrow its better parts along the way.<sup>20</sup> In short: they study us, we should study them.

In some ways, the Chinese government has sought our attention in recent years. Long a closed society with centralized control over the flow of information, China began a slow thaw in certain areas. Calls by the international community for increased transparency—by the United States in particular—produced preliminary steps in the right direction. One example is the biennial National Defense White Paper, most recently published by the Chinese Information Office of the State Council in March 2011.<sup>21</sup> Insofar as it addresses the military legal system, the white paper serves as something of an advertisement to the world, putting its best and friendliest face forward: this is how we (China) want the world to see us; we (China) have a comprehensive military legal system and our troops obey the law; our system is improving; it will

---

<sup>16</sup> *Zhongguo Junshi Faxue Luncong* [*The Study of Chinese Military Law*], (Xue Gangling ed., 2007) (China).

<sup>17</sup> *Id.* at 21.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 21, 38.

<sup>20</sup> For further discussion of the American military legal system by Chinese military law experts, see *Xin Zhongguo 60 Nian Junshi Fazhi Jianshe* [*60 Years of Military Legal Development in Modern China*] 391-96, (Hu Guangzheng ed., 2009) (discussing the American court-martial system).

<sup>21</sup> China’s National Defense in 2010, *supra* note 6.

continue to improve and evolve in the future. The white paper boasts: “the internal security organs, military courts and military procuratorates (attorneys representing the government in criminal cases) of the armed forces have performed their functions to the full, resolutely maintaining justice in punishing various offense [sic] and crimes in accordance with the law.”<sup>22</sup> While such pronouncements must be taken with a grain of salt, China’s white papers do hold value as invitations, calling on the international community to look deeper, to ask questions, and to hold China to its word. Given an open invitation to study the “soul” of the Chinese military, we should.

We have tried in the past. In 1988, then-Captain (now retired-Lieutenant Colonel) David Rodearmel of the U.S. Army attempted an ambitious, comprehensive study of Chinese military law that was published in the *Military Law Review* (MLR),<sup>23</sup> but he did so at a time when little information about the Chinese military was available to foreigners—and available information was often biased, misleading, or simply incorrect. The Rodearmel article prompted retired PLA General Zhang Chi Sun to publish a constructive critique in *MLR* shortly after.<sup>24</sup> General Sun praised Rodearmel’s article as “an informative, objective, and scientific work as a whole,” but noted that the inaccessibility of information about the inner-workings of the Chinese military caused the article to contain “errors,” “misunderstandings,” “disputable [statements],” and “questionable [facts].”<sup>25</sup> General Sun, whose well-intentioned response reads more as an apology than criticism, concluded on a positive note, calling for “further international exchanges of military law research.”<sup>26</sup> Unfortunately, perhaps deterred to a degree by the general’s comments, Western scholars have not produced much analysis of Chinese military law in subsequent decades.

However, many of the more formidable hurdles that hampered studies like Rodearmel’s have diminished in recent years, and what General Sun termed the “blockade of exclusionism” has been

---

<sup>22</sup> *Id.*

<sup>23</sup> Captain David C. Rodearmel, *supra* note 4.

<sup>24</sup> Zhang Chi Sun, *supra* note 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 31, 40.

significantly relaxed.<sup>27</sup> Today, publishers like the PLA Publishing House release books on every conceivable subject—military law included. While vast amounts of information remain walled-off from the outside world, pieces of the PLA are slowly beginning to see the light of day (of course, most publications continue to be published only in Chinese). So although Chinese military law remains less than perfectly transparent, this article continues the project Rodearmel and Sun began over two decades ago.

### III. THE RULE OF LAW IN CHINA: A BRIEF OVERVIEW

Good order and discipline in the Chinese military is largely enforced internally by the chain of command and without resort to the courts; at times, however, it is enforced pursuant to Chinese criminal law. For this reason, and to offer some context for those less familiar with the Chinese political system, this section briefly introduces the overall Chinese legal system and its position within the Chinese government, before delving more deeply into specifics of Chinese military law in sections to follow.

Founded on a Constitution promulgated in 1982—China’s fourth since the 1949 founding of the People’s Republic of China—the Chinese legal system follows the civil law tradition of continental European countries, rather than the common law approach found in the United States.<sup>28</sup> The current Constitution can be seen as a repudiation of the prior iterations of 1954, 1975, and 1978, reflecting a shift from the Mao Zedong-era of upheaval and continuous revolution (1949-1976) to the Deng Xiaoping-era and the ongoing march toward modernity (1978-present day). As one expert aptly put it, the 1982 Constitution helped codify that the “energies of the nation would shift from class struggle and political campaigns to economic development and modernization.”<sup>29</sup>

---

<sup>27</sup> *Id.* at 39.

<sup>28</sup> JOHN HENRY MERRYMAN & RODELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* 4 (noting unique East Asian characteristics distinguishing Chinese civil law from counterparts in Europe and Latin America).

<sup>29</sup> DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA IN A NUTSHELL* 74-75 (2003).

Consequently, over the past three-plus decades a rule of law familiar to Westerners has begun to take shape in China.<sup>30</sup>

The Chinese Constitution provides in its Preamble that “All state organs, *the armed forces*, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law.”<sup>31</sup> This provision and its explicit endorsement of a rule of law are further codified by statute, such as Articles 6 and 7 of the Military Service Law of the People’s Republic of China, which subject members of the armed forces to civilian criminal laws and disciplinary regulations of the military:

Article 6. The active servicemen and reservists must abide by the Constitution and the law, and shall perform their duties and at the same time enjoy their rights as citizens; their rights and duties resulting from their joining the military service shall be specified separately in military regulations in addition to the provisions of this Law.

Article 7. Active servicemen must abide by the rules and regulations of the army, faithfully discharge their duties and always be ready to fight for the defence of the motherland.<sup>32</sup>

The vast majority of military discipline is enforced pursuant to the “army regulation” provisions of Articles 6 and 7 of the Military Service Law, and is explored below. Serious criminal offenses, however, are prosecuted in the military branch of the national system of “People’s Courts,” all of which fall under the auspices of the Supreme People’s Court in Beijing.

---

<sup>30</sup> Cheng Li & Jordan Lee, *China’s Legal System*, 48 CHINA REV. 1 (2009), available at [http://www.brookings.edu/~media/research/files/articles/2009/9/autumn%20china%20legal%20system%20li/autumn\\_china\\_legal\\_system\\_li.pdf](http://www.brookings.edu/~media/research/files/articles/2009/9/autumn%20china%20legal%20system%20li/autumn_china_legal_system_li.pdf) (discussing improvements in the Chinese legal system since 1978).

<sup>31</sup> XIANFA pmbl., para. 12 (China) (*italics added*). The Preamble also states that the 1982 Constitution is “the fundamental law of the state and has supreme legal authority.” *Id.* pmbl.

<sup>32</sup> Military Service Law of the People’s Republic of China (promulgated by the President of the People’s Republic of China, May 31, 1984, effective Oct. 1, 1984) (China), available at [http://www.novexc.com/military\\_service\\_law.html](http://www.novexc.com/military_service_law.html).



As a political institution, the Supreme People's Court ranks highly within the national government; but unlike in the United States, it is not considered a coequal branch of government on par with a legislative and executive body. Rather, all entities within the Chinese government—courts included—fall under the singular, centralized authority of the National People's Congress (NPC), an ostensibly representative legislative body consisting of approximately 3,000 members drawn from throughout the country.<sup>33</sup> Within the NPC, a Standing Committee of approximately 155 members carries out most NPC functions, and within the Standing Committee resides a select group of approximately 21 members who together form the Council of Chairmen—the “leading core of the NPC.”<sup>34</sup> Among its many functions, the NPC supervises the work of various subordinate government entities, including the Supreme People's Court (and the Central Military Commission, which manages the PLA).<sup>35</sup> The subordinate position of courts is likewise codified in Article 128 of the Constitution, which states that the Supreme People's Court and lower courts are responsible and must report to the NPC and the Standing Committee.<sup>36</sup>

From this relatively constrained political position, Chinese courts are vested with adjudicative powers over civil and criminal cases.<sup>37</sup> Courts work in close coordination with the People's Procuratorate, which functions similar to prosecutors in the United States' system, preparing and bringing criminal cases to trial for prosecution. The Chinese government describes this coordination as follows:

---

<sup>33</sup> XIANFA arts. 2, 57 (1982) (China).

<sup>34</sup> CHOW, *supra* note 29, at 91-95.

<sup>35</sup> XIANFA art. 67 (1982) (China).

<sup>36</sup> XIANFA art. 128 (1982) (China); *see also* Organic Law of the People's Courts (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, amended Sept. 2, 1983) (China) (reaffirming the primacy of the NPC over the courts).

<sup>37</sup> XIANFA art. 126 (1982) (China) (“The people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.”); *see also* Randall Peerenboom, *Judicial Independence in China: Common Myths and Unfounded Assumptions* (La Trobe Law Sch. Legal Studies Research Paper No. 2008/11, 2008), available at <http://ssrn.com/abstract=1283179>.

