

CHAPTER 2

CHINA'S EFFORTS TO SUBVERT NORMS AND EXPLOIT OPEN SOCIETIES

SECTION 1: RULE BY LAW: CHINA'S INCREASINGLY GLOBAL LEGAL REACH

Abstract

China is attempting to use its own and other countries' legal systems and regulatory bodies to achieve a suite of strategic and political goals, including silencing critics of the regime, stalling litigation against Chinese firms that steal intellectual property (IP), and targeting other actors that challenge Chinese Communist Party (CCP) goals. At the same time, the CCP is attempting to draw more foreign business by increasing the efficiency and professionalism of its legal system. Despite using terms and practices consistent with a rule of law system, these reforms should not be confused with acceptance of the principles underlying that system. Instead, China's "rule by law" system aims to strengthen the Party's control through its ability to intervene in rulings and achieve its goals while also applying Chinese law outside its borders. Internationally, China seeks to shape international law in its favor by discrediting established norms, exporting authoritarian elements of its legal system, and influencing laws and norms development in and through emerging fields like space and cyber governance. The United States and countries committed to the rule of law lack mechanisms to adequately deal with the challenges China's rule by law presents to the integrity of their institutions and the international system.

Key Findings

- The CCP uses law as a tool to wield power, not constrain it. Rather than viewing courts as independent, neutral arbiters of disputes between equal parties, the Party-state leverages the judiciary as a tool to advance its policy and political goals through a rule *by* law system. Under this construct, the CCP pays lip service to clear, stable, and evenly applied laws, taking full advantage when they produce outcomes determined to be favorable to Beijing but quickly departing this system once it impedes CCP interests. Rule by law does not limit the Party's exercise of power or hold central leaders accountable.
- Chinese legislation increasingly includes extraterritorial provisions, and China's government is expanding its ability to apply Chinese laws outside its borders. Its efforts range from extraterritorial enforcement of Chinese laws—sometimes unbeknownst

to the host country—to penalizing firms operating in China for their activities in other jurisdictions.

- The CCP seeks to advance techno-authoritarianism beyond China’s borders, especially through partnerships and trainings with developing nations and those in the Belt and Road Initiative (BRI). Beijing encourages these governments to acquire its sophisticated surveillance tech and to use it to normalize censorship, lack of privacy, and other authoritarian norms within their countries, dampening the prevalence of Western concepts like “rule of law,” which it denigrates as “erroneous Western thought.”
- China’s promotion of surveillance technology to other governments also carries an ulterior benefit for Beijing: exercising certain powers granted to it within the Chinese legal system, the Party-state can compel Chinese firms to provide data from citizens of other countries collected on those platforms. The Party-state may then use these data to enforce its laws beyond China’s borders, in effect giving Beijing’s domestic laws international force and applications. In this way, Beijing grants itself power within the sovereign borders of other states.
- Beijing’s rule by law approach creates hazards for international firms, which must navigate competing legal systems with contradictory requirements, expectations, and mandates. To comply with the legal and regulatory provisions of China’s authoritarian system as well as democratic systems, some companies must establish segregated operations in China or even prioritize compliance with one legal system over another.
- In international law, or the rules and norms that govern relations between countries, China actively participates in fora it believes it can influence but deliberately undermines fora and laws that conflict with its objectives. For the former, its efforts are focused on setting rules of the road in emerging areas of international law that could have substantial future commercial impact, such as cyber governance and space.
- China’s government exploits the openness of the U.S. legal system to bring meritless lawsuits against its critics in U.S. court, imposing burdensome legal costs on dissidents and adversaries. While some U.S. states have procedural safeguards to throw out these politically motivated suits, there is no federal statute to prevent China from using U.S. federal court to silence critics and dissidents.

Recommendations

The Commission recommends:

- Congress enact legislation to address politically oppressive lawsuits initiated by the Chinese government or its proxies attempting to silence, intimidate, or impose significant litigation costs on parties for exercising protected rights through political engagement or other public participation. Such legislation would create a procedure providing for expedited consideration of efforts to dismiss such lawsuits and staying expensive discov-

ery proceedings until the court has made a threshold determination on the merits of the lawsuit.

- Congress pass legislation requiring the Judicial Conference of the United States to prepare an evaluation and guidance for U.S. courts and administrative personnel on the Chinese legal system and body of law for purposes of assisting courts in assessing recognition of Chinese judgments and change of venue, choice of law, and forum non conveniens inquiries.

Introduction

Just as economic development and international engagement have not fostered political liberalization in China, neither have they strengthened China's rule of law or resulted in convergence with legal systems in liberal democracies. As the Chinese Communist Party (CCP) has tightened political control over society and the market, it is similarly intervening in the legal system with an eye toward enacting laws and establishing courts that serve as instruments of CCP power. China's ambitions in wielding laws and courts to advance its geopolitical objectives extend beyond its borders as well. China is increasing its sway in international commercial dispute resolution, expanding extraterritorial enforcement of its laws, and shaping emerging fields within international law. Its efforts even extend to U.S. courtrooms, where it has brought frivolous lawsuits against dissidents simply to impose legal costs.

This section catalogues China's various uses of its own legal system, international law, and foreign courts to implement Chinese policy—in other words using law to achieve goals that are distinctly not legal in nature. The section opens with a short discussion of how Chinese jurists and legal theorists view the law. It then reviews key developments in China's legal system under CCP General Secretary Xi Jinping, particularly increased Party influence in court rulings and greater use of extraterritorial provisions in legislation. Through a series of case studies, the section analyzes how China is attempting to export ideas from its own legal system, shape the development of international rules and norms, and compromise other countries' sovereignty in extending law enforcement efforts beyond its borders. The section concludes with a discussion of challenges U.S. courts confront from Chinese parties and in interpreting China's laws before offering an assessment of the implications for the United States.

The CCP Uses Law as a Tool to Wield, Not Constrain, Power

The CCP views law as a tool to increase the state's capacity to achieve its political objectives without limiting central leaders' power. To this end, the CCP seeks the commercial efficiencies afforded by clear, stable, and evenly applied laws in most cases. To facilitate economic development, it has adopted many elements of contract law and equity ownership from both common law systems like that of the United States and UK as well as civil law systems like that of Germany. At the same time, the CCP views the legal system as a means to reinforce its authority, and it rejects concepts like sep-

aration of powers that would enable the legal system to provide independent oversight over the political elite or check their exercise of power.¹ In criminal proceedings in China, suspects have no right to refuse interrogation, enjoy no presumption of innocence, have no right to confront their accusers or compel the presence of witnesses to testify in their defense, and are granted extremely limited rights to counsel.*² Nonetheless, central leaders want the legal system to help them enforce laws consistently to achieve CCP objectives and implement policy priorities that might otherwise face resistance from lower levels of government. Similar to its goals domestically, the CCP wants international law—the norms and rules countries agree to in their interactions with one another and the institutions they form to decide and uphold these norms and rules—to work as its domestic legal system does: to function effectively but not constrain China’s actions. Taken together, this approach constitutes China’s vision of “rule by law”† and aims to achieve the governance benefits of a rule of a law system without undermining one-party rule.

China’s Legal System under Xi Jinping: More Party Influence, More Extraterritoriality

To strengthen China’s ability to use the law as an instrument of Party-state power, General Secretary Xi has restructured the judiciary and expanded the remit of China’s legislature. When Xi entered office in 2012, China’s court system was highly susceptible to interference from local governments.³ Moreover, China’s laws are often deliberately vague to allow for flexibility in implementation, so government agencies’ regulations to supplement and implement laws become authoritative sources of guidance.⁴ Xi’s initiatives to strengthen rule by law, articulated in several key CCP meetings since 2014 and the Plan on Building the Rule of Law in China (2020–2025), focus on shoring up the capacity of the jurisdiction and legislature while preserving the CCP’s ultimate authority and rein- in local governments’ leeway in interpreting laws.⁵

Even as these documents affirm the importance of establishing a uniquely Chinese approach to the law, jurists’ and legislators’ efforts to improve the efficacy of the legal system readily draw from and adapt concepts from other legal systems.⁶ While some of these include procedural measures that improve the consistency and transparency of China’s courts, others pose challenges to the United

*China is a signatory to the Vienna Convention on Consular Relations of 1963, which sets forth signatory countries’ obligations to foreign nationals detained within their jurisdictions. Under article 36 of the convention, Chinese authorities are obligated to advise detained foreign nationals of their right of access to a consular representative “without delay,” but they are not obligated to inform the detained persons’ consular posts of the detention or arrest unless the detained foreign national requests notification. China has violated the convention in the past, such as the denial by Chinese authorities of Australian national Yang Hengjun’s right of consular access in 2021. Kirsty Needham and Cate Cadell, “China Keeps Diplomats out of Espionage Trial of Australian Yang Hengjun,” *Reuters*, May 27, 2021; Sandra Weiland, “The Vienna Convention on Consular Relations: Persuasive Force or Binding Law,” *Denver Journal of International Law and Policy* 33:4 (Fall 2005), 675–687, 675, 678.

†Chinese sources since 1997 have used the term “法治,” translated as “rule of law,” to describe China’s approach to the law, distinguishing it from “法制” or “rule by law” used in prior official documents. Yale Law School fellow Moritz Rudolph notes that the CCP’s fundamentally “rule by law” approach has not changed, however, and is guided by a Marxist tradition of viewing law as subservient to the goals of the state. Moritz Rudolph, written testimony for the U.S.-China Economic and Security Review Commission, *Hearing on Rule by Law: China’s Increasingly Global Legal Reach*, May 4, 2023, 1.

States and other countries. Chief among these is a concerted attempt to increase longarm jurisdiction in China's laws and also penalize compliance with foreign sanctions.⁷ China's selective application of procedural concepts from foreign courts can also undermine transnational litigation, as China's courts may employ procedural steps explicitly to advance Party-state policy objectives where foreign courts employ them as neutral arbiters between disputants. China's recent extensive use of anti-suit injunctions to forestall unfavorable litigation against Chinese companies in IP cases, discussed below, demonstrates this challenge.

Xi's Judicial Reforms Aim to Foster Capable Judges Loyal to the CCP

Changes to the judicial system under Xi aim to improve the professional capacity of China's courts to hear complex commercial cases and strengthen their independence from local governments while bringing them more directly under the supervision of the CCP and higher courts. China's local governments often intervene in cases to support local industries, shield themselves from liability in administrative lawsuits, or protect corruption.⁸ Because courts are part of the bureaucracy rather than an independent branch of government, other agencies sometimes refuse to cooperate in enforcing local courts' judgments. Additionally, because formulation of laws and regulations is highly centralized in China—until 2015, only 31 of China's sub-provincial-level jurisdictions and 18 of its largest cities could enact local statutes—local officials have traditionally had broad leeway to interpret law and regulations according to “local conditions.”⁹ In what George Washington University law professor Donald Clarke describes as its “first meeting specifically devoted to the legal system,” the CCP Central Committee's 2014 Fourth Plenum Decision separated China's judiciary from the rest of China's civil service, cutting off local governments' ability to interfere in cases through control over judicial appointments and salary determinations within their administrative jurisdiction.¹⁰ Additionally, the decision proposed to establish circuit courts to hear cross-jurisdictional cases less subject to pressure from local governments, which saw the first pilot courts established in 2016.¹¹

None of these efforts to strengthen the judiciary's resilience against local political interference create genuine judicial independence, however, and the structure of the judiciary reinforces Party oversight. CCP political-legal committees oversee the work of the courts—among other aspects of the bureaucracy—at each level of China's government, and many of China's judges are CCP members.[†]¹² Moreover, special committees led by court presidents can

*This is compounded because China does not have a common law system in which legal precedent determines future interpretation. In China, the “law” encompasses statutes, regulations, and in many cases unpublished Party directives or guidance, but it does not include case law. China's courts nonetheless also hear cases and interpret government regulations in a fashion similar to judging the application of law.

