Beijing’s pending prosecution of deposed Politburo member Bo Xilai and the recent murder conviction of his wife, Gu Kailai, have again brought China’s criminal justice system to world attention. Having detained Bo in March, not until October did the Central Commission for Discipline Inspection turn him over to the state prosecutors for indictment. No indictment has yet been issued, perhaps because Bo’s prosecution presents the party with its thorniest legal challenge since the 1980-81 trial of the “Gang of Four”, which marked China’s transition from Mao Zedong’s Cultural Revolution to Deng Xiaoping’s radical new policy of reform and opening up. Will Bo be given a similar political “show” trial, as the most recent victim of a Communist legal tradition made infamous by Stalin’s 1930s “purge trials”?

Actually, the Gang of Four trial was a misnomer, since there were actually 10 major defendants tried before two chambers of a special tribunal. Yet the chamber dealing with Mao’s widow, Jiang Qing, and her colleagues was the focus. They had been arrested in October 1976, shortly after Mao’s death. It took over four years to bring them to trial in a way that would assure the nation that the defendants, who were saddled with principal responsibility for inflicting a decade of unspeakable harm on tens of millions of people, would be properly dealt with.

This would have been an ambitious task for any government, but particularly for one just beginning to recover from that nightmare of lawlessness. Indeed, the attempt to dispense justice in such a politically charged situation, in a country whose legal institutions had long been shattered, became the target of scepticism, even ridicule. The American comic strip Doonesbury, for example, claimed China had waited more than four years because it first had to put the judges through law school!

The purpose of the trial was not only to assign political responsibility for the nation’s disastrous decade, but also to punish the accused as criminals. In addition to various “counter-revolutionary” crimes, their alleged misconduct included directing officials to commit many offences, such as illegal searches and seizures, lawless detentions, torturing suspects to extort confessions, and wounding and killing people without legal procedures.

The trial was a golden opportunity to enhance the new Deng government’s legitimacy by introducing the masses to the principles underlying the Communist government’s first codes of criminal law and procedure, which had just gone into effect. Thus, instead of preventing public access to the trial on the grounds that it involved “state secrets”, as the party often does, Deng boldly decided to give it maximum publicity.

Unfortunately, the trial, which lasted roughly two months, failed to prove a satisfactory educational vehicle. It did get off to a promising start, however. The 15 members of the tribunal appeared serious and dignified, and a few were well known. Professor Fei Xiaotong, China’s most famous social anthropologist, took part as a lay judge, apparently to give representation to the broader public.

For those observers interested in resurrecting the status of lawyers, the high point came at the start, when the avuncular court president asked Jiang Qing, who until that point had played the role of helpless widow, whether she would like a defence lawyer. “What is a defence lawyer?” she asked. Here was the first opportunity to educate the masses, and the court president gave her a brief but useful explanation of a criminal defence lawyer’s functions.

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Legal Challenge
(continued from page 1)

At that point, watching the broadcast on television in my Chinese hotel, my hopes for the trial’s educational value rose. But then Jiang asked: “Can a defence lawyer take my place so I don’t have to come to court?” When the court president said this would not be possible, Jiang snapped back: “Then I don’t want one.” Shortly thereafter, she had to be temporarily removed from the courtroom for obstreperous behaviour, and the trial went downhill.

Jiang was not solely responsible for the trial’s failure to generate respect in legal circles. The ad hoc tribunal assembled by the party also displayed some warts. Indeed, some observers and Jiang herself challenged its legality, claiming the case should have been handled by a regular court. Moreover, the trial hardly seemed fair. Although some prosecution witnesses testified, there was no opportunity for effective cross-examination by the well-known scholars and lawyers who served as defence counsel, and they were not permitted to introduce any witnesses. By contrast, the judges’ inquisitorial questioning of defendants made prosecutors seem superfluous. Since guilty verdicts were assured, as almost always in China, the only real issue concerned the sentences. While the trial was proceeding, Judge Fei made a bizarre lecture tour of several North American law schools, where he discussed it and even asked his audiences what they thought might be appropriate punishments.