The people's court is the judicial organ in China and the People's Procuratorate is the supervisory organ for law enforcement. The people's court and the People's Procuratorate, in accordance with the Constitution, Organic Law of the People's Courts, Organic Law of the People's Procuratorates, Civil Procedure Law, Administrative Procedure Law and Criminal Procedure Law, independently exercise their adjudicative power and supervisory power, respectively, free from any interference of administrative organs, public organizations and individuals.<sup>38</sup>

As indicated, the People's Procuratorate brings criminal cases to trial in accordance with the Criminal Procedure Law of the People's Republic of China. Discussed as it pertains to military courts below, the Criminal Procedure Law governs jurisdiction, appointment of defense counsel, evidence, filing cases with a court, investigation, interrogation, questioning witnesses, searches, seizures, the use of experts, trial procedure, appellate rights, and other standard aspects of criminal procedure.<sup>39</sup>

As is the case in many developing countries, the legal system mapped out by Chinese law does not perfectly comport with the actual state of law and order in China,<sup>40</sup> a point the Chinese government readily acknowledged in a recent publication:

China's legal construction is still facing some problems: The development of democracy and the rule of law still falls short of the needs of economic and social development; the legal framework shows certain characteristics of the current stage and calls for further improvement; in some regions and departments, laws are not observed, or strictly enforced, violators are not brought to justice; local

---

<sup>38</sup> Information Office of the State Council of the People's Republic of China, *China's Efforts and Achievements in Promoting the Rule of Law*, 7 CHINESE J. OF INT'L L. 513 (2008), available at [http://www.china.org.cn/government/whitepaper/node\\_7041733.htm](http://www.china.org.cn/government/whitepaper/node_7041733.htm).

<sup>39</sup> Criminal Procedure Law of the People's Republic of China (promulgated by the Nat'l People's Cong., 1979, adopted Jan. 1, 1997), available at <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php> [hereinafter *Crim. Pro. L. China*].

<sup>40</sup> See Stanley Lubman, *Looking for Law in China*, 20 COLUM. J. ASIAN L. 1, 33-41 (2006) (listing various factors continuing to undermine the rule of law in China).

protectionism, departmental protectionism and difficulties in law enforcement occur from time to time; some government functionaries take bribes and bend the law, abuse their power when executing the law, abuse their authority to override the law, and substitute their words for the law, thus bringing damage to the socialist rule of law; and the task still remains onerous to strengthen education in the rule of law, and enhance the awareness of law and the concept of the rule of law among the public.<sup>41</sup>

Accordingly, efforts to strengthen the rule of law are a major concern for the Chinese government and the topic appears in official and semi-official media on a regular basis. A recent example entitled “PLA Military Courts Deploy Rule-of-Law Education for New Recruits” appeared in the military’s own newspaper, the People’s Liberation Army Daily.<sup>42</sup> The article expressed a need for China’s military courts to take the lead increasing rule-of-law consciousness within the PLA, and particularly among those just entering the service. It is within this context of an emerging rule of law—both via formal institutions such as the courts and in the minds of Chinese citizens themselves—that good order and discipline in the PLA must be understood.

#### IV. THE PLA’S “SOUL”: A PRIMER ON PLA HIERARCHY AND DISCIPLINE

If the soul of the PLA emanates from one underlying concept, it might be this: *wutiaojian zhixing mingling* or “unconditional obedience.”<sup>43</sup> The idea holds special resonance in PLA culture and tradition, and military law textbooks expound on it in considerable detail.<sup>44</sup> Xia Yong, a Chinese professor of military law, provides an

---

<sup>41</sup> *China's Efforts and Achievements in Promoting the Rule of Law*, *supra* note 38.

<sup>42</sup> Jiefangjun Junshi Fayuan Bushu Jiaoyu Gongzuo [PLA Military Courts Deploy Rule-of-Law Education for New Recruits] Jiefangjun Bao [PLA Daily] (China), Jan. 4, 2012, [http://chn.chinamil.com.cn/jsfz/2012-01/04/content\\_4759484.htm#](http://chn.chinamil.com.cn/jsfz/2012-01/04/content_4759484.htm#).

<sup>43</sup> An alternative, more literal translation would be “unconditional execution of orders.”

<sup>44</sup> See Xu Jiangwei, *Junshifa Jiaocheng* [*The Study of Military Law*], (2003) (China) (describing unconditional obedience as a fundamental principle underlying military discipline); *Junshi Faxue* [*The Science of Military Law*], (Xue Gangling ed., 2006) (China) [hereinafter Gangling 2006] (describing crimes involving failure to obey an order); Gangling, *supra* note 16, at 195-202 (explaining that unconditional obedience “remains the basic requirement of military law in the PLA”).

indication of the meaning troops attach to the term in his characterization of unconditional obedience as one of the PLA's "longstanding glorious traditions."<sup>45</sup> The concept is nothing new. Former Chinese President and Party Secretary Deng Xiaoping, himself a decorated military man, once wrote that a military is nothing without discipline, and that disobedience and misconduct cannot go unpunished.<sup>46</sup>

In the Chinese military, obedience begins with allegiance to the ruling Communist Party. This overarching principle is explicitly codified in the Regulation on Discipline in the People's Liberation Army of China (hereinafter Discipline Regulation), which ranks obedience to the Party as the first rule of discipline.<sup>47</sup> An expert on China, Dr. Nan Li has explained the Party's (somewhat convoluted) power position as follows:

[T]he Chinese Communist Party (CCP) has a monopoly on political power. As a result, the PLA, headed by the [Central Military Commission (CMC)], pledges its allegiance to the CCP . . . . The CMC . . . answers to the CCP Central Committee and the Politburo. The CMC chair, who is the commander-in-chief of the PLA, also comes from among the principal leaders of the Party Central.<sup>48</sup>

At the time of this writing, President Hu Jintao holds several titles, including CMC chairman, commander-in-chief of the PLA, and General Secretary of the Communist Party—thus Party control over the

---

<sup>45</sup> See Gangling, *supra* note 16, at 197.

<sup>46</sup> *Id.*

<sup>47</sup> Zhongguo Renmin Jiefangjun Jilu Tiaoling [Regulation on Discipline of the People's Liberation Army of China] arts. 79-80 (2010), *available at* [http://chn.chinamil.com.cn/xwpdxw/2010-06/08/content\\_4234767.htm](http://chn.chinamil.com.cn/xwpdxw/2010-06/08/content_4234767.htm) (hereinafter Discipline Regulation).

<sup>48</sup> Nan Li, *The Central Military Commission and Military Policy in China, in THE PEOPLE'S LIBERATION ARMY AS ORGANIZATION REFERENCE VOL. v1.0 45, 46* (James C. Mulvenon & Andrew N.D. Wang eds., 2002). In practical terms, Party control over the military results in an institution in which maintaining discipline occurs not only for the purpose of promoting the national interest, but also to preserve Party rule. *Id.* The PLA concept of "good order and discipline" consequently implies more than the Western idea of a fighting force loyal to and willing to die for national defense and homeland security. *Id.* In modern Chinese vernacular, a "disciplined" PLA implies a military willing to obey Party policy and guidance as well. *Id.*

PLA is presently at its institutional apex, with one man commanding both.<sup>49</sup> Power flows down from the President and the CMC through the PLA chain of command, which in turn manages a force of over two million troops.<sup>50</sup>

Chain of command in the PLA varies depending on a variety of factors, including whether the country is at war or peace and the type of conflict taking place. The PLA is divided into four branches: the PLA Army, PLA Air Force (PLAAF), PLA Navy (PLAN), and the Second Artillery Force, which controls the country's nuclear and surface-to-surface missile forces. During peacetime, a dual hierarchy exists based on both geography and branch of service. Geographically, China is divided into seven military regions: Shenyang, Beijing, Lanzhou, Nanjing, Guangzhou, Jinan, and Chengdu.<sup>51</sup> Regional commanders control all military operations within their region, but each branch maintains responsibility for training and administration of their forces within the military region.<sup>52</sup> During war, theater commands consisting of one or more regions are established, with theater commanders assuming command over all forces within their assigned theater. Additional nuance is added depending on the nature of the conflict.<sup>53</sup>

To enforce the concept of unconditional obedience within such complex command architecture, the PLA disciplinary system today employs a modern, nuanced code, much like those used by Western

---

<sup>49</sup> As this article goes to press, the positions of President, Chairman of the Central Military Commission, and Communist Party General Secretary are being transferred from Hu Jintao to Xi Jinping.

<sup>50</sup> For a more comprehensive look at the control and command architecture of the PLA, see *id.*

<sup>51</sup> ROGER CLIFF ET AL., *SHAKING THE HEAVENS AND SPLITTING THE EARTH: CHINESE AIR FORCE EMPLOYMENT CONCEPTS IN THE 21ST CENTURY*, 15 (2011).