†A 2016 editorial from the *Legal Daily*, a state-run paper on China's court system, indicated upward of 85 percent of judges are CCP members. There is not an explicit requirement for judges to be Party members, but Party membership is required to join the Communist Party Group, an institution with ten-members at the apex of each level of the judiciary. *Judiciaries Worldwide*, “China,” *Federal Judicial Center*; Zhao Hongqi, “Party Member Judges Must Strengthen Their Awareness of Judicial Service to the People” (党员法官更要强化司法为民意识), *Legal Daily*, June 15, 2016. Translation.

review, override, or approve decisions at each level of the judiciary, an authority often exercised in complex and politically sensitive cases.¹³ As Florida University law professor Larry DiMatto explains:

*[T]he impartial, objective, and well-reasoned judicial application of the law has not been a hallmark of China's court system. Important governmental (bureaucracy), Party, and local non-governmental power structures (organizations, rural collectives) continue to influence judicial decision making. As one scholar has noted, the Communist Party is the "ghost hidden in the legal machine." For most courts if there is a perceived conflict between government policy (national, regional, local) and formal law they will most often ignore the law and side with policy objectives.*¹⁴

In testimony before the Commission, Harris Bricken founding partner Dan Harris indicated that judges in China will preemptively seek guidance from higher courts before reaching a decision when the case pertains to a topic the CCP considers sensitive.¹⁵ As the CCP's industrial policy and national security goals have grown more expansive, the number of potentially sensitive cases has increased significantly, inviting greater CCP interference in court decisions.¹⁶

Like Economic Policy, Judicial Reform Aims to Increase Efficiency and Control

The goals for the court system mirror the CCP's goals for economic development: to foster general market efficiency in nonstrategic sectors while retaining the ability to exercise selective control over the nonstate sector through centralized authority. Likewise, the CCP wants the legal system to function effectively in resolving commercial disputes and creating a favorable business environment but at the same time enabling the Party to steer outcomes and decisions when it desires. To this end, many aspects of China's legal system function efficiently and fairly, provided the case is not sensitive. As Mr. Harris describes, "Many Chinese lawyers call this the 90-10 rule. Ninety percent of the time the Chinese courts rule fairly because that allows China's economy to function and that ultimately benefits the CCP. But if a case is critical to CCP power and control, fairness gets tossed out the window."¹⁷ He similarly notes contract enforcement is often effective at resolving disputes quickly and providing plaintiffs preliminary relief, such as ordering a defendant to stop infringing on IP, provided plaintiffs pursue litigation in Chinese courts and contracts are written in Chinese and governed by China's laws.¹⁸ A key component of China's efforts to improve the court system's efficiency is extensive use of technology and digital processes (see "China Uses Technology Extensively in Law Enforcement and Court Procedure" later in this section).¹⁹

China has also launched numerous programs to improve the technical acumen of judges focused on high-value commercial cases. These include establishing foreign exchange programs to improve Chinese judges' knowledge of international law and creating various tiers of specialized IP courts with educational criteria for judges.²⁰ Much of this training dovetails with other efforts to improve the attractiveness of China's venues for dispute settlement, both to en-

courage greater foreign investment and to bolster China's ability to steer international disputes with Chinese companies toward domestic courts.²¹ In cultivating a stronger cadre of jurists with expertise in technical and foreign law, China's government also aims to formulate strategies for advancing China's interests in international law.²²

China Uses Technology Extensively in Enforcement and Court Procedure

China's government views integration of digital processes as a means to improve the legal system's efficiency, enforcement capacity, and resilience against interference from lower governments. The most pervasive and notable example is China's sprawling social credit system, a nationwide system to monitor individual and corporate compliance with laws and regulations.* The social credit system incentivizes compliance through a series of sticks and carrots, for instance offering fast-tracked regulatory approvals to "creditworthy" entities and a series of tiered penalties to violators. The worst of these includes being "blacklisted" until the offender undertakes corrective measures. For individuals, being blacklisted can result in prohibitions on purchasing plane or upper-class train tickets.²³ For companies, it can mean being barred from participating in government procurement or receiving subsidies.²⁴ The system can also target foreign companies for actions outside of China's jurisdiction. For instance, in 2018, China's Civil Aviation Administration threatened to punish 44 international airlines for listing Taiwan separately from China on their international websites, a directive the majority complied with to avoid penalties.²⁵ In a report prepared for the Commission, research consultancy Trivium China found that blacklists often target violations that regulators struggle to address through China's legal system, such as defaulting on debt.²⁶

Other technology-enabled solutions in China's legal system focus on establishing "smart courts," an umbrella term for reforms to streamline and digitize judicial proceedings. Steps to implement smart courts range from establishing e-filing portals, including a feature enabling parties to file lawsuits or motions for evidence via social media platform WeChat, to moving courts fully online—a step China quickly implemented at the onset of COVID.²⁷ Since 2014, China's courts have also published extensive records online, including tens of millions of decisions, although scholarly analysis indicates numerous cases that are likely deemed sensitive have been omitted from public view.²⁸ While these steps improve the court system's efficiency and provide some degree of transparency, they are also explicitly intended to provide more capacity to monitor judges and not for the purpose of establishing precedent-based case law.²⁹

China's Laws Attempt to Counteract Sanctions and Govern Activity beyond Its Borders

Chinese legislators and administrative agencies are trying to strengthen China's ability to apply commercial and criminal law extraterritorially and mitigate the impact of foreign economic re-

*For more on China's corporate social credit system, see Kendra Schaefer, "China's Corporate Social Credit System: Context, Competition, Technology and Geopolitics," *Trivium China* (prepared for the U.S.-China Economic and Security Review Commission), November 16, 2020, 26–29.

restrictions on China. Both are key elements of China's attempts to build capacity in "foreign-related rule of law," a core element of Xi Jinping Thought on the Rule of Law.* The Plan on Building the Rule of Law in China (2020–2025) explicitly calls for China to "promote the construction of a legal system applicable outside the jurisdiction of [the] country."³⁰ Xi uses the same turn of phrase in describing goals for "using rule by law to carry out international struggles" in an April 2022 article in authoritative CCP journal *Seeking Truth*. In the same article, he calls on China to "further improve laws and regulations countering sanctions, interference, and 'long-arm jurisdiction.'"³¹ Chinese University of Political Science and Law professor Huo Zhengxin characterizes these as the spear and shield of foreign-related rule of law, likening extraterritorial laws as an offensive approach to asserting China's interests beyond its borders, coupled with a defensive tactic of blocking other countries' attempts to assert longarm jurisdiction against Chinese entities.³² In addition to strengthening China's ability to apply its own laws extraterritorially and to counter foreign economic restrictions, the CCP is encouraging courts in China to become more adept at interpreting and applying foreign law.³³

In implementation, Chinese legal theorists see foreign-related rule of law as an extension of China's domestic rule by law. Professor Huo explains that "foreign-related rule of law includes not only the elements of China's domestic legal system that address foreign and international affairs... but also includes China's immersion in the international legal system through participation in formulation of international laws, law enforcement, and judicial cooperation.... To put it bluntly, foreign-related rule of law breaks the long-standing distinction between domestic law and international law."³⁴ Researchers at the United States Institute of Peace note, "By linking domestic and international law, the party seeks to achieve its ultimate goal of enabling the PRC [People's Republic of China] to occupy the same role vis-à-vis other states internationally as the CCP plays for Chinese citizens domestically."³⁵

The Spear of Foreign-Related Rule of Law: Extraterritorial Laws

On the offensive side, China's legislature has increased its issuance of laws containing expressly extraterritorial provisions in the last ten years (see Appendix I: Extraterritorial Provisions and Countermeasures in Chinese Laws). Many of these laws seek to regulate commercial interactions with Chinese entities that occur outside China's borders. China's Antimonopoly Law, issued in 2007, extends to conduct outside China that impacts competition in China's domestic market.³⁶ China's evolving data governance regime is a source of many extraterritorial provisions, including the Personal Information Protection Law's application to "the activities carried out outside the territory of [China] to process the personal information of natural persons within the territory."³⁷ † While some

*As noted above, Chinese official translations render "法治" as "rule of law," including in Xi Jinping Thought on the Rule of Law and the Plan on Building the Rule of Law in China (2020–2025), but the CCP's fundamentally "rule by law" approach has not changed. Moritz Rudolph, written testimony for the U.S.-China Economic and Security Review Commission, *Hearing on Rule by Law: China's Increasingly Global Legal Reach*, May 4, 2023, 1.

†For more on China's data governance regime, see Emma Rafaelef, "China's Evolving Data Governance Regime," *U.S.-China Economic and Security Review Commission*, July 26, 2022.

of these regulations are in principle similar to components of the EU's General Data Protection Regulation (GDPR),* China's requirements are stricter and less clearly defined and require more review by government authorities, creating far greater compliance burdens for organizations outside China.³⁸ Article 43 of the 2021 Personal Information Protection Law also establishes retaliatory measures against countries that adopt discriminatory measures against China, a provision that Stanford University and New America's Digi-China Project assesses could be used to target competitors.³⁹

China is also strengthening its ability to enforce laws against a vaguely defined, broad scope of national security interests and related offenses. For instance, China's 2018 amendment of the Counterterrorism Law defines terrorism as "propositions and actions that create social panic, endanger public safety, violate person and property, or coerce national organs or international organizations," and indicates the state will pursue criminal responsibility for terrorist activity outside China.[†]⁴⁰ Article 38 of the 2020 Hong Kong National Security Law extends the law's application to anyone who commits undefined "offenses" against Hong Kong, regardless of where the activity deemed an offense took place. In July 2023, Hong Kong police issued arrest warrants offering rewards of over \$127,000 (1 million Hong Kong dollars) for each of eight overseas activists, including former lawmakers Dennis Kwok and Ted Hui (for more on enforcement of the National Security Law, see Chapter 5, Section 3, "Hong Kong").[‡]⁴¹ Sarah Cook, senior advisor for China, Hong Kong, and Taiwan at Freedom House, notes that article 38 "exposes a much wider array of individuals... to detention and prosecution should they travel to Hong Kong, mainland China, or any country where the rule of law is weak and the government is eager to curry favor with Beijing."⁴² The latter is of increasing concern for U.S. citizens, as China's government is expanding its criminal enforcement through cooperation agreements and extradition treaties, discussed below.

