

On the Features of Intelligence Legislation in the United States, Britain and Russia and Its Enlightenment to China

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Abstract

Since the first National Security Council meeting put forward the overall national security concept, China has gradually adopted legislation to regulate national intelligence affairs, especially the National Intelligence Law enacted in 2017, which has laid the cornerstone for subsequent related intelligence legislation. Important role. Looking at the international community, the intelligence legislation of the United States, Britain, Russia and other countries has its own characteristics. In recent years, the United States has focused on reforming its originally dispersed intelligence organization through legislation. The United Kingdom adheres to a strict tradition of secrecy, while Russia has a tendency to approach the Soviet Union's intelligence model. From the practice of intelligence legislation in other countries, our country can also take the essence and eliminate the dross, and constantly improve the existing national intelligence legal system to effectively safeguard the overall national security.

Keywords

Intelligence legislation; Overview of foreign legislation; Rule of law; National security.

1. Features of U.S. Intelligence Legislation

(1) Balance the disclosure and confidentiality of information

As countries in the world differ in ideology, actual national conditions, and historical development, different countries and regions have different tendencies regarding the issue of whether to focus on confidentiality or disclosure in the intelligence field. In order to ensure that its intelligence services do not become a tool for political parties to attack each other, avoid political scandals, and respond to people's concerns that national intelligence operations are harmful to citizens' rights, the United States requires the intelligence field to maintain an "open" state. Such a policy enables informatics scholars to actively conduct academic research based on intelligence practice, and the public will also exercise public supervision rights based on the protection of their own rights. But this does not mean that the U.S. government does not attach importance to secrecy, but that its comprehensive secrecy system clarifies the scope and limits of secrecy. Since the War of Independence, the United States has successively promulgated a series of secrecy laws and regulations such as Military Order No. 100, the Espionage Act, and Administrative Order No. 8381, forming an intelligence culture that emphasizes disclosure internally and confidentiality externally. The balance between confidentiality and openness is realized.

(2) A well-defined intelligence legal system

The existing national intelligence legal system framework of the United States is built around the "National Security Act of 1947". This is a comprehensive law that mainly covers three aspects: intelligence, military, and national security resources. It is a modern US national security agency. The prerequisite for its creation laid the legal foundation of the US national security system. At the same time, in order to further regulate the organizational structure and work responsibilities of the intelligence agency, the United States has formulated various

intelligence agency laws on the basis of the National Security Act of 1947, including the CIA Act of 1949 and the National Security Agency Act of 1959. "The 1996 National Bureau of Imagery and Surveying and Mapping Act" and so on. In addition, the Congress has enacted corresponding laws in different categories in response to the different focuses of the various professional fields of the intelligence community. Such as the "Foreign Intelligence Surveillance Act of 1978", the Patriot Act of 2001, and the "Protection of the United States Act of 2007" in the field of intelligence supervision; the "Freedom of Information Act", "Confidential Information Procedure Act", and "Homeland Security of 2002" in the field of intelligence secrecy and sharing Information Sharing Act. It is precisely because the US intelligence legal system is reasonably divided horizontally and vertically, its intelligence legislation has the advantages of wide coverage, clear division of labor, and detailed regulations.

(3) Information legislation reform focusing on coordination

After the "9.11" terrorist attack, the United States gradually realized the seriousness of the problem of poor information sharing among various intelligence agencies. Due to the fact that each department has its own affairs and the entanglement of interests is complicated, the efficiency of intelligence collection and analysis is not high, and it is impossible to give early warnings in the face of emergencies, which may even have a major impact on national security. In December 2004, the U.S. Congress passed the "Intelligence Reform and Terrorism Prevention Act of 2004", which authorizes the establishment of the Director of National Intelligence (DNI) and the Office of the Director of National Intelligence (ODNI) to give the Director of Intelligence extensive powers to supervise and direct various intelligence agencies. Especially to ensure the smooth implementation of the National Intelligence Program (NIP). This bill has become the main legal basis for the current reform of the US intelligence system. The law stipulates that the Director of the Central Intelligence Agency no longer concurrently serves as the Director of Central Intelligence, but instead accepts the management and supervision of the Director of National Intelligence. Compared with the Central Intelligence Director, the National Intelligence Director has broader budget and personnel powers, which facilitates better management and coordination of intelligence work, and comprehensively uses various intelligence forces to complete national intelligence tasks. In addition, the Office of the Director-General of National Intelligence has set up the National Anti-Terrorism Center, the Anti-Proliferation Center, and the National Intelligence Center. Each center conducts business guidance and supervision for each intelligence unit based on the business field it handles. This move pooled the originally dispersed resources to form a joint force, and further strengthened the guidance and coordination of the National Intelligence Director to the intelligence agencies.

