

International Scene

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The Archives Law of the People's Republic of China: A Summary and Commentary

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Abstract: The author summarizes and comments on the Archives Law of the People's Republic of China, which went into effect on 1 January 1988. He also notes the implementing regulations of 19 November 1990.

About the author: William W. Moss has been the director of the Smithsonian Institution Archives since 1983. From 1975 to 1983 he was chief archivist at the John F. Kennedy Library. He was president of the Oral History Association in 1978-79. William Moss studied Chinese at the Army Language School, Monterey, California, in 1960 and at Columbia University in 1964-65. Moss is in regular communication with members of the Chinese Archives Association.

THE ARCHIVES LAW OF the People's Republic of China was promulgated 1 January 1988. The law consists of twenty-six articles divided into six chapters. This is not a translation but a précis and commentary.

Chapter 1. General Provisions

The general provisions stipulate that any document deemed to have historical value to the state and society, no matter whether created by government action or by private action, is "archival" and must be protected in the public interest. They further stipulate universal responsibility for doing so, assigning it to corporate organizations and to individuals at every level of society. The general provisions also assert "unified leadership and decentralized administration" as means to this end. These general provisions reflect the Leninist notion of a "national archival *fond*."¹ Since private ownership is excluded as a basis for disposition authority, appraisal of historical value to state and society becomes the criterion on which disposition authority rests. Appraisal judgment is reserved to the state as trustee of the power of the people. The burden of implementation is on executive and administrative units wherever they may be and at whatever level of the government hierarchy.

Chapter 2. Archival Institutions and Responsibilities

This chapter stipulates that there shall be both archival management structures (national, provincial, municipal, and county or township archives bureaus) and archival repositories to implement the law and its regulations and to have archival authority over their specific jurisdictions. This chapter further requires archivists to maintain

professional quality in execution of their duties and stipulates that those who excel in doing so may be rewarded by their respective levels of government.

Chapter 3. Archives Management

In this chapter we find the principal substance of archival authority.

Documents of historical value must go into state-operated archives; none may be kept in private hands. Conversely, nothing that has *not* been explicitly appraised as archival and scheduled for retention is to go into an archives. The chapter recognizes some ambiguity in determining whether something is a record or a cultural relic, book, or "other research materials" that may in practice be kept and managed by cultural institutions other than archives; and it requires cooperation among archives, museums, libraries, and other cultural institutions to fulfill the objectives of the Archives Law. The chapter explicitly requires proper and modern facilities, technology, and methods for the storage, preservation, and retrieval of archives. It explicitly requires that national security classified material in archives be handled in accordance with laws, rules, and regulations pertaining to state secrets.

Article fifteen in this chapter explicitly reserves appraisal judgement to the "state archival authority" and prohibits anyone from disposing of records at their own individual initiative. The state may take historically valuable records from private hands if the state believes the records to be in jeopardy; but purchase of personal correspondence by archival institutions is also permitted to encourage retaining and preserving the national records. Two final provisions of this chapter forbid the sale of records from state archives and forbid the removal of any records *or copies of records* from the People's Republic of China without express permission.

¹See Patricia Kennedy Grimsted, "Lenin's Archival Decree of 1918: The Bolshevik Legacy for Soviet Archival Theory and Practice," *American Archivist* 45 (Fall 1982): 429-443, especially 430-431.

Chapter 4. Use and Publication of Archives

Provisions in this chapter are the nub of contention between American research scholars and the Chinese archival authorities.²

The general rule for opening archives to public research is thirty years. It may be less for some records, or more than thirty years if there are security issues. The state archival authority, backed up by the State Council (and, inferentially, by the Central Committee of the Chinese Communist Party) decides what is opened and what is closed. Archives are urged to make access procedures simple and easy for open materials.

The Chinese meaning of "open to society" is embodied in the provision that "any citizen or organization of the People's Republic of China bearing a legally valid identity certificate may use archives already open to society." It does not mean "in the public domain." In fact, a Western researcher also needs some sort of formal letter from a "work unit" (including universities) certifying that he or she is engaged in approved research before an archives will begin to provide assistance. Closed archives may be searched and used, but only if justified by work requirements (in turn derived from state-approved plans), only on a "need to know" basis, and only in accordance with rules and regulations set up by the state archival authority. But the law also recognizes a right of depositors to have access to the records that they have

deposited, and enjoins archives to protect and respect the lawful rights and interests of depositors.

There is, in effect, a state copyright to records in state archives, and no record in a state archives may be published without the permission of the archives (i.e., the state). Holders of "archival" (i.e., historically valuable) records may publish those records before they have been deposited in a state archives, but may do so only in accordance with state regulations. The law says nothing about whether explicit scheduling of the records for retention by an archives has any effect on this.

Finally, the chapter enjoins archives to select, arrange, and publish records for distribution to society.³

Chapter 5. Statutory Responsibilities.

The literal translation of this chapter's title does not reveal its content to an American audience. It is, in fact, a list of transgressions for which people may be prosecuted and punished according to Chinese law, or otherwise dealt with according to administrative regulation. Four of the seven provisions are prohibitions against acting on individual initiative, with allowance for state-authorized exceptions. The other three seem to be absolute provisions for which apparently not even the state may authorize exceptions. The specific prohibitions are:

- Do not damage, lose, or destroy state archives without state authorization.⁴
- Do not copy, or publish state archives, or furnish them to others without state authorization.
- Do not alter or forge records.⁵
- Do not sell state archives.
- Do not sell records for personal profit

²There is a parallel contentious issue of access that arises out of the unwillingness by archivists to permit access, even to finding aids, if the archival work of arrangement, preservation, and description has not been done to the archivists' satisfaction and professional standards. To researchers, this impediment seems arbitrary and obstructionist; to archivists, protection from willful access seems objective and necessary to the preservation and future availability of the records. It should be noted that researchers often have the same argument with American archivists over the same issue.

³Chinese archives do a great deal more selective documentary publication than do American archives.

⁴*State archives*, i.e., records that have been accessioned into the state archival system.

⁵*Records*, i.e., documents of potential archival value, whether they have been appraised and scheduled for retention and deposit in archives or not.

and do not sell records to foreigners without state authorization.

- Do not smuggle records out of the country or carry them out of the country without state authorization.
- Archivists must not neglect their duty so as to cause loss or damage to records.

Chapter 6. Supplementary Provisions.

The final two provisions call for the State Archives Bureau to submit implementing regulations to the State Council for approval, and state the effective date of the law as January 1, 1988.

Implementing Regulations. Detailed implementing regulations were promulgated by State Archives Bureau Order #1 of 19 November 1990. The implementing regulations are essentially a gloss on the

law. They restate the provisions of the law in new language for emphasis. They provide definitions and additional details, such as incentives, rewards, and penalties. They detail the authority and responsibilities of the State Archives Bureau and lower level archives management bureaus at each level. One interesting provision reserves to the People's Liberation Army the authority to interpret both the law and the implementing regulations as they apply to archives of the military establishment. Full translations and Chinese texts of both the law and the implementing regulations are available on request.⁶

⁶Write to William W. Moss, Smithsonian Archives, 2135 Arts & Industries Building, Washington, DC 20560.