The Shield of Foreign-Related Rule of Law: Reciprocal Countermeasures

On the "defensive" side, China's government is formalizing a legal and regulatory framework to counter foreign trade restrictions and sanctions, aimed especially at export controls on Chinese companies and financial sanctions on Chinese individuals (see Appendix I: Extraterritorial Provisions and Countermeasures in Chinese Laws). The most sweeping of these new measures are the June 2021 Anti-Foreign Sanctions Law and the June 2023 Foreign Relations Law.[§] The former prohibits companies operating in China from com-

*For instance, article 53 in China's Personal Information Protection Law requires "personal information processors" outside of China to establish entities or appoint representatives within the country responsible for relevant matters of personal information protection, similar to requirements for "data controllers" in the GDPR. Julia Zhu, "The Personal Information Protection Law: China's Version of the GDPR?" *Columbia Journal of Translation Law*, February 14, 2022.

†The initial draft of the law included "thought, speech, or behavior" that attempts to "influence national policy-making" in the definition of terrorism. Human Rights Watch, "China: Draft Counterterrorism Law a Recipe for Abuses," January 20, 2015.

‡The other six include activists Nathan Law, Anna Kwok, Finn Lau, lawyer Kevin Yam, labor organizer Mung Siu-tat, and internet commentator Yuan Gong-yi. James Pomfret and Jessie Pang, "Hong Kong Police Issue Arrest Warrants for Eight Overseas Activists," *Reuters*, July 3, 2023.

§The law's purview extends beyond strengthening China's retaliatory measures, outlining China's general foreign policy framework and goals. Dr. Rudolph notes the law, "restates China's

plying with foreign sanctions the Chinese government determines are “discriminatory” and gives those affected by sanctions the right to sue.⁴³ The latter has an even broader scope, establishing China’s right to impose countermeasures and restrictive measures “against acts that harm [its] sovereignty, security, and developmental interests in violation of international law and fundamental norms of international relations.”⁴⁴ A Chinese legal theorist and Chinese state media have attempted to justify this by alleging that U.S. longarm jurisdiction, in particular secondary sanctions, violates the fundamental norms of international relations by limiting countries’ ability to determine their relations with other states.⁴⁵

Vague and ideologically driven framing could extend Beijing’s evolving retaliatory framework well beyond responding to economic restrictions. Under Xi’s “comprehensive national security concept” introduced in 2014, areas as diverse and broad-ranging as “cultural security” are deemed elements of national security.⁴⁶ As analysts at the Mercator Institute for China Studies note:

*[E]verything has become a matter of national security for the party. Creating a favorable international public opinion environment, i.e., strengthening China’s positions and keeping criticism on key issues in check, is seen as key for China’s development interests. This thinking underlies the expansion of Beijing’s red lines and core interests over the past years, hence the recent inclusion of “maritime issues” and “pandemics” to the list of sensitive topics. These now sit alongside longstanding sore points like Xinjiang, Tibet, and Taiwan as issue areas where criticism or interference by foreign countries could warrant countersanctions by China.*⁴⁷

Campaign-Style Enforcement Adds Risk of Sudden, Swift Implementation

Though China has significantly expanded its toolkit for applying retaliatory restrictions, it has only invoked the new measures in a few instances and so far without great effect. In part, this is because it continues to rely on ad hoc retaliatory measures and other forms of coercion.⁴⁸ For instance, months after China’s Ministry of Commerce released its Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures (see Appendix I, Table 2), it introduced a series of restrictions on outgoing Trump Administration and other U.S. government officials* simply via a press conference without employing the formal mechanism it had just created.⁴⁹ Professor Huo notes that continued application of countermeasures on an ad hoc basis will likely undermine the potential deterrent effect of establishing such measures via formal legal and regulatory channels.⁵⁰ He also suggests that China’s long-standing criticism of U.S. longarm jurisdiction without a codified

long-standing foreign policy positions and codifies its foreign policy praxis.” The law also highlights China’s recently launched Global Security Initiative, Global Development Initiative, and Global Civilization Initiative. For more on the law’s impact on China’s foreign policy, see Chapter 1, Section 2, “Year in Review: Security and Foreign Affairs.” Moritz Rudolph, “China’s Foreign Relations Law: Balancing ‘Struggle’ with Beijing’s ‘Responsible Great Power’ Narrative,” *NPC Observer*, July 3, 2023.

*The Commission’s current chairman was among those sanctioned by China.

response has led to a perception that China is simply paying lip service to norms of international relations.⁵¹

For U.S. entities operating in China, the risk that Chinese agencies begin to implement retaliatory measures abruptly and expansively creates uncertainty. Owing both to a legacy of Mao-era governance* and in part because the state does not have the administrative capacity to enforce laws and regulations consistently, China's government often initiates "shock and awe" campaigns to enforce certain laws.⁵² These campaigns are aimed at scaring regulated individuals and entities into compliance.⁵³ Frequently, these campaigns seek to make examples of prominent firms.⁵⁴ Although Chinese entities are much more often the targets of such campaigns, their application against foreigners and foreign firms operating in China tends to result in much higher fines.⁵⁵ Campaign-style enforcement is also harsh because regulators are incentivized to take a harder line for their own promotion prospects and because administrative agencies in China are seldom subject to judicial scrutiny.⁵⁶ For instance, in an unprecedented and sweeping application of China's Antimonopoly Law in 2014, U.S. chip maker Qualcomm was fined a record \$975 million (renminbi [RMB] 6 billion) and also agreed to license its chip designs to Chinese firms at a significant discount to its global rates.[†]⁵⁷ This year, in an effort to inhibit foreign firms from collecting potentially damaging evidence about Chinese entities or negative information on China's economic performance, China's government conducted a series of raids on offices of foreign consulting firms, including Capvision, Bain & Company, and Mintz Group.[‡]⁵⁸ The raids coincided with the revision of China's Counterespionage Law to expand its scope, including encompassing all "documents, data, materials or items related to national security" where the prior version of the law had only concerned "state secrets and intelligence."⁵⁹ (For more on the Counterespionage Law and implications for the United States, see Chapter 1, Section 2, "Year in Review: Security and Foreign Affairs.")

China's Courts Back Commercial Interests: Setting Global Licensing Rates through Anti-Suit Injunctions

In 2020 and 2021, China's courts aggressively issued orders to prevent foreign patent-holders from suing Chinese firms for IP infringement. These orders, called anti-suit injunctions (ASIs), hold plaintiffs in contempt of court in China and may impose fines if they proceed with cases abroad.§ In common law juris-

* In testimony before the Commission, Fordham Law professor Carl Minzer traced the evolution of Mao-era campaigns against crime into enforcement actions against nonstate companies. See Carl Minzer, written testimony for the U.S.-China Economic and Security Review Commission, *Hearing on Stability in China: Lessons from Tiananmen and Implications for the United States*, May 15, 2014.

† Heftier fines have since been levied as part of a regulatory tightening campaign against internet firms starting in late 2020, including a \$2.6 billion (RMB 18.1 billion) fine for Alibaba in 2021 (also for antitrust violations) and a \$985 million (RMB 7 billion) fine for Ant Group in 2023 for corporate governance, consumer protection, and other violations. Julie Zhu and Jane Xu, "China Ends Ant Group's Regulatory Revamp with a Nearly \$1 Billion Fine," *Reuters*, July 7, 2023; Raymond Zhang, "China Fines Alibaba \$2.8 Billion in Landmark Antitrust Case," *New York Times*, April 9, 2021.

‡ In August 2023, Mintz Group was fined \$1.5 million (RMB 10.7 million) for conducting "unapproved statistical work." Laura He, "China Fines US Due Diligence Firm Mintz Group \$1.5 Million for 'Unapproved' Investigations," *CNN*, August 22, 2023.

§ In three cases in 2020, *Conversant v. Huawei*, *InterDigital v. Xiaomi*, and *OPPO v. Sharp*, Chinese courts granted ASIs requested by the Chinese manufacturer, imposing fines of approximately

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dictions, ASIs are interim orders to prohibit litigants from initiating or continuing parallel litigation in another jurisdiction so as to minimize friction between courts and prevent cases from being heard in multiple different jurisdictions at once. Chinese courts' implementation of ASIs differs from this practice in several important respects, demonstrating their politicized nature. ASIs issued by Chinese courts only target foreign litigation and only apply to cases outside of China.* They are also highly non-transparent, as many Chinese courts' decisions in related cases have not been published, and their application does not have a clear legislative basis.⁶⁰

For a sign of China's courts' willingness to back Chinese commercial interests, the country's recent wave of ASIs in IP-related litigation is instructive: it amounts to a nonindependent judiciary advancing an industrial policy objective, namely driving down the fair, reasonable, and nondiscriminatory (FRAND) royalty rates for standard-essential patents (SEPs)† owned by overseas companies, thereby reducing the cost of foreign technology inputs for Chinese manufacturers.⁶¹ Mark Cohen, Asia IP project director at Berkeley Center for Law & Technology, notes that "China's ASI practices have been promoted and endorsed by the highest levels of China's political and judicial leadership."⁶² Shenzhen Intermediate People's Court Judge Zhu Jianjun advocates for China to use SEPs to "form countermeasures in international competition... [and] build the main battlefield for foreign-related dispute resolution."⁶³ Law professors Jorge Contreras and Yang Yu also observe that the global scope of some of China's ASIs "is more sweeping than any ASI issued in U.S. or other courts in FRAND cases."⁶⁴ While ASIs generally address the jurisdictions in which parallel proceedings are occurring, China seeks global enforcement through its ASIs, employing them to prevent any jurisdic-

\$150,000 (renminbi [RMB] 1 million per day) for any violation. Jorge L. Contreras, "Anti-Suit Injunctions and Jurisdictional Competition in Global FRAND Litigation: The Case for Judicial Restraint," *New York University Journal of Intellectual Property and Entertainment Law* 11:2 (Fall 2021): 178.

*The Shenzhen Intermediate People's Court determined in October 2020 that other courts in China can still rule on global licensing terms for SEPs even when litigants are prohibited from pursuing parallel litigation in other countries, a ruling upheld a year later by the Intellectual Property Tribunal of the Supreme People's Court of China. Zhongren Cheng, "The Chinese Supreme Court Affirms Chinese Courts' Jurisdiction over Global Royalty Rates of Standard-Essential Patents: Sharp v. Oppo," *Berkeley Technology Law Journal* (January 3, 2022); Aaron Winger, "China's Supreme People's Court Affirms Right to Set Royalty Rates Worldwide in OPPO/Sharp Standard Essential Patent Case," *National Law Review*, September 5, 2021.