2. Features of Russian Intelligence Legislation

(1) Three-tier intelligence legal framework

The first layer is the basic law, mainly including the Russian Federation's "Russian Federation Security Law" and "Russian Federation Constitution" and other laws. The "Russian Federation Security Law" promulgated in March 1992 clarified for the first time the Russian Federation's cognition of the concepts of "security" and "national security". The activities of relevant national intelligence agencies have been regulated, thus forming Russia's "core legal basis for the national security system."

The second layer is the intelligence leadership and intelligence agency laws, regulations and rules. Such as the "Russian Federal Government Law", "National Defense Law", "General Staff Regulations" and other laws and regulations, which stipulate the leadership responsibilities of the entities in the Russian Federation's intelligence leadership system in the intelligence field, the "Business Investigation Law" and the "State Secrets Law" The "Russian Federal State Security Agency Act", "Government Communications and Information Agency Law", "Russian

Federal Counterintelligence Agency Regulations", "Russian Federal Security Agency Regulations", "Russian Federal Border Service Law" and other laws are the legal basis for the existence of corresponding intelligence agencies. , And also regulate its behavior.

The third layer is the presidential decree. Presidential orders are often clear instructions for major reforms of intelligence agencies. Separate laws and regulations are relatively stable, and presidential decree as a legal means is relatively flexible. For example, in February 2006, President Putin signed the "Presidential Decree on Measures to Combat Terrorism."

(2) Sublation of the Soviet model

Contemporary scholars of the Russian Federation believe that the Soviet Union's national intelligence and security legislation is very imperfect, and the intelligence agencies actually exercise their powers without a legal basis. This means that the activities of the Soviet intelligence agencies are hardly restricted by law, and even override the law. Above. With the disintegration of the Soviet Union, Russia first adopted various legislations to reform some intelligence agencies with "decentralization" as the main feature in order to increase mutual supervision and checks and balances. Although, refined intelligence legislation has allowed Russia to gradually shift from the mysticism of the former Soviet Union's intelligence services to the construction of a legal system, giving its national intelligence work legal norms and support, and it has become a legal form of state activity. In addition, through the disclosure of non-secret information of the intelligence agencies, for example, CBP cooperated with the journals "Motherland" and "Military Affairs Friendship" to publicize the collected photos and decrypted documents for the first time, and published a special issue on the 90th anniversary of CBP, telling the history of Russian foreign intelligence. , Legendary intelligence officers who have made great contributions to national security, current Russian intelligence tasks, etc., have greatly increased the public's trust in government intelligence work. However, excessively fragmented laws and regulations of intelligence agencies have led to the separation of intelligence agencies and failure to communicate with each other, resulting in waste of resources and inefficiency. After taking office, President Putin proposed highly concentrated reform ideas, committed to integrating intelligence agencies and establishing a unified and efficient intelligence system to help him regain Russia's status as a major power. Through two large-scale adjustments and power expansions of the Federal Security Administration, it has returned to a certain extent to the management mode of the KGB during the Soviet era.

3. Features of British Intelligence Legislation

(1) Conflict between civil rights and national intelligence work

Compared with the United States, the United Kingdom is a little weaker in passing legislation to balance citizenship and intelligence services. In 1998, the Parliament enacted the "Human Rights Act", which stipulated many rights and political freedoms that citizens have. The passage of this bill brings British law into conformity with the "European Convention on Human Rights". However, this bill does not use absolute clauses to guarantee citizens' right to freedom of information. For example, in response to the disclosure of information to the media, the British government can sign a "Defence Advisory Notice" (abbreviated as DA notice), which formally requires the media not to publish or report certain information. Although this requirement is not legally mandatory, the British media has traditionally followed this requirement. In addition, in the 1990s, the Parliament passed a resolution allowing MI5 to expand its scope of power to cover the investigation and punishment of organized crime, drug smuggling, immigration, and financial fraud. The law authorizes MI5 to monitor phone calls and monitor emails (both require a permit issued by the Minister of the Interior), and can also enter the home or office of an organized crime suspect.