<sup>52</sup> An exception to this is the Second Artillery Force, which operates independent of regional command under a "vertical command" system under direct control of the CMC. See *id.* at 23 (explaining this unique command system).

<sup>53</sup> For example, PLAAF literature includes multiple command and control systems that can be implemented where appropriate. *Id.* at 27-31.

militaries—including the United States.<sup>54</sup> The Chinese government offers the following overview of its military legal code:

As of December 2010, the [National People's Congress] and its Standing Committee has (sic) passed laws and issued law-related decisions on 17 matters concerning national defense and military affairs, the State Council and the [Central Military Commission] have jointly formulated 97 military administrative regulations, the [Central Military Commission] has formulated 224 military regulations, and the general headquarters/departments, Navy, Air Force, Second Artillery Force, military area commands and [People's Armed Police Force] have enacted more than 3,000 military rules and regulations.<sup>55</sup>

Amid this growing library of military laws, three in particular shape discipline within the PLA: the aforementioned Discipline Regulation,<sup>56</sup> the Internal Affairs Regulation of the People's Liberation Army of China (hereinafter Internal Affairs Regulation),<sup>57</sup> and the national criminal code,<sup>58</sup> which includes a number of prohibitions on military-specific conduct.

Each of these laws specifically addresses the conduct expected of PLA troops. Under Internal Affairs Regulation Article 63, subordinates enjoy the right to disagree with their superior and the right to offer

---

<sup>54</sup> The Chinese government published a document in 2011 describing various elements of its military, including the legal system. In pertinent part, the publication states:

The armed forces of the People's Republic of China abide by the Constitution and laws, implement the guidelines of governing the armed forces according to law, strengthen military legal system building, and guarantee and push forward the building of national defense and armed forces in accordance with the requirements of the legal system.

China's National Defense in 2010, *supra* note 6.

<sup>55</sup> *Id.*

<sup>56</sup> Discipline Regulation, *supra* note 47.

<sup>57</sup> Zhongguo Renmin Jiefangjun Jilu Tiaoling [Internal Affairs Regulation of the People's Liberation Army of China], Jiefangjun Bao [PLA Daily] (China), June 7, 2010, [http://chn.chinamil.com.cn/xwpdxw/2010-06/07/content\\_4233772.htm](http://chn.chinamil.com.cn/xwpdxw/2010-06/07/content_4233772.htm) (last visited Jan. 25, 2013) [hereinafter Internal Affairs]. The Internal Affairs Regulation is primarily aimed at instructing troops on proper etiquette, protocol, appearance, and the like, leaving it to the Discipline Regulation to enumerate punishable offenses. *Id.* Chinese textbooks place greater emphasis on the Discipline Regulation than the Internal Affairs Regulation when explaining troop discipline; this article therefore does the same. *Id.*

<sup>58</sup> Crim. Pro. L. China, *supra* note 39.

suggestions if given an order with which they do not agree, but they may not refuse to execute an order.<sup>59</sup> Similarly, Discipline Regulation Article 4 states as overarching policy *tingcong zhihui, lingxing jinzhi*—every soldier must strictly comply with instructions—and under Article 86 the failure to obey an order constitutes punishable misconduct.<sup>60</sup> Criminal laws such as the Criminal Law Article 421 duty to obey and the Article 425 crime of failure to perform one’s duty (discussed in greater detail in Section V) provide additional punitive mechanisms to enforce obedience.<sup>61</sup> While these laws give form and substance to PLA discipline, they too operate within a broader historical context that must be understood to fully appreciate how the PLA conceives of its own soul.

As with much of China today, laws are a fusion of old and new—of ancient tradition and modern thought.<sup>62</sup> Textbooks on military law in China trace concepts of good order and discipline to ancient times.<sup>63</sup> As early as China’s first empire, the Qin (pronounced “cheen”), disobedience was punished according to what historian Robin Yates describes as a “complex set of rules to control and manage almost every

---

<sup>59</sup> Internal Affairs, *supra* note 56, art. 63. For discussion of unconditional obedience in the modern PLA, see, e.g., Xun Hengdong, *Xiandai Zhanzheng Zhong de Falu Zhan* [*Legal Warfare in Modern War*], 278 (2005) (China) (explaining the heightened need for unconditional obedience in modern warfare due to evolving definitions of the battlefield, which now arguably includes the cyber domain). The right to offer suggestions to superiors is an integral part of modern PLA command and control strategy. The PLA Air Force, for example, relies on subordinates to “avoid overly centralized and rigid command,” even when employing its centralized system of command (other command types include dispersed, hierarchical, and skip-echelon). CLIFF et al., *supra* note 50, at 29 (“They should propose changes to the original plan to the commander unless the situation has fundamentally changed and they are unable to contact their superiors—in which case they should take the initiative to handle the situation and report to the campaign commander later.”).

<sup>60</sup> Discipline Regulation, *supra* note 47, arts. 4, 86.

<sup>61</sup> Criminal Law of the People’s Republic of China arts. 421, 425 (promulgated by the Nat’l People’s Cong., 1979, adopted July. 1, 1997), *available at* <http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm> [hereinafter *Crim. L. China*].

<sup>62</sup> For an illustration of the fusion of ancient tradition and modern thought in contemporary China, see YAN XUETONG, *ANCIENT CHINESE THOUGHT, MODERN CHINESE POWER* (Daniel A. Bell & Sun Zhe eds., Edmund Ryden trans., 2011).

<sup>63</sup> See Gangling, *supra* note 16, at 68-82.

aspect of military affairs.”<sup>64</sup> Commanders ensured obedience by the threat of harsh punishment, which ranged from fines to “mutilating punishments coupled with hard labor.”<sup>65</sup> Military disciplinary law proved resilient, surviving in various forms and degrees as Chinese empires rose and fell over subsequent millennia.<sup>66</sup> Eventually, ancient martinet tradition informed the thinking of the architects of modern Chinese military law, many of whom were renowned as historians by nature, warriors by necessity.

Despite its ancient heritage, Chinese legal scholars trace the current disciplinary system back to more modern times and sources—in particular, to the decades preceding the 1949 founding of the communist People’s Republic of China. The era was ripe for momentous change: following a devastating war with Japan, the Civil War of the 1940s pitted Mao Zedong’s Communists against the Nationalist forces of Jiang Jieshi (a.k.a., Chiang Kai-Shek), when a battle for the hearts and minds of approximately 500 million Chinese citizens played itself out in grand scale.<sup>67</sup>

---

<sup>64</sup> Robin D.S. Yates, *Law and the Military in Early China*, in *MILITARY CULTURE IN IMPERIAL CHINA* 25, 39 (Nicola Di Cosmo ed., 2009).

<sup>65</sup> *Id.* Punishments in ancient Chinese militaries truly spanned the spectrum: historical records suggest that, in one instance during the late Spring and Autumn Period (8th – 5th centuries BCE), a driver and his horse were both executed for driving at full speed in a military camp; and during the Warring States Period (479 – 221 BCE), soldier misconduct met with the harshest of consequences, as historian Robin Yates explains:

Execution by beheading was the usual punishment inflicted on a military criminal, although in cases of treachery and collusion with the enemy, relatives of the traitor were also executed, as were, in accordance with the law of collective responsibility, those on his left and right, front and rear. Only accidental arson of a building was punished with cutting off the extremities, hands, feet, ears, nose, although women appear to have been spared this punishment. Intentional arson was savagely punished by the offender being ripped apart by chariots.

*Id.* at 36-39.

<sup>66</sup> *Id.* at 25.

<sup>67</sup> For a leading account of the Chinese experience during the war against Japan, see IRIS CHANG, *THE RAPE OF NANKING: THE FORGOTTEN HOLOCAUST OF WORLD WAR II* (1997). For an English language history of the Chinese Civil War as told by a former member of the PLA, see XIAOBING LI, *A HISTORY OF THE MODERN CHINESE MILITARY* (2007).



As part of his guerilla approach to warfare, Mao sought support of the peasantry through, what would today be termed, psychological warfare.<sup>68</sup> Word was spread throughout the countryside: the Nationalist troops rape, pillage, and debauch the peasantry; the Communists respect and honor the peasantry because they are the party of the masses. To prove Communist commitment to peasant interests, from 1927-1928 Mao wrote and promulgated the framework for what has become a veritable Ten Commandments for PLA troops: the “Three Main Rules of Discipline and the Eight Points for Attention.”<sup>69</sup> The Main Rules require soldiers to “obey orders in all your actions, do not take a single needle or piece of thread from the masses [e.g., do not steal], and turn in everything captured.”<sup>70</sup> The Eight Points expand: “speak politely, pay fairly for what you buy, return everything you borrow, pay for anything you damage, do not hit or swear at people, do not damage crops, do not take liberties with women, and do not maltreat captives.”<sup>71</sup> Today, the PLA views itself as a force for good, founded on what it perceives to be the firmest of moral bedrock—the words and ethical moorings of then-General Mao Zedong.<sup>72</sup> Indeed, modern PLA disciplinary law draws heavily on Mao’s Main Rules. Blending old and new, however, it has been codified into Western-style law. Today, it is not only Mao’s fiat, but also Western-style statutory and regulatory provisions—for example

---

<sup>68</sup> MAO ZEDONG, ON GUERRILLA WARFARE (Samuel B. Griffith II trans., 1937); see also PAUL M.A. LINEBARGER, PSYCHOLOGICAL WARFARE (1948). For more on what is commonly referred to as “unorthodox” warfare in Chinese literature, see RALPH SAWYER, THE TAO OF DECEPTION: UNORTHODOX WARFARE IN HISTORIC AND MODERN CHINA (2007).