†Technical standards for emerging technologies often incorporate cutting-edge features held under patent by the original developer. Because this IP may become essential to following the standard, or "standard-essential," other companies that adopt the standard are required to license the SEP from the patent holder. This can guarantee billions in revenue for widely licensed patents, as complying with a standard generally means a producer is locked into using features specified by the standard—and paying royalties to the SEP holder—until another standard becomes dominant. To prevent SEP holders from abusing their market position and charging unreasonable licensing fees, the standards-making bodies obligate the holder to license the SEP under "fair, reasonable, and non-discriminatory" terms, or FRAND. FRAND terms apply globally, but SEP holders must often enforce their IP in multiple jurisdictions in order to assert their claim to licensing fees. Michael T. Renaud et al., "Key Considerations for Global SEP Litigation—Part 1," *Mintz*, October 30, 2019; Abraham Kasdan and Michael J. Kasdan, "Recent Developments in the Licensing of Standards Essential Patents," *National Law Review*, August 30, 2019.

**China's Courts Back Commercial Interests: Setting
Global Licensing Rates through Anti-Suit Injunctions—
*Continued***

tion in the world other than China from determining FRAND rates on valuable SEP patents.⁶⁵ As Mr. Cohen described in testimony before the Commission, “These cases often were highly intrusive of the sovereignty of foreign courts to adjudicate patent claims granted in their respective jurisdictions. As patents are territorial, only national courts generally adjudicate local patent claims, unless the parties have otherwise consented, which is rare.”⁶⁶

China's use of ASIs is an example of China's courts adapting concepts from foreign legal systems to advance China's strategic goals, namely the industrial policy objectives described above, and to expand China's influence in setting global judicial norms.⁶⁷ By using terminology from other legal systems, China's courts seek to convey a sense of legitimacy for their highly distorted application of transplanted concepts. Fortunately, China appears to have ceased issuing global ASIs for IP-related cases, after the EU filed a case against China at the WTO in 2022 over its use of ASIs to restrict EU firms from defending their SEPs, to which the United States, Canada, and Japan have requested to join as third parties.⁶⁸ A panel was composed to hear the case in March 2023.⁶⁹

China's Attempt to Shape International Legal Regimes

Domestically, the CCP seeks to craft a legal system that brings the advantages of rule of law without any of its accompanying limits on the Party's power; beyond China's borders, the Party aims to do the same. Short of exporting its legal system wholesale to other countries, China's objective is to establish global laws and norms that recognize the legitimacy—and even the superiority—of its own authoritarian system. Additionally, China wants to prevent international law from constraining its exercise of power or enforcement of its laws beyond its jurisdiction. In parallel to its promotion of its governance model abroad, China is trying to increase its influence in international law by simultaneously strengthening its position in international fora where it believes it can shape outcomes in its favor. At the same time, China undermines fora it believes serve as obstacles to its strategic priorities, establishing alternative institutions to support its agenda and working bilaterally to export elements of its model and build other governments' capacity to implement them. For the United States and other countries committed to rule of law, China's multipronged efforts pose three primary challenges examined in case studies below: (1) China undermines international law that contradicts its objectives; (2) China seeks to align foreign and international law with its own law and illiberal values; and (3) China aims to enforce its laws, particularly criminal laws, globally.

China Undermines International Law That Contradicts Its Objectives

China has disregarded multiple treaties to which it is a party, justifying its actions by claiming the treaties did not apply to areas it claims as sovereign territory. China demonstrates a particular antipathy toward those that provide for international arbitration measures, which China also views as infringing on its sovereignty.⁷⁰ For example, despite being a signatory of the UN Convention on the Law of the Sea (UNCLOS), China has refused to recognize the 2016 UNCLOS arbitral ruling determining that China's territorial claims in the South China Sea violate the Philippines' exclusive economic zone (EEZ).^{*71} Additionally, the National People's Congress's 2020 passage of the Hong Kong National Security Law and its subsequent implementation in Hong Kong has been in abrogation of the Sino-British Joint Declaration.⁷² While China has ratified seven of the 11 fundamental international labor conventions of the UN's International Labor Organization,[†] Beijing has also been accused of breaching the same conventions it ratified.⁷³ These include widespread accusations of not only labor violations but also human rights violations throughout the country.⁷⁴ While China signed the Forced Labor Convention and Abolition of Forced Labor Convention in 2022, China's continued use of forced labor in Xinjiang highlights its insincerity toward international law.⁷⁵ A UN assessment in 2022 suggested that China is in violation of its commitments to end forced labor under the Forced Labor Convention and Abolition of Forced Labor Convention.⁷⁶ Based on observations from 2020 and 2021, the International Trade Union Confederation alleged that China's government has engaged in a widespread and systemic program of forced labor in Xinjiang targeting Uyghur and other Turkic or Muslim minorities for agriculture and industrial activities.⁷⁷ China's assent to international treaties concerning human rights has also been selective, and it has been widely accused of breaking its international commitments to human rights, with UN experts calling on China to address systematic human rights violations.⁷⁸

China's violations of its international agreements—performed with impunity—weaken international law. With China facing limited or no recourse for its actions, countries are less likely to look to interstate dispute resolution mechanisms to challenge Beijing or hold it accountable. The failure of international law to govern conduct between countries in maritime East Asia directly challenges U.S. security interests in the region.

*An exclusive economic zone, as prescribed by the 1982 United Nations Convention on the Law of the Sea, is an area of the sea in which a state has exclusive rights over the exploration and use of marine resources. An EEZ stretches from the outer limit of the territorial sea (12 nautical miles from the baseline) to 200 nautical miles from the coast of the state. UN Convention on the Law of the Sea §55–75, 1982.

†The seven fundamental conventions of the International Labor Organization ratified by China are the Equal Remuneration Convention, the Discrimination (Employment and Occupation) Convention, the Minimum Age Convention, the Worst Forms of Child Labor Convention, the Occupational Safety and Health Convention, the Forced Labor Convention, and the Abolition of Forced Labor Convention. China has not ratified the Freedom of Association and Protection of the Right to Organize Convention, the Right to Organize and Collective Bargaining Convention, the Promotional Framework for Occupational Safety and Health Convention, or the Protocol of 2014 to the Forced Labor Convention. International Labor Organization, "Ratifications for China."

The Maritime Domain: China Undermines the Law of the Sea

Despite signing and ratifying UNCLOS,* China rejects the limitations that would be imposed on it by adhering to the convention.⁷⁹ China justifies its position by claiming that the key areas of contention in its maritime periphery are its sovereign territory and that international law does not apply.⁸⁰ The prime targets of this justification are China's claims in the South China Sea and Senkaku Islands.⁸¹ China claims almost 90 percent of the total area of the South China Sea based on disputed historical evidence and argues that all of the maritime features within its nine-dash line are its sovereign territory; it also makes unclarified ambiguous claims to the waters within the nine-dash line.⁸² China has even incorporated its claimed features in the South China Sea into its administrative structure† to lend weight to its argument that these features are just as integral to China's territory as any of its other provinces.⁸³

China has attempted to claim excessive maritime rights by directly labeling or alluding to the waters between certain features in its periphery as internal waters, a designation under UNCLOS that would allow China to regulate passage through those waters.⁸⁴ China has drawn baselines around both its claimed features in the Paracels in the South China Sea and the Senkaku Islands in the East China Sea that demarcate the waters between them as its internal waters even though the geography in these locations does not match the requirements established under UNCLOS for doing so.‡⁸⁵ Notably, China has not made such specific baseline claims in the Spratlys—where it occupies a number of features and also makes undefined claims to all of the features and surrounding waters—likely due to how escalatory a declaration would be, as such a move would put Vietnamese- and Philippine-occupied features within what China claims as internal waters.⁸⁶ Furthermore, some advocates of the PRC position posit that the PRC's lack of declared baselines in or around the Spratlys generate no opposable claim for a nation like the Philippines to dispute, again demonstrating the PRC's strategy of limiting the applicability of international law.⁸⁷ Despite the unspecified nature of China's position, the 2016 arbitral tribunal ruled that China has no justifiable claim under UNCLOS to internal waters in the Spratlys.§⁸⁸ In addition to this ruling on

*Entered into force in 1994, UNCLOS lays down a comprehensive regime of law and order in the world's oceans and seas, establishing rules governing all uses of the oceans and their resources. The United States, while a signatory to UNCLOS, has not ratified the convention. UN Convention on the Law of the Sea, 1982.

†In 2012, the PRC created the "Sansha Municipal Prefecture" as an administrative prefecture of Hainan Province that had responsibility for all features in the South China Sea, including expressly the Xisha, Nansha, and Zhongsha districts. Zachary Haver, "Sansha and the Expansion of China's South China Sea Administration," *Center for Strategic and International Studies*, May 12, 2020.

‡China has drawn what are known as "straight baselines" in these areas. In contrast to the standard method for determining baselines, UNCLOS allows a coastal state to draw straight baselines "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity." The geography of the Paracels and Senkaku Islands does not meet either of these conditions. James Kraska, "China's Excessive Straight Baseline Claims," in James Kraska, Ronan Long, and Myron H. Nordquist eds., *Peaceful Maritime Engagement in East Asia and the Pacific Region*, Oceans Law and Policy, 2023, 157–160; The UN Convention on the Law of the Sea § 5, 7, 1982.

§The tribunal found China cannot justifiably claim internal waters in the Spratlys by drawing straight baselines around the features because the geography does not match UNCLOS' requirement of a deeply indented coastline or a fringe of islands in the immediate vicinity of the coastline. The Tribunal similarly ruled that China cannot claim internal waters in the Spratlys by asserting the rights of an archipelagic state to draw "archipelagic baselines" around the features.

internal waters, the 2016 arbitral tribunal found that none of the maritime features in the Spratlys meet the criteria to be considered an island under UNCLOS, which invalidates any potential Chinese claims to an EEZ or continental shelf around them.⁸⁹

To further erode the effectiveness of international law, China pushes its neighbors toward resolving disputes in the South China Sea bilaterally.⁹⁰ Unless claimant countries like Vietnam and the Philippines accept Beijing's terms, China is often able to block claimants' ability to exercise their resource rights.⁹¹ For instance, it has prevented Vietnam and the Philippines from developing underwater oil and gas fields located in areas where their EEZs overlap with China's claimed waters.⁹² This establishes what Isaac Kardon, senior fellow at the Carnegie Endowment for International Peace, refers to as "veto jurisdiction" over maritime resources claims in its periphery: backed by its naval power, China holds final say in what its neighbors can do in their own EEZs.⁹³

Since the 2016 ruling in the favor of the Philippines, China has not changed its policy toward the disputed features and waters, continuing to treat them as its own territory, as UNCLOS has no effective enforcement mechanism.⁹⁴ By disregarding a dispute resolution mechanism that it agreed to in signing UNCLOS,* China appears to have discouraged other claimants from putting their faith in the convention.⁹⁵ Despite the Philippines' favorable ruling, there have been no follow-on cases brought by other South China Sea claimants as might be expected, indicating that countries with valid claims against China may have lost faith that a favorable ruling by the Permanent Court of Arbitration would provide relief.⁹⁶

China Claims UN Resolution Establishes Its Sovereignty over Taiwan

Using sovereignty claims to mitigate the applicability of international law, as China has done in the South China Sea, holds direct implications for Taiwan. Just as China contends that its maritime claims along its periphery are China's internal territory, China has been vocal in its assertions that Taiwan's status is a matter of its own internal affairs and will not tolerate interference from other nations.⁹⁷ China is attempting to leverage a false interpretation of the UN resolution recognizing the PRC as the

As defined by UNCLOS, an "archipelagic state" is constituted wholly by one or more archipelagos and may include other islands, a condition that China does not meet. Recognized archipelagic states include the Philippines and Indonesia. The tribunal further noted that even an archipelagic state would not be entitled to draw archipelagic baselines around the Spratlys because the water-to-land ratio greatly exceeds the allowable limit under UNCLOS. Dai Tamada, "Straight or Archipelagic Baseline with Respect to Offshore Archipelago?" in James Kraska, Ronan Long, and Myron H. Nordquist eds., *Peaceful Maritime Engagement in East Asia and the Pacific Region*, Oceans Law and Policy, 2023, 190–192; Asia Maritime Transparency Initiative, "Reading between the Lines: The Next Spratly Legal Dispute," *Center for Strategic and International Studies*, March 21, 2019; PCA Case No. 2013-19 in the Matter of the South China Sea Arbitration before an Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People's Republic of China, Award, July 12, 2016, 235–237; UN Convention on the Law of the Sea § 5, 7, 46–54, 1982.