(2) Strict information secrecy culture

In the British Victorian era, secrecy was regarded as one of the virtues of public servants, and it was an expression of loyalty to the king. However, until the mid to late 19th century, leaks were not criminalized in law, and leakers were only condemned by morals. In order to meet the needs of the British foreign expansion at that time, the Official Secrets Act was officially promulgated in 1889. In the European legal circle, the "Official Secrets Act" revised in 1911 was rated as harsh in terms, breaking through the bottom line of the rule of law and human rights in many ways, and becoming an important promoter of the British secrecy culture in the future. Its implementation of the presumption of guilt, the unclear distinction between spy theft and personnel leaks, and the granting of excessive search powers to the police have all been widely criticized. Even though the law was repealed in 1989, its influence is far-reaching in Britain, which focuses on legal traditions, and its colonies under its influence.

4. Comparison of Advantages and Disadvantages of Intelligence Legislation in the Three Major Countries

By comparing the legislative characteristics of various countries, a preliminary conclusion can be drawn: Although in order to serve its concept of global hegemony, the United States desires the centralization of intelligence decision-making agencies in its intelligence strategy, and integrates resources to vigorously develop foreign intelligence work. However, based on the tradition of case law, the form of intelligence legislation adopts decentralized legislation. A law generally only focuses on the content of a certain type of intelligence activity and the system related to it. A comprehensive national security law that includes procedural content, so its intelligence legislation concept shows complexity and a certain degree of conflict, and lacks rigorous integrity and systemicity. This is reflected in the actual intelligence work, that is, the United States currently faces many intelligence reforms. Resistance from various intelligence agencies. In order to balance intelligence work and human rights protection, US intelligence legislation pays more attention to the use of legal procedures to supervise and restrict the power of intelligence agencies, reflecting the vigilance of intelligence agencies. However, Russia, with the tradition of the civil law system, pays more attention to overall thinking and system thinking, and reflects the characteristics of totality, system and comprehensiveness in the top-level design. It hopes to set up a vertical intelligence agency to centralize national intelligence power, while the intelligence supervision regulations are relatively Generally speaking, internal regulations are more commonly used to regulate intelligence work. Compared with the United States and Russia, the United Kingdom's intelligence legislative work has limited its legislative intent to defend national intelligence security due to its weak national power, and its foreign intelligence expansion strategy has shrunk. Although the United Kingdom was one of the first countries to carry out modern intelligence work, in the process of carrying out intelligence work, violations of privacy, abuse of power, and other illegal issues appeared from time to time. Especially in the international context of increasing human rights protection in EU countries, the United Kingdom appears to have insufficient restrictions on intelligence power on the one hand, and on the other hand, driven by internal and external factors, it is gradually reforming and developing in the direction of reasonable protection of the human rights of its citizens (especially the right to privacy).

5. Enlightenment to China's Intelligence Legislation

(1) Compared with the above three countries, China's legislation is closer to Russia. Laws on intelligence are scattered in a series of national security legislative systems, reflecting the subordination of attaching importance to intelligence and national security, but missing clear provisions on the functions of intelligence agencies, the protection of intelligence personnel, and the means of intelligence collection. This is exactly what Issues that must be resolved on

the road of ruling the country by law in our country. Therefore, in the future, we should refine the special intelligence legislation based on the new version of the National Security Law and the National Intelligence Law to fill the legal gaps. At the same time, with the continuous progress of the times, the information production process is faced with multiple challenges such as the amount of source information, the speed of information generation, and the complexity of content. While developing and applying various new intelligence technologies, the country needs to set up new intelligence agencies and formulate new working rules and regulations to manage these new technologies. Only when our country's intelligence legislation advances with the times can it safeguard the fundamental interests of the country and the people in an era of severe international security.