<sup>69</sup> Zhang Chi Sun, *supra* note 4, at 37; see also XIAOBING LI, *supra* note 66, at 53-54. Today, the Three Main Rules of Discipline and the Eight Points for Attention are codified as attachments to the Regulation on Discipline in the People’s Liberation Army of China, available at [http://chn.chinamil.com.cn/xwpdxw/2010-06/08/content\\_4234767\\_23.htm](http://chn.chinamil.com.cn/xwpdxw/2010-06/08/content_4234767_23.htm).

<sup>70</sup> He Xiaodong, *The Chinese Humanitarian Heritage and the Dissemination of and Education in International Humanitarian Law in the Chinese People’s Liberation Army*, 841 INT’L REV. RED CROSS no. 841 (2001), available at <http://www.icrc.org/eng/resources/documents/misc/57jqyz.htm> (providing an English language translation of the Main Rules and Eight Points).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* (describing the formative years of the PLA and early efforts to promote humanitarian law). For an example of a Chinese military law scholar tracing the PLA’s commitment to humanitarian law back to Mao Zedong, see Jin Huazhi, *Xuezhe Jianyi Jiang Junshifa Zuwei Duli Bumenfa* [Scholars Recommend Creating an Independent Military Law], RULE OF LAW DAILY, Oct. 18, 2010, available at <http://www.chinanews.com/fz/2010/10-18/2594929.shtml>.

Criminal Law Article 446 and Discipline Regulation Article 84—that prohibit soldiers from plundering civilian property.<sup>73</sup>

In the eight decades since the Main Rules and Eight Points were first promulgated, China and the PLA have undergone sweeping change. During the Cultural Revolution of the 1960s and 1970s, laws of all kinds were branded bourgeois tools of oppression, and legal institutions of all kinds were dismantled, including those of the PLA.<sup>74</sup> Law and order began its revival following Mao's death in 1976, when Deng Xiaoping and a new generation of leaders took the helm of the state. Military courts resumed operations in 1978 and the military procuratorate followed suit in 1979.<sup>75</sup> A new constitution was passed in 1982, followed by volumes of legislation and administrative regulations. Military law was likewise revived, for example with the passage of the Discipline Regulation in 1990.<sup>76</sup> Today, discipline is firmly enshrined in law and policy—a codified soul.

#### V. GOOD ORDER & DISCIPLINE IN THE PLA

Chinese enforcement of good order and discipline might sound familiar to those trained in Western military law.<sup>77</sup> It should, both as a matter of procedure and substantive law. Broadly speaking, like many Western militaries,<sup>78</sup> the PLA imposes two types of punishment for misbehavior: administrative punishment for low-level offenses, and judicially imposed punishment for more egregious offenses that rise to the level of codified crime, with different procedural rules in place for

---

<sup>73</sup> Such rules are similar to U.S. military law, which prohibits looting and pillaging captured or abandoned. Uniform Code of Military Justice (“UCMJ”), 10 U.S.C. § 903, art. 103(b)(3) (2012).

<sup>74</sup> Zhang Chi Sun, *supra* note 4, at 36; *see also* Professor Lu Hui's chapter on the history of court-martials in China in Guangcheng, *supra* note 20, at 275-286.

<sup>75</sup> Zhang Chi Sun, *supra* note 4, at 37.

<sup>76</sup> The Discipline Regulation was first promulgated in 1990. This article elsewhere refers to an amended version promulgated in 2010.

<sup>77</sup> A great deal of military criminal law translates well across countries and cultures. GEORG NOLTE, EUROPEAN MILITARY LAW SYSTEMS (2003) (noting considerable commonalities among European military law systems).

<sup>78</sup> *Id.*

each type of punishment.<sup>79</sup> The vast majority of misconduct is handled either through “indoctrination and political education” or administratively as violations of discipline, rather than criminal law.<sup>80</sup> For instances in which a competent authority deems administrative punishment to be insufficient, however, the Criminal Procedure Law governs subsequent investigations, the rights of the accused, pretrial proceedings, and trial.

This section examines several core aspects of good order and discipline in the PLA: administrative punishment, criminal procedure, and a sampling of military crimes under Chinese law, the latter of which is compared to U.S. law for context. The section concludes with a look at the 1989 Tiananmen Square incident, which illustrates several key aspects of PLA disciplinary law.

#### A. *Administrative Punishment in the PLA*

PLA rules of discipline derive from a number of sources, including Communist Party policy,<sup>81</sup> national laws such as the Constitution and Criminal Law, administrative regulations promulgated by the Ministry of Defense, lawful orders given by superiors, and the Main Rules and Eight Points discussed above. Ultimately, however, it is the Discipline Regulation that governs day-to-day enforcement of discipline among the PLA rank-and-file.

Guiding principles for the punishment of disciplinary infractions are set forth in Discipline Regulation Article 77 and include maintaining “strict military discipline” (*yanming junji*), educating both violators and

---

<sup>79</sup> General Sun, an expert in Chinese military law profiled above in Section II, contends that “it is [not] precise to classify the process of China’s military law and discipline into judicial and nonjudicial punishment categories . . . although that is quite right in the U.S. military system.” Zhang Chi Sun, *supra* note 4, at 33. To avoid any confusion, this paper uses the term “administrative punishment” to refer to all forms of punishment not requiring recourse to the judicial process. Thus there are two forms of punishment: those that involve a judge and those that do not.

<sup>80</sup> *Id.*

<sup>81</sup> For an excellent primer on the Chinese Communist Party and its influence over all aspects of Chinese government, including the military, see RICHARD MCGREGOR, *THE PARTY: THE SECRET WORLD OF CHINA’S COMMUNIST RULERS* (2010).

their units on proper conduct, strengthening unity among the troops, and enhancing combat effectiveness.<sup>82</sup> To ensure constant combat readiness, punishment is intended to be swift—to wit, Article 136 of the Discipline Regulation states that misconduct should generally be investigated and punished within 45 days of the date of discovery.<sup>83</sup> This metric is quite similar to that used by the U.S. military. The U.S. Air Force, for example, attempts to punish relatively serious, but non-criminal misconduct, within 30 days of discovery.<sup>84</sup> Also similar to the U.S. approach, Chinese regulations provide suspects an opportunity to be heard prior to imposition of punishment, and the opportunity to appeal punishment after the fact.<sup>85</sup>

In practical terms, the principles underlying punishment translate into a variety of options available to commanders. Like many Western systems, enforcement can take the form of formal warnings (*jing gao*), “serious” warnings, the creation of a written record of an offense, reduction in rank or grade, and dismissal from a position of command.<sup>86</sup> For particularly grave offenses, including national security crimes and criminal convictions resulting in five or more years imprisonment, soldiers are subject to discharge from military service altogether.<sup>87</sup> Additional punishments are also available for certain offenses. For instance, under the PLA Provisional Regulation on Re-education through Labor, offenders may be sentenced to labor for a

---

<sup>82</sup> Discipline Regulation, *supra* note 47, art. 77.

<sup>83</sup> Discipline Regulation, *supra* note 47, art. 136.

<sup>84</sup> Air Force Instruction 51-202, Procedures for Initiating and Imposing Nonjudicial Punishment ¶ 3.3 (2003), available at <http://www.e-publishing.af.mil/shared/media/epubs/AFI51-202.pdf>.

<sup>85</sup> Discipline Regulation, *supra* note 47, art. 137. For a counterpart regulation in the U.S. military, see, e.g., Air Force Instruction 51-202, *supra* note 83 (governing notice and appellate rules for administrative punishment in the U.S. Air Force).

<sup>86</sup> Discipline Regulation, *supra* note 47, arts. 79-80; see also Hengdong, *supra* note 58, at 279. European militaries share many similarities in terms of the range of punishments available to commanders, though they too are far from uniform. Many, but not all, impose fines as punishment. Some permit public admonishments, while others do not. And several do not allow reduction in rank to be imposed as a form of disciplinary punishment. NOLTE, *supra* note 76, at 129-39.