Nevertheless, in light of the failings of China’s current criminal justice system, certain features of the Gang of Four trial merit reassessment. For example, this year’s orchestrated, one-day, supposedly “public” trial of Gu and the closed trials of her husband’s police chief, Wang Lijun, and his assistants make one appreciate the relative openness of the Gang of Four trial.

Moreover, the evidence produced in that complex and occasionally chaotic proceeding, although sometimes not clearly linked to the defendants, seemed largely credible, raising fewer questions than Gu’s trial did. The courtroom witnesses against Jiang and her co-defendants were carefully coached, but their humanity shone through during unscripted exchanges with judges and accused. And there was certainly no repentant confession from Jiang, who bitterly defended herself throughout the hearings and in a final speech of almost two hours, understandably seeking to put much of the blame on Mao.

Furthermore, the Gang of Four trial drove home a major lesson that deserves amplification in today’s China, where police and other officials, who should be implementing newly legislated criminal procedures designed to protect suspects, often engage in lawless search and seizure, beating, kidnapping, detention in “black jails”, “residential surveillance” in “safe houses”, and torture. As Fei noted in his introduction to a book published about the trial, similar misconduct “took place despite the constitution of 1954 specifically guaranteeing that the freedom of the person was inviolable and the homes of citizens of the People’s Republic of China were also inviolable”.

Bo’s trial is by no means likely to be as lengthy, transparent or chaotic as that of the Gang of Four. Its procedures will probably resemble the nominally “open” but carefully restricted trial of Gu, if by that time the normally feisty accused has been reliably subdued, and can be counted on to confess and regret. That would mean a brief exercise in which no significant witnesses are summoned and subject to cross-examination, even if the defendant and his family are permitted to appoint lawyers of their choice, as required by law but often violated in practice.

The script for the recitation of pre-trial statements in court would be drafted to reveal only what the party thinks useful to present. Thus, despite China’s significant advances in both information technology and criminal legislation during the past three decades, the people are likely to learn much less about Bo’s case than they did about that of the Gang of Four.

This article by Pacific Century Institute’s 2013 Building Bridges Award recipient was published in the South China Morning Post on January 3, 2013. Jerome A. Cohen is professor and co-director of the US-Asia Law Institute at New York University School of Law and adjunct senior fellow for Asia at the Council on Foreign Relations. See also www.usasialaw.org.

Food Security on the Pacific Rim

As a Senior Advisor to the US National Center for APEC, PCI board member Lynn Turk has joined the US team that is part of the “Policy Partnership on Food Security,” a newly formed part of the APEC (Asia-Pacific Economic Cooperation) organization. For the first time ever, the partnership brings the private sector in as full participants with the twenty-one Pacific Rim governments of APEC in developing a policy to bring “lasting food security to the region by 2020.” Lynn attended a meeting of the PPFS last month in Jakarta, where it produced its first plan of action to achieve its lofty goal. John Deere, Cargill and WalMart represent the US private sector in this endeavor.

Food security is defined as existing when “all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.” As world population grows toward ten billion, as the UN predicts by late this century, and growing wealth means people demand food that requires more inputs, it is estimated that the world must produce 70% more food than it does now with no increase in available land and water and increasingly fragile ocean fisheries.

The PPFS is a direct result of lobbying for such an entity by the APEC Business Advisory Council (ABAC). During his time on the ABAC, Spencer Kim was the “shepherd” on this concept and played a central role in pushing it forward.

PCI Board Member Lynn Turk contributed this story.
Park can better tackle NK issue

By Donald P. Gregg

I’ve been watching South Korean politics closely for the past 40 years, and I rate the just-concluded election as the best ever held in Korea. The election pitted two excellent candidates against each other, the voting rate was very high, the result was close, and a woman was elected in a society where male chauvinism remains alive and well. How and why did this come about?