(2) The United States and Russia have both carried out intelligence reforms of different degrees under the new international situation. The trend is to centralize intelligence decision-making agencies to integrate decision-making from various agencies' intelligence sources from different perspectives to maintain overall national security. As a major country in the world, China should insist on advancing the integration of intelligence and perfect the top-level design of intelligence sharing. Article 5 of the National Intelligence Law stipulates that "national security agencies, public security agencies' intelligence agencies, and military intelligence agencies (hereinafter collectively referred to as national intelligence agencies) shall, in accordance with the division of responsibilities, cooperate with each other to do a good job in intelligence work and carry out intelligence operations. All relevant countries Organs should work closely with national intelligence agencies according to their respective functions and tasks." The unity of the three fronts is highlighted. Moreover, we should further use legislation to appropriately expand the scope and collection of national security intelligence, give full play to the collection capabilities of consulting companies, guild organizations, libraries and other information institutions, and give full play to research institutions such as higher education institutions and professional research institutes. The information analysis and evaluation capabilities of the company, the use of cultural, media, technology, business, financial and other operating agencies' activity planning and social operation capabilities, to build a social intelligence front outside the system.

(3) Similar to the United Kingdom, our country has a long tradition of secrecy of information, especially the strict secrecy system of the party's intelligence organizations. Secrecy has always been the main feature of intelligence work. To a certain extent, secrecy has brought certain resistance to the construction of the national intelligence legal system. Due to confidentiality requirements, public laws and regulations often fail to reach the crux; non-public handling of intelligence laws will adversely affect the authority of the law. In actual operations, in addition to intelligence laws and regulations that serve as the program and bottom line of intelligence work, China's intelligence agencies mostly act in accordance with their own internal rules and regulations, ordinances and regulations. Therefore, in order to handle the balanced relationship between confidentiality and disclosure of intelligence work, China should improve the classification system of intelligence archives, and transition some internal or even unwritten regulations similar to customary laws to formal intelligence laws. Archives of practical significance or low-level confidentiality should be made public to increase the deterrence of laws and regulations and public support for intelligence work.

6. Conclusion

In order to meet the needs of national security strategies, the world's major countries generally pay attention to national intelligence work legislation, and our country is still in the catching-up stage in this regard. "Stones from other mountains can be used to attack jade", learning from other countries' experience in intelligence legislation, and combining with China's actual

situation, to continuously improve intelligence legislation is the only way to earnestly implement General Secretary Xi Jinping's overall national security concept and actively promote the process of governing the country according to law.

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References

- [1] Wu Subin, Xu Yaguang. Research on China's National Intelligence Legislation Development and Systematization Conception——Based on the Perspective of National Intelligence Legislation in China and the United States[J]. Intelligence Magazine, 2018, 37(12): 1-7.
- [2] You Xianju. A weapon for national security protection——Analysis on the establishment of intelligence systems and intelligence agencies in the United States, Russia, and Britain [J]. Confidential Science and Technology, 2017(08): 14-17.
- [3] Hao Min. The three major trends of the US intelligence community against China [N]. Global Times, 2021-10-12 (015).
- [4] Chen Feng, Hu Yingkun. The US-China Economic and Security Evaluation Commission's research and enlightenment on China's high-tech issues[J]. Journal of Information, 2021, 40(10): 1-6+14.
- [5] Ma Haiqun, Han Na, Sun Ruiying, Zhang Chunchun. Analysis on the evolution of US national intelligence strategy[J/OL]. Intelligence Magazine: 1-7[2021-11-01].<http://kns.cnki.net/kcms/detail/61.1167.G3.20210908.1004.010.html>.
- [6] Lian Rui, Song Hongfei, Wei Yuening, Jiang Jiahao. The construction of the national security intelligence legal system in the post-"National Intelligence Law" era-from the perspective of "legal interest" theory[J]. Intelligence Magazine, 2021, 40 (09): 26-30+80.
- [7] Wang Bing, Huang Qingwen, You Bo, Xu Jiabin, Wu Chao. Research on Methodology of Security Information Science[J]. Chinese Journal of Safety Science, 2021, 31(07): 9-14.
- [8] Ma Lin. Research on intelligence work mode under the background of the integration of "love, guidance and action" [D]. Chinese People's Public Security University, 2021.
- [9] Chen Yuanyuan. Research on the Construction and Application of U.S. Cyber Intelligence Force System [D]. National University of Defense Technology, 2019.
- [10] Gao Yunbo. The legal norms of the personal protection of Russian intelligence personnel and its enlightenment [D]. Ningbo University, 2018.
- [11] Wu Changqing. The balance between national security and citizen privacy: the US intelligence monitoring system and its enlightenment [J]. Intelligence Magazine, 2016, 35(04): 9-14.