<sup>87</sup> Discipline Regulation, *supra* note 47, art. 120.

number of offenses, including drug offenses, theft, sexual assault, and absence without leave.<sup>88</sup>

The list of offenses punishable as disciplinary violations includes a range of misconduct similar to that punishable in the U.S. military. Traditional offenses such as absence without leave,<sup>89</sup> violent behavior,<sup>90</sup> alcohol-based offenses,<sup>91</sup> sexual assault,<sup>92</sup> and theft<sup>93</sup> are all proscribed under the Discipline Regulation. Having been updated in 2010, the disciplinary code also includes prohibitions on more modern forms of misconduct, such as wrongful use of mobile phones and the “international Internet.”<sup>94</sup> In certain circumstances, violations of regulations regarding military and state secrets may likewise be handled as disciplinary infractions.<sup>95</sup> As discussed below, for more serious offenses rising to the level of crime, more formal procedures and trials are required before punishment may be imposed.

#### B. *Criminal Procedure in the PLA*

As discussed previously, the Chinese system of military criminal law operates within the national criminal justice system, a pyramidal structure atop of which sits the Supreme People’s Court (SPC).<sup>96</sup> The Constitution establishes military courts and grants them jurisdiction over cases involving service members and others with a sufficient military

---

<sup>88</sup> See Gangling 2006, *supra* note 44. These offenses are also prohibited under the Discipline Regulation, which serves as the primary basis for punishment. For example, absence without leave is a disciplinary violation under Article 94, Discipline Regulation, and carries with it a range of punishments including warnings for minor instances and reduction in rank for more serious offenses.

<sup>89</sup> Discipline Regulation, *supra* note 47, art. 95.

<sup>90</sup> *Id.*, art. 96.

<sup>91</sup> *Id.*, art. 97.

<sup>92</sup> *Id.*, art. 99.

<sup>93</sup> *Id.*, art. 101.

<sup>94</sup> *Id.*, art. 93.

<sup>95</sup> Discipline Regulation, *supra* note 47, art. 93.

<sup>96</sup> Article 2(2), Organic Law of the People’s Courts of the People’s Republic of China (1983), available at [http://www.novexc.cn/organic\\_law.html](http://www.novexc.cn/organic_law.html).

nexus.<sup>97</sup> General Sun, the retired Chinese military attorney discussed in Section II, explains:

The military courts . . . are authorized by the Constitution as an integral part of the State judicial system. They are organized under The Organic Law of the People's Courts . . . and are defined as Special People's Courts . . . attached to the armed forces.<sup>98</sup>

As part of the state judicial system, both the national Criminal Law and Criminal Procedure Law apply in military courts.<sup>99</sup> As a result, aside from the military status of those involved, the manners in which civilians and service members are tried in Chinese courts are essentially the same.

In this regard, the Chinese and American systems diverge, though the difference is much more as a matter of degree than kind. Court-martialed U.S. service members face an experience similar in many ways to their civilian counterparts due in large part to the fact that constitutional guarantees to a fair and speedy trial apply in both forums. However, American military courts operate in separate venues, under different criminal codes, and pursuant to different procedural rules than civilian criminal trials. In the U.S., misconduct by service members can in some circumstances run afoul of civilian laws, and service members can find themselves haled into civilian courts for prosecution. However, the UCMJ applies to active duty service members at all times and in all locations—whether on or off duty and whether or not in uniform.<sup>100</sup> As a result, civilian authorities often step aside and allow military offenders to

---

<sup>97</sup> State Structure of the People's Republic of China, NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, [http://www.npc.cn/englishnpc/stateStructure/2007-12/06/content\\_1382076.htm](http://www.npc.cn/englishnpc/stateStructure/2007-12/06/content_1382076.htm) (last updated Dec. 17, 2007) ("The jurisdiction of military courts is restricted to specified criminal cases such as criminal cases committed by army men in active service and by workers on the payroll of the military, and other criminal cases whose trial and judgment are delegated to the military court by the SPC [Supreme People's Court].").

<sup>98</sup> Sun, *supra* note 4, at 34.

<sup>99</sup> Crim. Pro. L. China, *supra* note 39, art. 225 ("The security departments of the Army shall exercise the power of investigation with respect to criminal offences that have occurred in the Army. . . . The handling of criminal cases by the security departments of the Army . . . shall be governed by the relevant provisions of this law.").

<sup>100</sup> UCMJ art. 3, 10 U.S.C. § 803 (2006); UCMJ art. 5, 10 U.S.C. § 805 (2006).

be dealt military justice. For example, a U.S. service member suspected of committing sexual assault outside a base in the U.S. might be handed over to military authorities for prosecution and be charged in a court-martial with violating Article 120 of the UCMJ, rather than the criminal laws of the state where the incident occurred. In the U.S., once a case is referred to court-martial by the appropriate military authority, proceedings are governed by the military's own substantive and procedural laws.

Despite their differences, the Chinese and U.S. systems are in certain ways—to again borrow a distinctly Chinese expression—“harmonious”: both recognize the value of keeping military disciplinary matters in-house, yet both acknowledge that criminal conduct sometimes carries with it a societal cost for which civilian prosecution and punishment are appropriate. China strikes this balance by handling most misconduct in-house under the Discipline Regulation, as opposed to criminal trial; and where crimes are sufficiently serious, China refers cases to criminal courts where sanctions intended to serve the public interest can be imposed. The U.S. balances the equation instead by steering suspected military criminals into an independent court-martial system, which operates almost entirely beyond civilian oversight and influence. U.S. courts-martial afford the military considerable autonomy, while simultaneously promoting the social benefits associated with incarceration and rehabilitation of criminals—and, as mentioned, civilian prosecution remains a viable option in appropriate cases.

Once underway, military criminal investigations in China parallel those in the United States. Two players in particular guide proceedings: the military investigator and procuratorate.<sup>101</sup> The Criminal Procedure Law cabins the authority of military investigators and procuratorates, limiting their reach to “internal” military cases—those which directly impact the military or which are committed by service

---

<sup>101</sup> The term procuratorate or *jianchaguan* refers to an attorney representing the government during trial—similar in many ways to a prosecutor in the common law tradition.

members.<sup>102</sup> Within these boundaries, criminal cases play themselves out much as they would in the United States.

A case begins when filed with a court for investigation.<sup>103</sup> For a filed case to go forward, the Criminal Procedure Law requires a showing of both substantive evidence and jurisdiction.<sup>104</sup> As authorized by Articles 3 and 225 of the Criminal Procedure Law, military procuratorates work on behalf of the military court where a case is filed and in concert with military security forces (*baowei*) during the investigatory and charging phase, and responsibilities include conducting interviews and other fact-finding, managing pre-trial detention, and drafting formal charges.<sup>105</sup>

Before a crime is formally charged, a court first applies Article 15 of the Criminal Procedure Law, which lists various grounds for dismissal, including de minimus harm caused, expired statute of limitations, and others familiar to those trained in U.S. law.<sup>106</sup> After a court determines that charging a service member with a crime is appropriate, a charging document is issued, and preparation for trial begins.<sup>107</sup> Crimes forming the basis for criminal trials are the subject of the following section.

### C. *Crime and Punishment in the PLA*

#### 1. A Comparative Study: U.S. and Chinese Military Discipline

This section looks at a sampling of crimes for which Chinese service members can be brought to trial and the punishments available for such crimes. As previously discussed, unlike in the U.S., Chinese military courts do not operate under independent criminal laws. Rather, China has one system of criminal law within which military courts operate. Military crimes are prosecuted under provisions of the national Criminal Law, the same comprehensive statute used to prosecute

---

<sup>102</sup> See Gangling 2006, *supra* note 44, at 294.

<sup>103</sup> For an in-depth explanation of criminal procedure in the Chinese military, see Gangling 2006, *supra* note 44, at 292-99.

<sup>104</sup> Crim. Pro. L. China, *supra* note 39, art. 86.

<sup>105</sup> *Id.*, arts. 3, 225.

<sup>106</sup> *Id.*, art. 15.

<sup>107</sup> *Id.*, art. 150.



unlawful civilian behavior. However, certain provisions of the Criminal Law apply only to service members and those working in close conjunction with the military.<sup>108</sup> These offenses are contained within Chapter 10 of the Criminal Law and fall under the heading “Crimes of Servicemen’s Transgression of Duties.” Chapter 10 consists of 32 offenses and applies to “officers, civilian staff, soldiers in active service and cadets with military status of the Chinese People’s Liberation Army,” as well as members of the “Chinese People’s Armed Police, and reservists and other persons performing military tasks.”<sup>109</sup>

Much of the conduct prohibited by Chapter 10 likewise runs afoul of the Discipline Regulation. As previously discussed many offenses involving service members are resolved in-house as disciplinary infractions, rather than as criminal conduct warranting trial by judge. As such, cases are referred to the criminal system only for particularly egregious or harmful conduct. So, for instance, sending innocuous but inappropriate information to a friend abroad via email might result in light disciplinary measures under Discipline Regulation Article 92, which prohibits certain wrongful uses of the Internet. However, sending information about military weapons systems in a subsequent email might result in charges under Criminal Law Article 432, which prohibits the leaking of military secrets.<sup>110</sup> While, in both instances, the underlying conduct is the wrongful use of email, the gravity of the offenses differs greatly, making one case appropriate for reprimand or the like, the other appropriate for referral to the courts to be handled as a criminal matter.<sup>111</sup>

---

<sup>108</sup> In addition to the Chapter 10 crimes by service-members, 14 crimes listed in Chapter 7 of the Criminal Law have some military nexus but can be applied to the conduct of civilians. *Crim. L. China*, *supra* note 60, ch. XII. U.S. law contains similar provisions, such as Chapter 43 of Title 18 of the Federal Code, which lists eight different “Military and Navy” crimes that can be applied to the conduct of civilians. 18 U.S.C. ch. 43 (2006).