Park Geun-hye was not elected primarily because of her gender. She won because she is a proven politician; cool under fire, physically brave, intelligent and charismatic, who happens to be a woman. She is also Park Chung-hee’s daughter, and this has left many of Moon Jae-in’s supporters gnashing their teeth in despair, as they see Park’s election a major step backward, away from the liberalization of the “sunshine policy,” toward a more calculating, hard-edged leadership style exemplified by her father. Despite this pessimism on the part of some of my friends, I find myself both intrigued and excited by her presidency, and am delighted that she has received such a warm welcome from President Barack Obama.

I served in Seoul as CIA chief of station from 1973-75, and knew President Park fairly well. I was in Seoul in August 1974 when his wife and first lady, Yuk Young-soo, was shot and killed in a botched assassination attempt directed at him. I saw Park Geun-hye a few times when she returned from studies abroad to help her father, but cannot recall having conversed directly with her.

In early 2002, on my way back from my first visit to Pyongyang, I talked with Lim Dong-won in Seoul, who was then head of Korea’s National Intelligence Service. Lim told me of a recent conversation he had had with Chairman Kim Jong-il in Pyongyang. Kim told Lim that he read the South Korean press every day on the Internet, and that he had also read about Park Chung-hee with high interest on the Blue House website. Chairman Kim said that he would like very much to meet Park Geun-hye, who was then serving in the National Assembly. Lim agreed to pass this information on to Ms. Park, who agreed to travel to Pyongyang, which she did in 2001, meeting and talking with Kim. I was most interested to hear this.

Later in 2002, I attended the opening soccer match of the World Cup, jointly hosted by South Korea and Japan. At that game in Seoul, I spotted Park Geun-hye, and went over to speak to her. She knew who I was, and I congratulated her for her willingness to travel to Pyongyang, given the fact that North Korea had twice tried to kill her father, and had in the process killed her mother. Her answer was unforgettable: “We must look to the future with hope, not to the past with bitterness.”

On the strength of that encounter, I invited Park to speak to The Korea Society in New York, which she did the following year. I also accompanied her to Columbia University, where she gave a talk to a large audience of students and faculty. She performed impressively on both occasions, and had a strong impact on those in her audiences. In her decisiveness and realism, she reminded me of her father. In her warmth and friendliness, she reminded me of her mother.

President-elect Park has apologized to the Korean people for some of the things that her father did, but there were many things he did that were praiseworthy. In 1972, only four years after the 1968 Cheong Wa Dae raid, in which North Korean commandos, dressed in South Korean uniforms, tried to assassinate Park, he sent his intelligence chief, Lee Hu-rak, to Pyongyang. Lee met with Kim Il-sung, and began the first North-South dialogue, which involved direct talks about eventual reunification. In 2000, when the first North-South summit was held in Pyongyang, Park Geun-hye wanted to attend as part of Kim Dae Jung’s delegation, but was kept from doing so by the conservative party that she then represented.

The current young North Korean leader, Kim Jong-un, was carefully chosen by his father to succeed him. Park Geun-hye’s meeting with Kim Jong-il is well-remembered in Pyongyang. This will work favorably when Park decides to make her first move toward the North. When Park makes this move, as I am sure she will, she will carry with her the credibility of conservatism which Richard Nixon took with him to China in 1972. Kim Dae-jung and Roh Moo-hyun, both full-blown liberals, were never trusted by large segments of South Korea’s conservatives when they took the “sunshine policy” to the North. Moon Jae-in would have suffered from this same disadvantage.

President Park is a realist, and as such she will quickly see the need to reestablish meaningful dialogue with North Korea by taking Kim Jong-un seriously and meeting with him. In five years, when her term comes to an end, I am certain that Park Geun-hye will have left North-South relations in far better shape than they are now, and that her presidency will have gained both support and respect from her neighbors in Tokyo and Beijing, and from Moscow and Washington as well.