*The PRC government asserts that its 2006 statement rejecting the arbitration clause of UNCLOS constitutes a valid reservation against submitting to compulsory arbitration; such an interpretation is not supported by UNCLOS article 309, which states that "no reservations or exceptions may be made to this Convention unless expressly permitted by other article of this Convention." Article 310 allows for declarations and reservations upon ratification, but the PRC did not elect to do so.

China Claims UN Resolution Establishes Its Sovereignty over Taiwan—*Continued*

rightful representative of China, promoting a view that this resolution codifies China's "One China principle," a phrase China uses to assert that Taiwan is a part of China.*⁹⁸ China's State Council's Taiwan Affairs Office claims UN General Assembly Resolution 2758 is "a political document encapsulating the One China Principle whose legal authority leaves no room for doubt and has been acknowledged worldwide."⁹⁹ In fact, Resolution 2758 solely addresses the question of China's representation in the UN and does not mention "one China" or Taiwan or address the self-governed island's sovereignty.¹⁰⁰ In her testimony before the Commission, Yu-Jie Chen of Academia Sinica argued that Beijing's intensified efforts to exclude Taiwan from international institutions are aimed not only at isolating Taiwan but also at promoting the One China principle internationally to present Taiwan's legal status as a matter of China's internal affairs.¹⁰¹ Such a distinction would be particularly useful to Beijing in a conflict across the Taiwan Strait, which China's government would almost certainly claim to be a domestic issue rather than an invasion to annex a functionally sovereign Taiwan.¹⁰² Similarly, China has protested the passage of foreign warships through the Taiwan Strait, claiming that those ships were passing through China's internal waters.¹⁰³

China Seeks to Align Foreign and International Law with Its Own Law

China is encouraging other countries to adopt laws and procedures like its own and is attempting to shape the evolution of international law to advance its objectives. These efforts are especially focused on areas Chinese jurists call "frontier law"—emerging fields in which international law has been less clearly defined, better positioning China to influence its evolution—including cyber law and norms, space law, polar law, climate change law, maritime law, and nuclear security. Notably, China's encouragement of other countries to adopt elements of Chinese law and its attempt to steer international law can be mutually reinforcing. In cyber law, for instance, Vietnam and Uzbekistan have both adopted elements of China's restrictive cyber governance regime; both have also voted in favor of UN General Assembly resolutions that support countries' discretion to curb internet freedoms. If successful, China's efforts could provide a model of authoritarian law for other countries to follow, potentially harming U.S. interests or U.S. citizens' safety in those countries while also establishing international frameworks that challenge liberal Western values and U.S. strategic objectives.

*The "One China principle" refers to the Chinese government's position that there is only one China; that there is only one legitimate government of China, the People's Republic of China (PRC); and that Taiwan is an inalienable part of the state called "China." By contrast, the "One China policy" of the U.S. government refers to its position recognizing the PRC—rather than the Republic of China (ROC) government on Taiwan—as the sole legal government of China but only "acknowledging" the PRC's position that Taiwan is part of China. Many other countries that maintain official ties with Beijing use the phrase "One China policy" to describe their stance of officially recognizing the PRC while simultaneously not recognizing the Republic of China.

China Expands Its Influence in International Arbitration via the Belt and Road

China is attempting to increase the attractiveness of its own courts and arbitral institutions to draw more cases to China while at the same time increasing the application of Chinese law and procedure abroad. It is particularly focusing its efforts in areas where China has significant commercial interests and in countries that have borrowed heavily from China but have weak domestic legal institutions, especially those involved in BRI. In 2019, the China International Commercial Court (CICC),* a branch of the Supreme People's Court designated for proceedings on international disputes, began hearing cases. China has since established eight more international commercial courts in major Chinese cities.†¹⁰⁴ Chinese entities involved in projects overseas are also insisting that China's laws govern contracts. A study of 100 contracts between Chinese entities and foreign governments by the Center for Global Development showed that the Export–Import Bank of China's debt contracts nearly always stipulate the use of the China International Economic and Trade Arbitration Commission (CIETAC) in dispute resolution and the use of Chinese law in all Export–Import Bank of China concessional and buyer credit loan contracts.¹⁰⁵

China's push to develop capacity in commercial disputes has corresponded with a rise in the number of first-instance foreign-related civil and commercial cases in Chinese courts, from 14,800 in 2013 to 27,300 in 2021.‡¹⁰⁶ As lenders from China insert language into contracts mandating Chinese arbitration in dispute resolution, CIETAC, China's largest arbitral tribunal, also registered a record high number of cases in 2022, with 642 relating to foreign cases totaling about \$5.15 billion (RMB 37.4 billion) in dispute.¹⁰⁷ In total, parties from 69 jurisdictions were involved in CIETAC cases last year, including from 32 countries participating in BRI.¹⁰⁸ Chinese arbitral institutions are also increasing the application of China's laws abroad through partnerships with tribunals in other countries, such as the China Africa Joint Arbitration Center (CAJAC). Prior to its establishment, many disputes between Chinese and African entities were decided in local courts, which could be plagued by inefficiency and bureaucratic red tape.¹⁰⁹ CAJAC enables Chinese entities to resolve disputes guided by China's laws and procedures in centers in Johannesburg and Nairobi. China has established similar joint institutions in Thailand and Kyrgyzstan.¹¹⁰

Though Chinese dispute resolution venues are becoming more competitive, the political nature of China's judicial system limits its attractiveness. As University of Sydney law professor Vivi-

* For more on the CICC, see Leyton Nelson, "Dispute Settlement with Chinese Characteristics: Assessing China's International Commercial Court," *U.S.-China Economic and Security Review Commission*, February 28, 2023.

† Along with Beijing, additional cities with International Commercial Courts include Chengdu, Suzhou, Shenzhen, Hangzhou, Xian, and Xiamen. China Justice Observer, "Xiamen International Commercial Court Holds Its First Hearing," October 31, 2022; China Justice Observer, "Hangzhou Int'l Commercial Court Hears Its First Case Involving Procurement of Test Kits," March 16, 2023; Hansel Pham, "The China International Commercial Court," *White & Case*, March 4, 2021.

‡ The Supreme People's Court does not define "foreign-related case."

China Expands Its Influence in International Arbitration via the Belt and Road—*Continued*

enne Bath described in testimony before the Commission, China's courts remain subservient to the CCP's strong oversight, creating, "an ongoing risk of intervention (both political and otherwise) in court decisions which will continue... to undermine the credibility of China's courts as an international dispute resolution venue."¹¹¹ Additionally, nearly all disputes heard by Chinese institutions involve a China- or Hong Kong-based party. The proliferation of Chinese arbitral tribunals and Chinese law governing international contracts nonetheless presents nascent competition with existing patterns of international arbitration largely governed by U.S. law.¹¹² According to Matthew Erie at the University of Oxford, U.S. influence in international law grew in tandem with the U.S. role in international commerce, as lawyers supervising international contracts on behalf of U.S. firms sought to have deals governed by U.S. law.¹¹³ This meant that "[a]s the US became the financial center of the world, New York and Delaware law were used in contracts the world over."¹¹⁴ Now, as Chinese commercial activity expands globally, particularly in developing countries, an increasing number of law firms and courts are specializing in the application of Chinese law.¹¹⁵ Dr. Erie notes that "African lawyers, arbitrators, and businesspeople welcome Chinese capital and want to create legal institutions to facilitate its entry into African markets."¹¹⁶

China's Export of Cyber Restrictions and Techno-Authoritarianism

China is promoting laws and regulations modeled on its own cyber governance regime that appeal to authoritarian countries, potentially paving the way for greater global acceptance of more authoritarian models of the internet. A key tactic in China's exportation of its cyber governance regime is capacity building through state-to-state training workshops. Since 2017, China has held training sessions and seminars with numerous developing countries on China's information policy and management of the internet.¹¹⁷ At the Baise Executive Leadership Academy near the Sino-Vietnam border over, for example, 400 government officials from southeast Asian countries were trained in how to "guide public opinion" online.¹¹⁸ In another two-week Seminar on Cyberspace Management for officials from BRI countries, attendees toured Chinese facilities that tracked cyber activity and examined methods of digitally tracking public sentiment.¹¹⁹ According to an investigation by Freedom House, in 2017 and 2018 alone, government officials from at least 36 countries attended seminars in China on "cyberspace management."¹²⁰

China's state-to-state capacity building appears to have influenced the legal systems of attending countries. Shortly after Vietnamese officials attended training on internet governance and security in 2017, Vietnam introduced a new cybersecurity law in 2018 that closely mimics China's, including close government management over the access to and storage of data.¹²¹ Tanzanian and Ugandan

officials attending Chinese seminars on cyberspace management similarly preceded both countries passing restrictive cyber crime and media laws in 2018.¹²² The laws enhance government powers in censorship and impose harsh punishments for journalists publishing content perceived as damaging to the state.¹²³

China's trainings on cyber governance are also meant to encourage the export of surveillance technologies. According to Freedom House, at least 38 countries, including many who have sent officials to cyber training seminars in China, have received or are set to receive internet equipment from Chinese technology companies.¹²⁴ Among these, 18 are receiving artificial intelligence systems specifically designed for law enforcement.¹²⁵ Deploying surveillance technology from China can also encourage countries to adopt laws and regulations stipulating how authorities might use these technologies. Following Zimbabwe's 2018 purchase of a mass facial recognition system from China-based surveillance tech firm CloudWalk,* for instance, the country adopted a new cybersecurity law modeled on China's that expanded the government's authority to conduct surveillance using CloudWalk's facial recognition tools.¹²⁶ After the Zimbabwe law's adoption in 2021, the EU renewed sanctions on Zimbabwe for undermining human rights, including intimidating political opponents and harassing journalists.¹²⁷

In addition to remodeling other nations' legal structures in the CCP's image and likeness, there is a hidden benefit for Beijing when other countries acquire surveillance tech from China: China's legal system grants the Party-state the authority to access and act upon the data foreign governments might collect with those systems, as long as those systems are serviced by Chinese entities. As outlined in article 11 of China's National Security Law, "to maintain national security, national security agencies may inspect organizational and personal electronic communication tools, facilities, and other related equipment belonging to any organization or individual."¹²⁸ Similarly, article 18 underpins the state's absolute authority to access networks: "when a national security organization investigates any circumstances threatening national security and gathers evidence, organizations and individuals must comply with conveying relevant information to authorities and may not refuse to do so."¹²⁹

The CCP Exercises Extensive Control over Nonstate Firms

Beyond the National Security Law, China has developed numerous avenues through which to intervene in corporate decision-making and direct nonstate firms and resources toward advancing the CCP's priorities. China's government can leverage these tools to strengthen oversight of ostensibly nonstate internet and technology firms exporting surveillance technology as well as firms supporting China's military-civil fusion strategy† and de-

*The U.S. Department of Commerce's Bureau of Industry and Security added CloudWalk to the Entity List in May 2020 for its involvement in human rights violations associated with China's mass detention and repression of the Uyghur Muslim minority in Xinjiang. U.S. Department of Commerce, Bureau of Industry and Security, "Addition of Entities to the Entity List, Revision of Certain Entries on the Entity List," *Federal Register* 85:109, June 5, 2020.