<sup>109</sup> *Crim. L. China*, *supra* note 60, art. 450.

<sup>110</sup> *Id.*, art. 432.

<sup>111</sup> General Sun, discussed above in Section II, used the following example to illustrate the importance of severity when distinguishing between disciplinary violations and crime:

Disrespect would become [a criminal] offense in a case where the accused not only was disrespectful toward the superior commissioned officer, but also resorted to violence or threat to obstruct the superior in the performance of his duty.

Chapter 10 offenses compare favorably to offenses listed in the U.S. military's criminal code—the UCMJ. On paper at least, in this respect the two systems have more similarities than differences, beginning with several of the more commonly charged offenses under the UCMJ. To illustrate this point, this article compares the following six UCMJ offenses to their Chinese counterparts: Article 86—absence without leave, failure to go, and desertion;<sup>112</sup> Article 92—dereliction of duty and disobeying an order;<sup>113</sup> Article 107—false official statements;<sup>114</sup> Article 112a—wrongful use, possession, etc., of controlled substances;<sup>115</sup> Article 120—rape, sexual assault, and other sexual misconduct;<sup>116</sup> and Article 134—the so-called “general article,” under which individuals subject to the UCMJ can be punished for all manner of conduct deemed to be prejudicial to the good order and discipline of the armed forces.<sup>117</sup> Violations of each of these six UCMJ offenses would likely violate Chinese military law as well, and in any case would certainly run afoul of the PLA rules of discipline codified in the Discipline Regulation.

*a. Disobedience and Dereliction of Duty*

One of the more commonly occurring UCMJ offenses is Article 92, which prohibits disobedience and the failure to obey lawful orders. Chinese law takes a similar tack. Some aggravated forms of dereliction of duty and disobedience could run afoul of Articles 421 and 425 of the Criminal Law, which prohibit disobedience and include anyone “on duty who leaves his post without permission or neglects his duties,”<sup>118</sup> but for run-of-the-mill offenses disciplinary measures can be taken administratively under Discipline Regulation Articles 86 and 89, which require obedience and the performance of one’s duty.<sup>119</sup>

---

SUN, *supra* note 4, at 34.

<sup>112</sup> Manual for Courts-Martial, United States, pt. IV, art. 86 (2008).

<sup>113</sup> *Id.*, art. 92.

<sup>114</sup> *Id.*, art. 107.

<sup>115</sup> *Id.*, art. 112a.

<sup>116</sup> *Id.*, art. 120.

<sup>117</sup> *Id.*, art. 134.

<sup>118</sup> Crim. L. China, *supra* note 60, arts. 421, 425.

<sup>119</sup> Discipline Regulation, *supra* note 47, arts. 86, 89.

In this regard, the two countries' systems are quite similar. In practice, in the U.S. military less severe violations of Article 92 oftentimes result in a service member receiving administrative paperwork such as a letter of counseling, admonishment or reprimand. Only more severe violations result in trial by court-martial. The Chinese approach strikes a similar balance: instances of petty disobedience are handled under the Discipline Regulation and result in administrative punishment, with only aggravated derelictions, such as those satisfying the elements of Criminal Law Articles 421 and 425, finding their way into court.

*b. False Statements*

False statements are punishable under both U.S. and Chinese military law. In the U.S. military, making a false official statement (e.g., lying) violates Article 107 of the UCMJ, and as with Article 92 less egregious violations often result in administrative paperwork, rather than trial by court-martial. In China, certain false official statements might contravene the Criminal Law Article 422 prohibition on "lying about military intelligence," and Criminal Law Article 433, which makes it a crime to "spread rumors to confuse people,"<sup>120</sup> but ordinary lies can be dealt with administratively as disciplinary violations. For instance, Discipline Regulation Article 90 prohibits various types of deception and misrepresentation,<sup>121</sup> allowing PLA commanders to punish certain false statements in-house without resort to the courts. The end product of the two systems is much the same: in both militaries, only a subset of particularly harmful or aggravated false statements result in trial. Others are a matter for nonjudicial recourse.

*c. Absence Offenses: AWOL and Desertion*

"Going AWOL" (absence without leave) is one of the classic military offenses; accordingly, its prohibition can be found in both the U.S. and Chinese disciplinary codes. American troops who fail to go to their appointed place of duty, who leave their place of duty, or who "absent" themselves from their place of duty violate Article 86 of the UCMJ. Such offenses occur with relative frequency—commanders in all

---

<sup>120</sup> Crim. L. China, *supra* note 60, arts. 422, 433.

<sup>121</sup> Discipline Regulation, *supra* note 47, art. 90.

services are all too familiar with the subordinate who rolls in 15 minutes late on a regular basis or who manages to stretch every lunch hour into two. In the U.S. military, such offenses generally do not merit trial by court-martial, though exceptions can occur in deployed locations, where repeated reprimands fail to bring the soldier in line, or where the consequences of the absence are particularly serious.

The Chinese system is much the same. Criminal Law Article 425 prohibits AWOL, and as such it can be the basis for a criminal charge. But as Xue Gangling, et al, explain in *The Science of Military Law*, absence offenses should only be charged as a crime if the result of the offense is “serious”,<sup>122</sup> otherwise, matters should be handled more quietly as non-criminal disciplinary infractions. For such ordinary offenses, punctuality can be instilled pursuant to Article 95 of the Discipline Regulation, which expressly prohibits AWOL.<sup>123</sup> Both the U.S. and Chinese militaries prefer to handle such misconduct with what the U.S. military informally refers to as “graduated” or “stair-step” punishment, or the practice of giving just enough punishment to correct a soldier’s behavior and reserving harsher punishments for recalcitrance or aggravated offenses. An example of this approach is codified in Article 95 of China’s Discipline Regulation, which states that “warnings” or “serious warnings” should be given for instances of AWOL totaling seven days or less, demerits for eight to 15 days, demotions for 16 to 30 days, and expulsion from military service for over 30 days.<sup>124</sup>

Like AWOL, both the U.S. and Chinese codes of conduct prohibit the act of desertion, another absence offense. Under Chinese Criminal Law Article 435, desertion carries up to a three-year prison sentence during peace, and up to seven years during war. Similarly, under Article 85 of the UCMJ, desertion, defined to include going or remaining away from one’s unit with the intent of remaining away permanently or avoiding hazardous duty, carries different maximum punishments depending on whether committed during peace or war. Interestingly, both countries specifically provide for the death penalty for

---

<sup>122</sup> See Gangling 2006, *supra* note 44, at 276.

<sup>123</sup> Discipline Regulation, *supra* note 47, art. 95.

<sup>124</sup> *Id.*

desertion during battle,<sup>125</sup> a reminder that the final aim of both systems of military discipline is to ensure a fighting force willing to fight and die for their country.

*d. Drug Offenses*

Both militaries have little to no tolerance for drug crimes. Drug offenders in the U.S. military risk a great deal even for relatively mundane offenses. The use of unlawful drugs—such as marijuana or painkillers without prescription—regularly results in administrative punishment followed quickly by discharge from military service. For those caught manufacturing or distributing illegal drugs, criminal charges and court-martial can be expected. Similarly, in China, drug offenses by service members can be punished pursuant to the Criminal Law, and consequences can be severe.<sup>126</sup>

The Chinese government goes to great lengths to combat drug crime, taking part in a number of international efforts to combat drug trafficking and even declaring a “People’s War on Drugs” in 2005.<sup>127</sup> Such efforts can be traced back to at least 1997, when amendments to the Criminal Law added numerous drug offenses, including use, possession, trafficking, and manufacturing. Over the decade-plus since the amendments, China’s commitment to drug-related law enforcement has been noteworthy, and from 2005 to 2006 its government issued a series of regulations targeting the possession and transportation of precursor chemicals and psychotropic agents, a proactive step similar to that taken in the United States.<sup>128</sup>

Section 7 of China’s Criminal Law contains prohibitions on smuggling, trafficking, transportation and manufacturing a broad range of drugs, including “opium, heroin, methylaniline (ice), morphine, marijuana, cocaine and other narcotic and psychotropic substances that

---

<sup>125</sup> Crim. L. China, *supra* note 60, art. 422; UCMJ, art. 85(c), 10 U.S.C. § 885 (2006).

<sup>126</sup> Crim. L. China, *supra* note 60, arts. 347-357 (drug offenses).

<sup>127</sup> Niklas Swanstrom and Yin He, *China’s War on Narcotics: Two Perspectives*, SILK ROAD PAPER, Dec. 2006, at 41-47.