This opinion piece by PCI Chairman Donald Gregg appeared in the Korea Times on December 23, 2012. He was national security advisor to Vice President George H.W. Bush (1982-88) and ambassador to South Korea (1989-93).
Q: First of all, I think we should briefly touch upon the latest development with North Korea. Pyongyang said that it will carry out a third nuclear test. Again, China’s stance is seen as the key here. How far do you think China will go in terms of restraining North Korea? A: China spoke out much more openly against the satellite launch than it has against most past North Korean violations and it supported U.N. sanctions. Another North Korean nuclear test would be a major provocation against China, which has made its strong disapproval clear. China won’t do anything that would destabilize North Korea, but it might take some economic actions.

Q: Koreans are divided about their impressions about China, as they are divided about many other things. What advice on China would you give to the incoming President Park? A: Korea should make efforts to be on good terms with China in a mutually beneficial relationship, but has to stand firm on matters of principle such as territorial disputes. When China’s coast guards patrol very close to Korea’s Ieodo Island, for example, Korea should tell China that this is unacceptable. Korea should send a very clear signal to China that the current North Korean territory is part of South Korea’s territory and no historical revisionism on the part of China will be acceptable. Korea should also let Beijing know that it wants to work with China over North Korea in a peaceful way. There are complex balances here, but that’s what diplomacy is about.

Q: How can Korea stand firm against China when, diplomatically speaking, it doesn’t have many cards? A: That’s the argument I often hear, and I disagree with that. Korea is actually very important to China, particularly given China’s problems with Japan. Korea can find a balance between Japan and China. That is one important card it has. China also needs Korean investment and Korean technology. China vitally needs Korea to upgrade its industry. It’s important that Korea does not underestimate the value of its cards. Besides, Korea is not alone. Most other countries have similar problems as South Korea in dealing with China. So, it’s important for Korea to leverage its friendships.

Q: Does friendship really matter in international relations? The IR 101 tells students that it’s all about interests. A: Friendship with other countries can work powerfully. Friendship among nations derives from shared interests that have led to patterns of mutual understanding and cooperation. The shared interests can include regional security, intellectual property protection, economic agreements and others. Long-term cooperation between the United States and Korea over such shared interests has led to mutual understanding and friendship that transcend daily issues. In all this, for instance, in the territorial waters issues, China itself cannot afford to be isolated either.

Q: Lately, China and Korea have been acting like new lovers. After being elected, Park sent her envoy to China first, scrapping the previous practice of sending envoys to the United States first. Is this change worrisome to Washington? A: It’s not dangerous to the United States for Korea to have a warming relationship with China, as long as Seoul and Washington are in robust communication with each other. That said, China has been striving to pull Korea away from the United States. One of the arguments I often hear in Korea these days is, “How could we depend on China for our economic growth, while depending for our security on the U.S.?“ Obviously, there is a fallacy in that argument. Korea is not dependent on China economically. While China is Korea’s biggest single trading partner, the majority of its trade is with others. And trade is, by nature, done based on mutual needs; China needs Korean trade and investment as much as Korea needs China’s. I was struck when I heard this economics versus security argument many times during my recent visit to Seoul. It looks like Chinese propaganda has made big inroads into Korea.

Q: As a member of the G2, what do you think China is lacking as a superpower? A: China has done very well at growing its economy and, more recently, its military. It also has enormous cultural attractiveness, which is increasing as its art and literature and music blossom. But it has vital weaknesses in soft power. If it is to be accepted as a leader, it needs to accept the responsibilities of a big power. For instance, in its territorial disputes in the South China Sea, China has not behaved very differently from some of the ASEAN countries. But it is so big that it comes across as a bully to its neighbors. As a big power it needs to take responsibility for moving toward a fair solution of the problems. Its other soft power problem is that most of the neighbors find its domestic politics unattractive.