†As articulated in many speeches, Xi's vision for military civil-fusion aims to facilitate transfers between the defense and civilian sectors to improve the sophistication of China's military and cre-

The CCP Exercises Extensive Control over Nonstate Firms—*Continued*

fense modernization objectives. Chinese law grants the state privileged status in the governance of any corporation for which it is a shareholder, regardless of its ownership stake.¹³⁰ The state may exercise these rights through its extensive investment in the non-state economy, which has increased significantly in the last ten years through government guidance funds leading investments in state-directed priority areas, government attempts to stabilize China's stock market through mass share purchases, and "mixed-ownership reform."^{*} Beyond these de jure mechanisms for intervention, the CCP itself is not bound by legal constraints and is expanding its influence over firms' management and personnel decisions through CCP committees.¹³¹ Additionally, policy incentives, such as subsidies, grants, and tax breaks, as well as corporate monitoring mechanisms guide companies toward fulfilling the Chinese government's objectives even without direct government influence.¹³²

Within this expanded framework of government control, traditional definitions of state control in an entity no longer apply because any commercial entity may be compelled to act on behalf of the Chinese government's interest, regardless of the state's formal ownership. This rising control makes the distinction between civilian and defense activities of Chinese companies increasingly blurry and furthers the Chinese government's objective of cultivating a commercial environment that supports military-civil fusion and broader technological development.[†] The Chinese government's extensive footprint in China's corporate sector also increases the likelihood that foreign capital invested in China's economy will ultimately fund CCP objectives.

China Is Attempting to Normalize Internet Censorship and Surveillance in International Organizations

State-to-state trainings in cyber governance complement China's attempts to steer international organizations toward embracing an authoritarian vision of the internet more easily censored and regulated at a national level. While global use of the internet carried promise for freedom of speech and has been key to promoting

ate cohesion in Chinese industry and academia working with and in support of military objectives so that the entire system can be effectively mobilized to support the military in the future and to drive technological innovation and economic growth. Greg Levesque, written testimony for the U.S.-China Economic and Security Review Commission, *Hearing on What Keeps Xi Up at Night: Beijing's Internal and External Challenges*, February 7, 2019, 10–16.

^{*}Mixed-ownership reform has attempted to improve the efficiency of China's state sector by inviting private capital and managerial expertise into nonstrategic sectors, such as hotel chains and other services, while allowing China's government to concentrate on managing the operations of a smaller number of state-owned enterprises in critical sectors of strategic importance, such as energy, telecommunications, and technologies prioritized under industrial policy initiatives. In practice, the program has tilted much more heavily toward increased state investment in the nonstate sector rather than vice versa. For more on the state's increased ownership of nonstate firms, see U.S.-China Economic and Security Review Commission, Chapter 2, Section 3, "The Chinese Government's Evolving Control of the Nonstate Sector," in *2021 Annual Report to Congress*, November 2021, 222–224.

[†]For more on the state's increased ownership of nonstate firms, see U.S.-China Economic and Security Review Commission, Chapter 2, Section 4, "U.S.-China Financial Connectivity and Risks to U.S. National Security," in *2021 Annual Report to Congress*, November 2021, 241–286.

free access to information on a global scale, under China's cyber sovereignty model, data and networks would constitute sovereign territory within individual countries' jurisdictions to be governed according to local laws.¹³³ The model is directly in contrast to the free and open multistakeholder platform championed by the United States and other democracies. In effect, China's Cyberspace Administration has moved to narrow the internet's use, invoking the logic of nationally bounded cyberspace to justify limiting the exercise of free speech and personal privacy in China and promoting repressive internet governance on a global scale.¹³⁴

Within the UN and its standards-setting agency, the International Telecommunications Union (ITU), China has tried to promote its overarching vision of centrally controlled, nationally bounded internet. In 2015, China attempted to have the UN adopt cyber sovereignty in a series of documents defining global internet policies and frameworks, aligning with Russia, Cuba, and a group of 134 developing countries.¹³⁵ It ultimately dropped the proposed language owing to strong resistance from developed countries led by the United States, but the final documents approved by the UN General Assembly include phrasing that allows for a greater role for state management of the internet.¹³⁶ Leaked documents from the ITU study group meetings in 2019 indicate China is pushing for adoption of standards for facial recognition technology that would facilitate Chinese-style surveillance norms.¹³⁷ Because standards set by the ITU are more influential among developing countries, dissemination of standards promoting techno-authoritarianism may pave the way for China to align more countries behind its initiatives in the UN and other international organizations.¹³⁸

China Seeks to Ensure Maximum Flexibility in International Space Law

The emerging global space law regime is another area of "frontier law" where China seeks to ensure the alignment of developing international law to its own interests. In contrast to its efforts to revise global cyber governance norms, China views the current international architecture that governs space as favorable to its interests (see Appendix II: International Space Law Frameworks). It has made few efforts toward building space law to a level commensurate with the global space industry's expansion in recent years and has refrained from endorsing efforts to establish norms for responsible behavior in space.¹³⁹ China is wary of proposed changes to the order that it believes would constrain its future actions in space, particularly U.S.-sponsored changes like the voluntary moratorium on destructive antisatellite testing in space.¹⁴⁰

China has countered the influence of the United States and its allies in space legislation within the UN, proposing resolutions that would restrict U.S. actions in space while resisting U.S. and allied initiatives to develop norms of responsible behaviors in space.¹⁴¹ One such example is the 2008 draft presented to the UN by China and Russia titled the Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Objects (PPWT).¹⁴² In testimony before the Commission, Brian Weeden, director of program planning at the Secure World

Foundation, notes that the PPWT sought to define “space weapons” and to prohibit their deployment into outer space but was silent on the development, testing, and deployment of ground-based antisatellite weapons.¹⁴³ Dr. Weeden states that “most outside experts assess the PPWT as an attempt to limit a potential future U.S. space-based missile defense program, which China and Russia believe would undermine their nuclear deterrent.”¹⁴⁴ Despite both China and Russia advocating for a UN resolution to prevent the militarization of space, the U.S. Defense Intelligence Agency has reported that both countries continue to develop and test space and counterspace weapons systems.¹⁴⁵ In 2021, the United States proposed a resolution that centered around a ban on destructive antisatellite weapons testing that would generate space debris, endangering other nations’ satellites.¹⁴⁶ China opposed the resolution, countering that a binding arms control agreement was needed first.¹⁴⁷

The current absence of defined “rules of the road” in space enables Chinese activities, such as its lack of concern over falling space debris, irresponsible communications practices, and continued destructive antisatellite weapons testing. China appears to apply an extremely lax interpretation of the “due regard”* clause of the 1967 Outer Space Treaty, given that there is no set definition of what constitutes “due regard.”¹⁴⁸ Under the Outer Space Treaty, all nations are bound by a duty to consult with others prior to conducting activities that might “cause potentially harmful interference” with other state parties’ peaceful use of space.¹⁴⁹ The People’s Liberation Army (PLA) and affiliated institutions are reportedly engaged in the development and testing of kinetic kill missiles, ground-based lasers, and orbiting space robots in addition to hypersonic and fractional orbital bombardment systems that that would utilize low-earth orbit as an attack vector.¹⁵⁰ China’s resistance to establishing norms in space allows irresponsible actions to continue; the PLA’s 2007 live-fire antisatellite weapons test generated over 900 debris fragments that remain a danger to space actors and will need to be avoided for decades to come.¹⁵¹ In 2021, just hours before the U.S. National Aeronautics and Space Administration (NASA) was set to launch a crewed mission to the International Space Station (ISS), the ISS was forced to maneuver to avoid being struck by a piece of debris from China’s 2007 test.¹⁵² A PRC rocket launch in October of 2022 that resulted in the uncontrolled reentry of a 23-ton rocket booster was criticized by the heads of both NASA and the European Space Agency, with NASA chief Bill Nelson characterizing it as an unnecessary risk and stating that the PRC did not share trajectory information needed to predict landing zones.¹⁵³ A recently brokered deal between Hong Kong Aerospace Technology Group, a Chinese company, and the government of Djibouti to build a rocket launch facility may represent an attempt by the PRC to circumvent the obligations imposed on it by the Outer Space Treaty by establishing a space launch site in a country that is not party to the treaty.¹⁵⁴ Such a site may be used as a platform to present the PRC’s alterna-

* Codified in article IX of the 1967 Outer Space Treaty (OST), the due regard principle obligates states to conduct all their space activities “with due regard to the corresponding interests of other all other States Parties to the Treaty.” If a state fails to consult with others prior to potentially harmful actions, it must abide by the principle of “due regard.”

tive views of space law while undermining the current international space governance regime.¹⁵⁵

On the question of resources derived from space, current international space law does not include a legal mechanism to clearly adjudicate ownership of space-based resources, leaving room for interpretation based on the dictates of a country's national interests.¹⁵⁶ The Outer Space Treaty states that celestial bodies are not subject to national appropriation, but it is vague on the legal status of any resources extracted from those bodies.¹⁵⁷ While most countries believe the extraction of space-based resources is not incompatible with the ban on sovereignty over these bodies, there is no agreement on what the framework for such activities should be.¹⁵⁸ Previous statements from senior Chinese officials indicate that Beijing intends to claim a right to use space-based resources in the absence of a clear legal framework regulating mining in space, lest Beijing forfeit its "space rights and interests."¹⁵⁹ In 2021, China's Shenzhen Origin Space Technology Co. launched the first commercial spacecraft dedicated to the mining of space resources, indicating Beijing's preparations for eventual space mining operations.¹⁶⁰