<sup>128</sup> *Id.* In the United States, federal drug crimes are enumerated in the United States Code. 21 U.S.C. ch. 13 (2006) (extending prohibitions not only to drugs themselves, but also to various types of precursor materials and paraphernalia).

can make people addicted to their use and are controlled under State regulations.”<sup>129</sup> A wide range of drug-related activities are prohibited, allowing for prosecution not only of those principally involved in the trafficking, manufacturing, and the like, but also those who “shield” principals and those involved in drug “gangs” and international trafficking organizations.<sup>130</sup> Drug quantity likewise factors into sentencing. For example, a manufacturer of less than 10 grams of heroin faces up to three years confinement and a fine, but at least seven years confinement for 10 to 50 grams.<sup>131</sup> For those whose involvement does not merit criminal prosecution, punishment under Discipline Regulation provisions like Article 118 for “undisciplined” behavior remains an option for military commanders.

In the U.S. military, offenses such as those prohibited by Section 7 of China’s Criminal Law (e.g., smuggling, trafficking, transportation and manufacturing) are punishable under Article 112a of the UCMJ, which authorizes the punishment of anyone who “wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces” a variety of drugs.<sup>132</sup> The list of prohibited drugs and their precursor chemicals is also similar to those banned under Chinese law, including “opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana, and any compound or derivative of any such substance.”<sup>133</sup> In sum, both countries take drug crime very seriously, criminalizing not just use, but also manufacturing, distributing and transporting; and both extend prohibitions to precursor chemicals, ensuring that drug-free fighting forces will be available should they be called into action.

---

<sup>129</sup> *Crim. L. China*, *supra* note 60, art. 357.

<sup>130</sup> *Id.*, art. 347.

<sup>131</sup> *Id.*

<sup>132</sup> UCMJ, art. 112a, 10 U.S.C. § 912(a) (2006).

<sup>133</sup> *Id.*

e. *Sex Offenses*

The legal regimes of the two countries are likewise similar with regards to sex offenses, though notable differences do exist. Both strictly forbid forcible sex with women and both provide for heightened sentences where aggravating circumstances exist. The Chinese Criminal Law addresses the subject in Articles 236 and 237. Under Article 236, “whoever rapes a woman by violence, coercion or any other means” is guilty of a crime and subject to at least three years in prison.<sup>134</sup> The law provides for lengthier prison sentences where the victim has not reached 14 years of age and for the following aggravators:

- (1) [committing rape under] flagrant [circumstances];
- (2) raping [multiple] women or girls under the age of 14;
- (3) raping a woman before the public in a public place;
- (4) raping a woman with one or more persons in succession; or
- (5) causing serious injury or death to the victim or any other serious consequences.<sup>135</sup>

Less egregious offenses can be prosecuted under Article 237, which states that “whoever acts indecently against or insults a woman by violence, coercion or any other forcible means” is guilty of a crime.<sup>136</sup> As with Article 236, harsher penalties are available for crimes committed by a group of individuals or where the victim is a child.<sup>137</sup> Additionally, for offenses failing to rise to the level of a criminal sex offense, Article 99 of the Discipline Regulation provides military leadership with an alternate means of punishing sexual misconduct with its prohibition on “molestation, insults, and inappropriate conduct toward women.”<sup>138</sup>

The U.S. military approach to sex offenses is similar, with the notable exception that U.S. law does not require the victim of sexual assault to be female for a crime to occur. A 2011 case in China involving a male rape victim made international headlines after a Beijing court

---

<sup>134</sup> Crim. L. China, *supra* note 60, art. 236.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*, art. 237.

<sup>137</sup> *Id.*

<sup>138</sup> Discipline Regulation, *supra* note 47, art. 99.

convicted a man of intentional injury, but not rape, after the man forced an 18-year-old male to have sex with him.<sup>139</sup> Such an offense assuredly would have resulted in a rape conviction under U.S. law. Aside from this distinction, the U.S. approach to sexual assault in the military is quite similar to China's. Article 120 of the UCMJ goes into considerable detail enumerating impermissible types of sexual conduct. Explicit prohibitions include rape, aggravated sexual assault, aggravated sexual contact, abusive sexual contact, indecent liberty with a child, indecent acts, forcible pandering, wrongful sexual contact, and indecent exposure.<sup>140</sup> Criminal prosecution is the standard response to such offenses and lengthy prison sentences often result.

Less egregious offenses falling outside the scope of Article 120 can result in criminal prosecution, but many are resolved without convening a court-martial. This category of lesser offenses bears considerable resemblance to the category of offenses described in Article 99 of the PLA's Discipline Regulation, which, as mentioned previously, prohibits "molestation, insults, and inappropriate conduct toward women," though "molestation" would potentially be a prosecutable offense in the U.S. military under Article 120's prohibition on "wrongful sexual contact," defined to include "sexual contact with another person without that other person's permission."<sup>141</sup> In China, such lesser sex offenses result in punishments ranging from warnings and reprimands for less serious offenses to demotions for more serious offenses.<sup>142</sup> Similarly, for U.S. service members who commit less serious offenses not meriting trial by court-martial, punishments range from counseling and reprimand for less serious offenses to demotions and fines for more serious offenses.

Overall, the two systems approach sex offenses in substantially similar fashions. While the U.S. approach goes into considerably more detail parsing out the various types of sex offenses in Article 120 of the

---

<sup>139</sup> *Male Rape Case May Be China's First*, UPI.com (Jan 5, 2011, 3:09 PM), [http://www.upi.com/Top\\_News/World-News/2011/01/05/Male-rape-case-may-be-Chinas-first/UPI-12021294258161](http://www.upi.com/Top_News/World-News/2011/01/05/Male-rape-case-may-be-Chinas-first/UPI-12021294258161).

<sup>140</sup> UCMJ, art. 120, 10 U.S.C. § 920 (2006).

<sup>141</sup> *Id.*

<sup>142</sup> Discipline Regulation, *supra* note 47, art. 99.



---

UCMJ, Chinese law ensures that punishment can be imposed for offenses ranging from “inappropriate conduct toward women” on the low end to rape in the upper extreme. And, like in the U.S., the Chinese system allows for particularly strong punishments where aggravating circumstances exist.

*f. Other Misconduct*

A sixth offense frequently charged in the U.S. military is Article 134 of the UCMJ, under which conduct that is prejudicial to good order and discipline or service discrediting can be prosecuted. The intentionally vague language of Article 134 equips commanders and prosecutors in the U.S. military with a powerful and flexible charging tool capable of capturing almost any form of misconduct. The Chinese approach is again similar. If misconduct falls outside specific prohibitions listed elsewhere in the Criminal Law or the Discipline Regulation, Article 118 of the Discipline Regulation allows commanders to punish all other “undisciplined” conduct.<sup>143</sup> Likewise, Article 420 of the Criminal Law states that “any act committed by a serviceman in transgression of his duties, an act that endangers the military interests of the State and should therefore be subjected to criminal punishment in accordance with law, constitutes a crime of a serviceman's transgression of duties.”<sup>144</sup> Such catch-all prohibitions on poor discipline ensure that PLA commanders—like their U.S. counterparts—have at their disposal the legal tools necessary to punish undisciplined behavior in whatever form it appears.

Thus, while the U.S. and Chinese military justice systems are by no means carbon copies, the two share some fundamental properties. Substantively, the types of crimes that are prohibited in the two militaries are not very different; nor are the options available to commanders for dealing with misbehavior—in both, lack of discipline can result in punishment imposed either administratively or via trial. Procedurally, the two systems are quite different at an institutional level, with no direct parallel to the U.S. court-martial system in the PLA. But examined more

---

<sup>143</sup> Discipline Regulation, *supra* note 47, art. 118.

<sup>144</sup> Crim. L. China, *supra* note 60, art. 420.

closely—at least on paper—suspected criminals can expect significantly similar experiences being brought to justice in either of the two systems.

The Chinese court system remains decades behind international standards, however, and comparisons rightly end on paper. Until Chinese military courts significantly increase transparency and outsiders are permitted to observe firsthand, outside analysis will remain limited to the yet unproven assumption that good order and discipline in the PLA at least resembles that described in the textbooks of its leading practitioners. Unfortunately, at present, Chinese military courts remain enigmatically sealed off from the outside world. As a consequence, publically available case studies are few and far between. Accordingly, to illustrate some of the core disciplinary principles found in PLA law and literature, this article turns to one of the more famous incidents of military discipline—or lack thereof—in PLA history: the 1989 Tiananmen Square incident.