Q: You made a very intriguing point by saying that Korea needs some intensive domestic policy care before it can be a more confident international player. How does that apply to incoming president Park Geun-hye? A: I think President Park could reach out to opposition leaders.
Sympathy for the devil — how best to deal with NK

By Spencer H. Kim

North Korea has successfully, sort of, launched a long-range missile. We are outraged. We want more sanctions; we want to pressure them till they say uncle or collapse. We wonder how China could be so perfidious in failing to make Pyongyang behave. We find it morally odious to talk to a regime that spends for rockets and nukes but allows its people to starve and puts others in concentration camps. Only when they agree in advance that they will knuckle under will we talk to them.

But indignation, however righteous, is often the enemy of wisdom. Reflection is a better ally. Yes, North Korea is difficult to deal with and its regime treats its people unspeakably. But if we are to deal with it (and, let’s face it, the place is not going to go away) we need to at least try to understand their viewpoint and understand our own weaknesses. Let us ask some probing questions of ourselves and perhaps even look at history a bit from the other guy’s eyes.

North Korea says it was forced into the missile/bomb “deterrent” because of U.S. “hostility.” Do we look hostile? We signed the Agreed Framework in 1994 promising to build two nuclear reactors and deliver heavy fuel oil, but implementation from our side was desultory (with many in the national security establishment arguing for inaction as regime collapse was imminent). After the 1998 North Korean missile launch rattled us, the Perry Process concluded we needed to deal with North Korea “as it is, not as we wish it to be.” A missile moratorium ensued; South Korean President Kim Dae-jung went to Pyongyang to launch his Sunshine Policy; Jo Myong-rok (Kim Jong-il’s de facto No. 2) came to the White House and an October 2000 joint communique resolved to “fundamentally improve” relations and “formally end the Korean War by replacing the 1953 Armistice Agreement with permanent peace arrangements.” Madeline Albright visited Pyongyang. But President Clinton’s term ended before the joint communique could be acted upon.

North Korea kept on the trajectory, establishing diplomatic relations with the U.K., Canada, Australia and a host of EU and Asian countries and announcing tentative economic reforms. In Pyongyang’s eyes, however, George Bush then

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slammed on the brakes, even naming North Korea part of an “Axis of Evil.” Could the foreign policy of a major power turn 180 degrees on an election?

Or could momentum be restored? A State Department official agreed with North Korean counterparts on the outline of a deal in September 2005. Almost immediately, Treasury sanctioned a Macau bank and sent officials around the globe warning all banks everywhere about transacting any business with any North Korean entity. Certainly the negotiating right hand of a great power must know what the hostile left hand is doing?

The Sunshine Policy continued, with a 2007 summit of South Korean President Roh Moo-hyun and Kim Jong-il producing a flurry of new economic and security initiatives. They came to a screeching halt upon conservative President Lee Myung-bak taking office in 2008. Lesson learned in Pyongyang: yes, if your partner is a democracy, its policy can indeed change 180 degrees in a day.

More questions: Which is cheaper in the long run, a missile/bomb deterrent or a million-man conventional army that eats up much of your command economy (especially one with obsolete weapons that couldn’t win a war anyway)? If you are going to boost your economy, don’t you have to get rid of most of that overhang?

Are more sanctions really going to make North Korea cry uncle? Look at a map; it has a long border with China. If China and North Korea want to tango, then we are powerless to turn off the music.

And is China really writhing in agony about what to do with the recalcitrant North Koreans? Or, if things do not develop into an actual U.S. invasion, are things actually quite fine? Does deepening economic dependency and Pyongyang’s isolation help to create the vassal buffer state that Beijing prefers as a permanent alternative to a unified Korea (which could prove to be prickly, allied to the US, and an economic competitor)? But do the North Koreans really want to end up a de facto province of China?