China Resists U.S.-Led Initiative on Civil Space Cooperation

Chinese leadership appears to believe that the United States is attempting to build a U.S.-centered legal regime in space with the Artemis Accords,* a U.S.-led nonbinding framework for cooperation in civil space exploration.¹⁶¹ China has expressed opposition to the Artemis Accords, framing the agreement as an attempt by the United States to unilaterally set ground rules for lunar behavior and arguing that the United States is attempting to foment a new space race.¹⁶² While many of the accords' provisions are already in force under existing UN space treaties or would otherwise align with China's interpretations of space resource use, China objects to a commitment to mitigate space debris and the establishment of "safety zones" wherein nations announce and coordinate zones of noninterference for the purpose of deconfliction of lunar activities.¹⁶³ China views the accords as the United States abandoning reforming space law through bodies such as the UN and attempting to build a U.S.-centered legal regime in space.¹⁶⁴ Despite the accords largely aligning with China's interpretation of international law on the extraction and utilization of space resources, China's criticism of the accords likely indicates trepidation that the NASA-led initiative will outpace China's lunar program.¹⁶⁵

China may be preparing to launch its own competing body for space cooperation between nations. A 2022 white paper detailed China's ambitions in space.¹⁶⁶ Of notable inclusion in the document was a section devoted to the governance of space advocating

*The Artemis Accords is a nonbinding multilateral arrangement between the United States government and other world governments participating in the Artemis program, a U.S.-led effort to return humans to the Moon by 2025 with the ultimate goal of expanding space exploration to Mars and beyond. The accords act as a framework for cooperation in the civil exploration and peaceful use of the Moon, Mars, and other astronomical objects. The accords reinforce the commitment by the United States and signatory nations to the Registration Convention and the Rescue and Return Agreement as well as best practices and norms of responsible behavior that NASA and its partners support, including the public release of scientific data. As of July 2023, 27 countries have signed the accords. National Aeronautics and Space Administration, *The Artemis Accords*.

for China to take a greater role in its development, which may be achieved through China's proposed International Lunar Research Station (ILRS).¹⁶⁷ While not explicitly an alternative to the Artemis Accords, China has announced a partnership with Russia to develop the ILRS complete with its own set of principles, which, if they differ from those expressed in the Artemis Accords, could result in a situation where there are multiple competing frameworks for lunar space activities.¹⁶⁸ First announced in 2021 in a joint statement by China and Russia, ILRS signatories are unknown at this time but will likely include members of the China-led Asia Pacific Space Cooperation Organization (APSCO).^{* 169}

China Aims to Enforce Its Laws Around the World

During General Secretary Xi's tenure, China's law enforcement and related agencies have significantly expanded their capacity to investigate and prosecute outside China's borders. This expansion is partly driven by attempts to bring purportedly corrupt Chinese officials living abroad to justice.¹⁷⁰ However, it has also strengthened China's ability to target overseas Chinese nationals or even other countries' citizens for political reasons, particularly criticism of China's government.¹⁷¹ To enforce its laws abroad, China has both greatly increased its network of extradition treaties and reportedly established numerous secret police stations overseas, directly violating host countries' sovereignty.¹⁷² Citizens in countries with which China has concluded mutual legal assistance treaties or law enforcement agreements may be at risk of extradition to China.¹⁷³

Extraterritorial Enforcement of China's Laws via Undeclared Entities and Agents

Beijing considers all individuals of Chinese descent, whether PRC nationals living overseas or ethnically Chinese citizens and residents of foreign countries, part of the Chinese nation.¹⁷⁴ The CCP—through China's law enforcement, intelligence, and public security agencies, in particular—has established numerous operations to investigate and charge residents of other countries for violating PRC law, both in cooperation with foreign countries through formal extradition treaties and coordination mechanisms and in violation of other countries' sovereignty. This increase in extraterritorial ambitions is reinforced by the CCP's view of citizenship and nationality.

China has also sought to place agents and organizations abroad and in the United States designed to monitor, harass, and persuade citizens wanted by PRC authorities to return to China.¹⁷⁵ In April 2023, the Federal Bureau of Investigation arrested two individuals for their involvement in helping manage and operate an undeclared "overseas Chinese police station" in Lower Manhattan without notifying the U.S. government.¹⁷⁶ The U.S. Department of Justice alleges that in 2018, the individuals assisted Chinese law enforcement in efforts to coerce a "PRC fugitive" to return to China and assisted the Ministry of Public Security in locating a prodemocracy activist

* APSCO consists of: Turkey, Peru, Mongolia, Thailand, Pakistan, Iran, Bangladesh, and China. Dues-paying APSCO members are granted access to Chinese space training, ground stations, and satellite development projects. Asia Pacific Space Cooperation Organization, "What Is APSCO?"

in California.¹⁷⁷ U.S. law enforcement alleges that the Fuzhou Public Security Bureau (PSB) operated through a nonprofit organization founded to assist the local Fujian Chinese diaspora in order to disguise its police operations in Manhattan.¹⁷⁸ As argued by Martin Pubrick of the Jamestown Foundation, the operation of police stations in foreign countries without prior consultation of the host nation government constitutes a breach of the UN Vienna Convention on Diplomatic Relations of 1961.*¹⁷⁹ DOJ issued an additional three dozen charges against members of China’s national police force who helped facilitate these harassing behaviors from operating sites in China.¹⁸⁰ U.S. attorney Breon Peace of the Eastern District of New York stated that this case “reveals the Chinese government’s flagrant violation of our nation’s sovereignty by establishing a secret police station in the middle of New York City. As alleged, the defendants and their co-conspirators were tasked with doing the PRC’s bidding, including helping locate a Chinese dissident living in the United States, and obstructed our investigation by deleting their communications.”¹⁸¹

China Attempts to Enlist Tech Companies in Censorship and Surveillance

The Party-state also seeks to extend China’s domestic law enforcement activities to citizens of other countries in virtual settings. In 2020, Xinjiang “Julien” Jin, a former China-based Zoom executive, was charged with multiple counts of conspiracy in blocking commemorative dedications marking the anniversary of the 1989 Tiananmen Square massacre at the Chinese government’s behest.¹⁸² According to reporting by the *New York Times*, Mr. Jin allegedly told a colleague in April 2020 that the Chinese government requested Zoom to develop a feature that would terminate a meeting within one minute of discovering any violation of China’s laws.¹⁸³ Mr. Jin complied with this request and coordinated across Zoom to have Tiananmen Square memorial meetings shut down for fabricated violations of Zoom’s terms of service agreements.¹⁸⁴ At least four meetings commemorating the massacre in 2020—largely attended by U.S.-based users—were terminated as a result of Mr. Jin’s actions, according to prosecutors.¹⁸⁵ An internal investigation by Zoom also revealed that Mr. Jin had shared individual user data with Chinese authorities, though Zoom claimed this applied to fewer than ten individuals, and he also requested user data from Zoom’s U.S. servers.¹⁸⁶ In 2023, DOJ amended an additional criminal complaint related to *United States v. Julien Jin et al.* charging ten individuals, including six Ministry of Public Security officers and two officials in the Cyberspace Administration of China, with conspiracy to commit interstate harassment and unlawful conspiracy to transfer means of identification.¹⁸⁷

*Article 12 of the convention states that “the sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.” United Nations, “Vienna Convention on Diplomatic Relations,” April 18, 1962, Article 12.

China Leverages Economic Influence to Expand Law Enforcement Cooperation

China is wielding its economic weight to increase its network of extradition treaties and law enforcement cooperation agreements.¹⁸⁸ Countries in Central Asia and Southeast Asia have consented to extradite Uyghurs to China, often coinciding with Chinese investment pledges in these countries.¹⁸⁹ According to a report by the Wilson Center, China is the largest financial creditor to five of the top ten countries in which Uyghurs are most vulnerable to harassment, detention, or extradition to China: Pakistan, Kyrgyzstan, Tajikistan, Cambodia, and Burma (Myanmar).¹⁹⁰ As of 2023, each of these countries except Burma has agreed to a formal extradition treaty with China.¹⁹¹ Other countries that depend on China's economic presence continue to ratify extradition treaties with China, including in the past year the Democratic Republic of the Congo and Uruguay, both of which count China as their largest trading partner.¹⁹² As of September 2023, China has ratified extradition treaties with 45 countries, with 14 other extradition treaties waiting to be ratified by either China or the partner country.*¹⁹³

A prominent case of China using economic leverage for extradition is Tajikistan, where China held more than half of the country's \$2.8 billion external debt in 2017, equivalent to 35.9 percent of its gross domestic product (GDP) that year. Tajikistan has previously paid off debts to China by ceding mining rights and other resource agreements.†¹⁹⁴ Following deepening economic relations and the ratification of an extradition treaty between the two countries in 2015, China has built strategic facilities and border outposts across the country in cooperation with Tajik police forces.¹⁹⁵ The end result has been a mass extradition of Uyghurs to China, with Tajikistan's Uyghur population declining from a height of 3,000 in 2016 to around 100 in 2022.¹⁹⁶ Lawyers for Uyghur rights groups have filed a formal complaint in the International Criminal Court (ICC) against Tajikistan for this practice; the complaint also names Cambodia.¹⁹⁷ As China is not an ICC member and is outside the ICC's jurisdiction, it was not named in the complaint. China continues to pursue additional extradition treaties with countries with sizable Uyghur populations and where it has deepening economic relations, including Turkey, with which China's National People's Congress ratified an extradition treaty in 2020. Facing sizable protests over the safety of Turkey's Uyghur community, the Turkish parliament has yet to ratify the extradition treaty as of July 2023.¹⁹⁸

Europe more broadly has recently moved to push back on China's extradition treaty network with the European Court of Human Rights ruling in January 2023 to halt all extraditions to China, a ruling most recently held up by a court in Italy in March 2023.¹⁹⁹ This extradition ban applies to any nation that is party

*In Europe, Armenia, Turkey, and Greece have yet to ratify their extradition treaties with China. In the Asia Pacific, Sri Lanka, Nepal, and Australia have not yet ratified. The Australia ratification has faced strong protests and is unlikely to move forward. In Latin and South America, Argentina, Chile, Ecuador, and Panama have yet to ratify their treaties. In Africa, Kenya, Senegal, Zimbabwe, and Mauritius have yet to ratify. *Safeguard Defenders*, "China Expands System of Extradition Treaties," January 25, 2023.