## 2. Case Study: The 1989 Tiananmen Square Incident

The 1989 Tiananmen Square crackdown helps illustrate several important aspects of the Chinese military justice system. And while the lack of transparency surrounding the incident makes it an imperfect case study at best, the event serves as an excellent vehicle from which to discuss good order and discipline in the PLA. The crisis began with the death of Hu Yaobang, a leading voice in the Communist Party and a man with a reformist reputation thought to favor liberalization of the Chinese government. His death touched a nerve for those seeking change and triggered an outpouring of public mourning—particularly in Beijing, the political and cultural center of China and the home to several of the nation’s elite and more politically active universities. As former U.S. Secretary of State Henry Kissinger recently wrote of the incident in his book *On China*, students “took the opportunity to voice their frustration with corruption, inflation, press restrictions, university conditions, and the persistence of Party ‘elders’ ruling informally behind the scenes.”<sup>145</sup> Students were not alone in harboring such grievances—many in the military shared their views. So when crowds of mourners swelled and the

---

<sup>145</sup> HENRY KISSINGER, *ON CHINA* 409 (2011).

PLA was called in to quell protest, some within the PLA found themselves forced to choose between their military duties and their personal convictions. Some demurred, refusing their orders; many, however, dutifully obeyed.

Images of the resulting carnage have come to be seen somewhat singularly as the embodiment of arbitrary and brutal authoritarianism.<sup>146</sup> Yet the incident can be mined for additional insight as well. In particular, Tiananmen offers context to better understand the PLA disciplinary system. Here, two points are worth noting: first, when called upon to use force against Chinese citizens deemed to be threats to public order, the Chinese military largely obeyed and successfully carried out orders assigned them; second, those who did not obey were punished.

Chinese military historian Li Xiaobing writes that, after being ordered to clear the square, a group of generals signed a letter addressed to Deng Xiaoping and the [Central Military Commission]:

“We request that troops not enter the city and that martial law not be carried out in Beijing.” . . . Deng sent top military leaders to visit these generals, and Yang Shangkun, the PRC president, made some phone calls. Thereafter . . . the mini-revolt was pacified.<sup>147</sup>

As explained previously in Section III, under Chinese military law an order may be questioned and alternatives may be suggested, but a subordinate may not refuse to execute an order.<sup>148</sup> At least insofar as current military law would have applied to what is known about the Tiananmen Square incident, the initial reluctance exhibited by certain elements within the PLA conformed to the letter of the law—that is, it was the exercise of the right to disagree guaranteed by Chinese law. The same cannot be said for those who, in the end, refused to use force against the student protesters.

---

<sup>146</sup> See *id.*, at 411 (explaining that following Tiananmen Square the Chinese government “emerged in the media of the world as an arbitrary authoritarian state crushing popular aspirations to human rights”).

<sup>147</sup> XIAOBING LI, *supra* note 66, at 265.

<sup>148</sup> See *supra* note 36.

Refusing an order violates several provisions of both the Chinese Criminal Law and the PLA Discipline Regulation, as previously explained. General Xu Qinxian, who feigned illness to avoid commanding his troopers against the demonstrators on the eve of battle, ran afoul of several laws—including for example Criminal Law article 428 (disobedience by a commander, “flinching before a battle,” or remaining inactive during a military operation)—was court-martialed and imprisoned in a massive crackdown following the incident.<sup>149</sup> By one account, well over 3,000 PLA soldiers were investigated for disciplinary violations—in the aftermath, a great many troops were punished administratively or brought to trial.<sup>150</sup>

Only so much can be gleaned from a case study like the Tiananmen Square incident, about which we admittedly have limited knowledge. We learn nothing, for example, about what (if any) legal procedures were followed before punishments were meted out, and we are left to speculate about punishments imposed. But the incident does help drive home a larger point: calls by Western governments for greater transparency by the PLA should extend to its disciplinary system as well.

## VI. CONCLUSION

What difference does it make how the Chinese military maintains discipline—how well its troops fall in line? Does a deeper threat lie beneath the obvious point recently made by Guo Boxiong, Vice Chairman of China’s Central Military Commission, that the discipline of a combat unit determines how efficiently and how rapidly warfighting capabilities can be mobilized?<sup>151</sup> Chinese leadership appears to believe it does.

---

<sup>149</sup> When recently interviewed about his decision to defy orders during the Tiananmen Square incident, former General Xu Qinxian expressed no regret, despite the career-ending implications of his decision. Verna Yu, *No Regrets for Defiant Tiananmen General*, S. CHINA MORNING POST, Feb. 15, 2011, at 5, available at <http://www.scmp.com/article/738185/no-regrets-defiant-tiananmen-general>.

<sup>150</sup> XIAOBING LI, *supra* note 66, at 268.

<sup>151</sup> Guo Boxiong Inspects Shenyang Theatre, Stressing Grassroots Building, PEOPLE’S LIBERATION ARMY DAILY (May 26, 2011), [http://eng.mod.gov.cn/DefenseNews/2010-06/12/content\\_4165318.htm](http://eng.mod.gov.cn/DefenseNews/2010-06/12/content_4165318.htm).

One of the more remarkable chapters of the Arab democratic revolution of 2011 occurred in Egypt, where a world-class military maintained continuity of operations as it transferred its loyalties to a new government. What would the Egyptian revolution have been had discipline and the command and control architecture of the Egyptian military collapsed? At the very least, it would have been much different. One might likewise ask: what would happen in a future Tiananmen Square incident? How would the Chinese military respond amid wide-scale domestic uprising? The answer is far from certain, and not only for those outside China—clearly concerned, the Chinese government reportedly censored media coverage of the Egyptian revolution.<sup>152</sup>

Such questions serve as a reminder of the difficulties of studying the PLA, which, for all its professed efforts to increase transparency, remains an enigmatic institution to the outside observer.<sup>153</sup> Moreover, the answers to such questions are heavily informed by the character and culture of the PLA itself, an area difficult to quantify and therefore an area for which it remains difficult to draw any firm conclusions. Yet, such challenges need not deter outsiders from analyzing presently available information. However limited such inquiries may be due to deficits in reliable information, they are nonetheless important: as discussed in Section I, common security interests have the potential to bring Chinese and U.S. service members to the same table, if not the same team, at a not-so-distant point in the future. What level of discipline can U.S. troops expect from a Chinese partner? For that matter, in the event cooperation does not materialize and the U.S. and

---

<sup>152</sup> See, e.g., Jeremy Page, *China Co-opts Social Media to Head Off Unrest*, WALL ST. J., Feb. 22, 2011, at A8.

<sup>153</sup> In its 2010 annual report to Congress on the Chinese military, the United States Department of Defense stated the following regarding PLA transparency:

The PLA has made modest improvements in the transparency of China's military and security affairs. However, many uncertainties remain regarding how China will use its expanding military capabilities. The limited transparency in China's military and security affairs enhances uncertainty and increases the potential for misunderstanding and miscalculation.

China find themselves on different sides of armed conflict—what level of discipline can U.S. troops expect from a Chinese adversary?

Additional reasons exist for continuing the project begun decades ago by Rodearmal and Sun. One example comes from the cyber domain and questions of attribution. Outside assessments about the robustness and integrity of PLA command and control architecture within its cyber warfighting elements would be an important variable when responding to a cyber attack emanating from PLA computer networks.<sup>154</sup> For example, an attack from an element known to have lax discipline might be more likely to be deemed a rogue attack not attributable to the Chinese government than one emanating from a unit where subordinates could be presumed to act only in accordance with the orders of their superiors.<sup>155</sup>

In the end, the importance of studying PLA discipline is captured in the words of Lt. Gen. Harding, who observed that “discipline is a force multiplier.”<sup>156</sup> The converse, also captured by Lt. Gen. Harding, is likewise true: “Without discipline, a fighting force is little more than a dangerous mob.”<sup>157</sup> Whatever direction PLA discipline takes in the coming years, it will be a direction tethered to an ancient and proud tradition. Both George Washington and Mao Zedong led underequipped forces against technologically superior foes. They passed on legacies of courage under fire and commitment to a cause. What they left behind is a loyalty—a discipline. In this institutionalized discipline, their souls live on.



---

<sup>154</sup> David E. Sanger, David Barboza & Nicole Perlroth, *China's Army Seen as Tied to Hacking Against U.S.*, N.Y. TIMES, Feb. 19, 2013, at A1.

<sup>155</sup> For a discussion of command and control infrastructure in the PLA as it relates to cyber activities, see BRYAN KREKEL, NORTHROP GRUMMAN CORP., CAPABILITY OF THE PEOPLE'S REPUBLIC OF CHINA TO CONDUCT CYBER WARFARE AND COMPUTER NETWORK EXPLOITATION (2009), available at [http://www.au.af.mil/au/awc/awcgate/china/uscsc\\_prc\\_cyber\\_capab\\_16oct2009.pdf](http://www.au.af.mil/au/awc/awcgate/china/uscsc_prc_cyber_capab_16oct2009.pdf) (prepared for the U.S.-China Econ. & Sec. Rev. Comm'n).

<sup>156</sup> See *supra* note 1.

<sup>157</sup> *Id.*



*National Security Law Journal*  
George Mason University School of Law  
3301 North Fairfax Drive  
Arlington, VA 22201

**[www.nslj.org](http://www.nslj.org)**

© 2013 *National Security Law Journal*. All Rights Reserved.