I visited Pyongyang in September 2010 as part of a delegation organized by the University of California San Diego, the Asia Society, and the National Committee on North Korea. Major personnel promotions were announced while we were there that boosted the role of the party and government ministries and lowered that of the defense establishment. Their meaning was explained to me by a high-ranking North Korean: the military-first policy had served its purpose; now, with the “self-reliant deterrent” in place the emphasis will be on raising living standards; eventually North Korea has to deal with the U.S. face to face and resolve fundamental issues in an irreversible way; but first, the U.S. has to decide if its policy is hostility and regime change, or not.

It seems to me the North Koreans have been following that playbook, even with the transition to Kim Jong-un. We seem to be thrashing about, red-faced and shouting with little purpose.

The North Koreans want lasting security but don’t want to have to learn how to speak fluent Chinese to get it. The South Koreans want security and an end to the “Korea risk premium” that hinders their prosperity. Both dream of a united Korea taking its proper place in the Asian constellation. The U.S. wants to reverse nuclear proliferation and establish a stable Northeast Asian security architecture.

There will be a new president of South Korea soon. She will make overtures to the North; both candidates felt Lee Myung-bak’s policies were bankrupt. The new president will be in office for five years. We will soon have a new secretary of state and a new secretary of defense; our president is in place for four more years. Kim Jong-un was “elected” to a 40-some-year term of office. There are new faces in Tokyo and Beijing.

Even “as it is” there may well be a deal that can be struck with North Korea, and new administrations are in place in all the relevant capitals that can cement the deal before another round of elections. But it will not be easy and we cannot break off for every crisis of the day and start negotiating about returning to negotiations.

Upon reflection, it is time to talk, and keep talking until the deal is done.

*This opinion piece by Spencer H. Kim appeared in the Korea Times on December 26, 2012. Mr. Kim is chairman of CBOL Corporation, a California aerospace company. He is a member of the Council on Foreign Relations, and a non-resident fellow at Harvard’s Ash Center for Democratic Governance and Innovation.*
Former Youth Ambassador Andrea Bortnik serves as an LA Group Leader, along with Paul Kim, for the Project Bridge 2012-2013.

A decade ago, when Project Bridge celebrated its 10th anniversary, I was one of the Youth Ambassadors who attended weekly seminars in LA, participated in a weekend retreat, and embarked on a marvelous, eye-opening journey to Korea. As a beneficiary of this program, I gained a deeper understanding and appreciation of the Korean people, culture and history. Moreover, it helped me develop from a high-school teenager into a college student who appreciated and promoted cultural and racial sensitivity on campus at the University of California, Los Angeles (UCLA), as well as in my personal and professional lives. As a Project Bridge alumnus, I have been given the honor to mentor and cultivate the next generation of Youth Ambassadors into multicultural global leaders.

I began my undergraduate studies at UCLA and earned double majors in Global Studies and Spanish. During my college career, I studied abroad in Shanghai, China, and studied the social, political and economic impact globalization had on Shanghai. While studying abroad in Madrid, Spain, I had the opportunity to travel throughout Europe and enjoyed the vast, rich and unique cultural heritage of each country. After college, I attended a semester of Bible school, got married, and decided to go into the health industry. I completed a post-baccalaureate Nutritional Science program at the California State University, Los Angeles and trained at the Veterans Affairs Greater Los Angeles Healthcare System. I furthered my education by pursuing a master’s degree in Public Health at UCLA. Currently, I am a Registered Dietitian working at Kaiser Permanente as a health educator.

As a Chinese-Argentinean-American who relishes cultural diversity, I look forward to escorting the next generation Project Bridge leaders to Korea and a future of greater tolerance and peace.
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“I learned many new things about myself and others during the weekend retreat. I had a great time!”  
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Los Angeles Youth Ambassadors had a retreat at the White Eagle Ranch on Jan. 19, 2013.

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