†For more on Tajikistan-China economic relations, see U.S.-China Economic and Security Review Commission, Chapter 3, Section 3, "China's Activities and Influence in South and Central Asia," in *2022 Annual Report to Congress*, November 2022, 557–558.

to the European Convention on Human Rights, encompassing virtually every European country except Russia and Belarus.²⁰⁰ Economic leverage has also been used to target citizens of Taiwan. Spanish Human Rights Group Safeguard Defenders released a report in 2019 documenting over 600 cases between 2016 and 2019 of Taiwan nationals abroad who, when accused of criminal activity, have been extradited or deported to China rather than Taiwan.²⁰¹ This practice has been found in countries across Asia, Africa, and Europe.²⁰² Many of the countries that have sent Taiwan nationals to China have close economic relations with China, including Armenia, Indonesia, and the Philippines, all signatories of China's BRI.²⁰³ In one high-profile case, Kenya, one of the highest recipients of BRI investment in Africa, agreed to extradite to mainland China 45 Taiwan citizens implicated in a telecom equipment scam that targeted Chinese nationals, despite protests from Taiwan.²⁰⁴ Kenya continues to deepen its economic relations with China. The year following the deportations, Kenya opened a major railway from the port of Mombasa to the city of Naivasha, financed by a \$5 billion loan from a Chinese bank, and as of 2022, China serves as Kenya's largest external creditor, at 22 percent of its external debt.²⁰⁵ Amid Kenya's deepening reliance on Chinese financing, in 2023 Kenya's Cabinet endorsed a formal extradition treaty with China that appears to encompass Taiwan citizens, as well, if ratified by the National Assembly.²⁰⁶

The CCP Uses U.S. Courts to Target Dissidents and Fugitives

The CCP and its proxies have brought lawsuits alleging manufactured claims in U.S. court in an attempt to exercise sovereign control within U.S. borders. These cases seek both to silence critics of China's government and to pressure fugitives into returning to China to face prosecution on charges that are often politically motivated.²⁰⁷ While many of the suits brought against Chinese dissidents residing in the United States are eventually thrown out, they can impose significant financial costs and time burdens on the defendants.²⁰⁸ Such suits can also deter other potential critics from speaking out for fear they will be targeted in a similar manner.²⁰⁹ Similarly, in 2020, China's electric vehicle maker BYD brought an unsuccessful defamation suit against the Alliance of American Manufacturers and several of its employees for publishing concerns that BYD profited from forced labor in Xinjiang and was controlled by the Chinese government.* Although some states have safeguards to prevent frivolous lawsuits in an attempt to suppress free speech,† there is no equivalent

* BYD alleged that the Alliance of American Manufacturers' (AAM) maliciously published articles claiming BYD benefited from forced labor and was under the control of the Chinese government, although AAM knew the claims were false or intentionally distorted underlying evidence. The District Court for the District of Columbia rejected three attempts at litigation by BYD, finding that it failed to demonstrate that AAM acted with malice. The DC Circuit Court dismissed an appeal on the same grounds, and the Supreme Court rejected writ of certiorari from BYD. AAM's claims that BYD benefited from forced labor were based on a report from the Australian Strategic Policy Institute. *BYD Company Ltd. v. Alliance for American Manufacturing, et al.* (DC Cir. 2022), *cert. denied*, (U.S. October 11, 2022) (No. 22–137).

† Anti-Strategic Litigation Against Public Participation (SLAPP) statutes establish procedural safeguards against courts accepting such suits. For instance, many state anti-SLAPP statutes shift the burden of proof to demonstrate that a case is not frivolous to the plaintiff if the defendant can show the case was likely brought for political reasons. Eighteen states do not have

for federal cases. Additionally, while China's government can exploit the openness of the U.S. court system to advance political objectives, it is shielded from lawsuits by the Foreign Sovereign Immunities Act and act of state doctrine.* Lawyers representing the CCP or its proxies in these meritless cases may be violating American Bar Association rules.†

Suits seeking to pressure fugitives to return to China are part of Operation Fox Hunt‡ and a similar program called Sky Net launched in 2015, both repatriation operations that claim to target overseas “corrupt officials.”§ The return to China of Xiao Jinning, the former chairman of the state-owned mining company Yunnan Tin Co., demonstrates a CCP success in employing such tactics. Mr. Xiao had fled to the United States in 2012 and was sued in 2019 by a U.S. subsidiary of Yunnan Tin (Yuntinic) in California for allegedly diverting company funds from 2002 to 2006.²¹⁰ One month after the suit was filed, Mr. Xiao returned to China and Yuntinic's lawyer withdrew the suit.²¹¹ The CCP's Discipline Inspection Commission reportedly hailed the lawsuit, saying it caused “tremendous pressure on [Mr. Xiao] and became an important factor that prompted him to make up his mind to return to China.”²¹² While some of the targets of this campaign appear to be financial criminals, these operations are also known to target dissidents within Chinese diaspora communities that have not been accused of corruption, such as Wang Zaigang, who was seemingly targeted under Fox Hunt for participating in a Seattle protest against Xi Jinping in 2015.¶²¹³

such statutes. Austin Vining and Sarah Matthews, “Overview of Anti-SLAPP Laws,” *Reporters Committee for Freedom of the Press*.

*The court-created act of state doctrine instructs that U.S. courts cannot judge the validity of foreign sovereign acts performed in the foreign country's territory, even if authoritarian acts—like expropriation, political persecution, and torture—violate U.S. law and public policy. Citation of the act of state doctrine barred Chinese dissidents' action against a computer hardware provider that allegedly supported China's nationwide surveillance program. In 2014, the Federal District Court in Maryland dismissed *Du Daobin v. Cisco Systems*, a case brought by Chinese dissidents alleging that U.S. company Cisco knowingly customized, marketed, sold, and provided continued support and service for technologies as part of China's Golden Shield, a digital censorship and surveillance system used by the Chinese government to facilitate human rights abuses. Cindy Cohn and Rainey Reitman, “Maryland Court Dismisses Landmark Case That Sought to Hold Cisco Responsible for Violating Human Rights,” *Electronic Frontier Foundation*, February 27, 2014.

†The American Bar Association's Model Rules of Professional Conduct prohibit lawyers from bringing meritless legal actions. The suits brought by the CCP and its proxies are often framed as legitimate business disputes when brought to U.S. courts. American Bar Association, “Model Rules of Professional Conduct,” Rule 3.1.

‡Launched in 2014, Operation Fox Hunt is a Chinese government initiative professed to repatriate allegedly corrupt Chinese officials so they could be prosecuted for their crimes in China. The Chinese government has used a variety of means to bring those officials back, including offering lighter sentences to encourage voluntary repatriation and working with foreign governments (including the United States) to extradite suspects. However, Beijing has also resorted to pressuring its targets by threatening their family members in China or even allegedly kidnapping wanted fugitives, including political dissidents.

§The ability of many CCP officials to flee abroad is assisted by the prevalence of the “naked official” (裸体官员)—a Party or government official whose immediate family members live overseas as permanent residents or have already become foreign nationals.

¶The United States has established procedures for working with foreign law enforcement agencies and has previously cooperated with Chinese authorities on prosecuting and repatriating Chinese nationals accused of financial crimes. However, many of the charges brought against individuals pursued under Operation Fox Hunt are unlikely to hold up to scrutiny by the U.S. justice system. Former Assistant Attorney General John Demers explains that “some of these people didn't do what they are charged with having done. And we also know that the Chinese government has used the anticorruption campaign more broadly within the country with a political purpose.” Aruna Viswanatha and Kate O'Keefe, “China's New Tool to Chase Down Fugitives: American Courts,” *Wall Street Journal*, July 29, 2020.

Rule by Law Distorts U.S. Judicial Doctrine and Processes

Increased economic and social engagement has brought China's legal system into more frequent contact with the U.S. legal system, requiring U.S. courts to construe Chinese law in a variety of settings, from contract and intellectual property disputes to family relations. Likewise, U.S. courts are increasingly confronted with cases requiring them to assess the Chinese system itself, often by evaluating the adequacy of the process afforded in Chinese courts or the specific remedies provided by Chinese law. These evaluations are central to the application of numerous doctrines of international law, especially those that extend a measure of deference to other judicial systems regarding the meaning of their own laws and matters occurring with their own jurisdictions.

These doctrines, including choice of law rules, the doctrine of forum non conveniens, and principles of judicial comity, are well established in international and U.S. legal traditions—and for good reason, as the United States expects other judicial systems to afford comparable deference when dealing with questions of U.S. law and adjudicating cases involving U.S. disputants.

However, the application of these doctrines and others are premised on certain assumptions about the parallels between the U.S. legal system and other legal systems, assumptions that often do not hold in cases involving illiberal judicial systems like China's. The challenge is not simply that there are differences between the U.S. legal system and China's, as there are differences between every legal system. The gulf is more fundamental, as China's authoritarian system lacks institutional cornerstones that independent judicial systems share. Authoritarian regimes like China want the superficial benefits of a modern legal system without actually empowering an independent judiciary that could hear challenges to the CCP's core interests.²¹⁴ To those ends, China departs from notions of the "rule of law" in fundamental ways, namely through written "laws" that do not bind, hidden norms that do, and courts that bend to political interests.*²¹⁵

These departures from the rule of law often can result in distortions in those cases where the U.S. and China's legal systems meet. Indeed, these differences are so profound, and yet so opaque, that U.S. courts may lack sufficient familiarity to fully assess China's legal system or judiciary in determining whether application of certain deferential doctrines is warranted or whether the recognition of China's judicial decisions is appropriate. As Georgetown Law Professor Mark Jia noted, "A regime that uses law selectively at home is probably more likely to do so in litigation abroad," which creates challenges for U.S. courts in evaluating Chinese law, assessing Chinese government-prof-

*Although the Chinese constitution explicitly protects the right to free expression, the constitution itself is not directly enforceable, and other laws and regulations that clearly violate the text of the constitution are not subject to judicial scrutiny. For instance, China's Cybersecurity Law requires companies to censor "prohibited" information and restrict online anonymity.

Rule by Law Distorts U.S. Judicial Doctrine and Processes—*Continued*

ferred interpretations of its own laws, weighing the procedural protections afforded political lawsuits filed or supported by the CCP, and grappling with multi-jurisdictional intellectual property disputes.²¹⁶

Implications for the United States

China's far-reaching ambitions in applying its own laws as an instrument of statecraft and bending international law to its will pose fundamental challenges to the United States and the international system. Critically, the lack of consequences for China's rejection of international law—and its exploitation of the U.S. court system—constitute a significant, long-term threat to both. The United States and other countries committed to the fair administration of justice lack defensive measures to counter China's systematic erosion of the rule of law in international commerce and affairs. While the United States can respond to this challenge domestically, China's continued abrogation of international rules and norms—committed with impunity—undermines confidence in and the effectiveness of international organizations and treaties.

The CCP views law as a tool to further the development goals of the Party-state without constraining the actions of the political elite. This vision of rule by law represents a clash of systems with the impartial, well-reasoned application of law to all citizens and institutions embodied in the democratic concept of rule of law. The most essential element in this clash may be in words and concepts themselves: many of the terms upon which China's legal system is constructed, including ideas it is attempting to export to other countries, appear to be derived from common law or civil law systems in developed democracies. In practice, however, these concepts are distorted and politicized far beyond their original application. In the United States, courts are part of an independent branch of government and serve as a neutral arbiter between two disputants viewed equally before the law. When acting to advance a strategy of helping national champions avoid penalties for infringing on other countries' IP, courts become exponents of China's industrial policy. The challenge is compounded if courts in other jurisdictions fail to recognize the political nature of China's courts and treat their judgments as having been rendered by peer institutions.

Within its own legal system, China's rapid expansion of extraterritorial provisions and countermeasures against foreign sanctions creates new uncertainty for foreign business operating in the country and could influence their actions in other jurisdictions. Laws like China's Anti-Foreign Sanctions Law and Foreign Relations Law establish processes for China to penalize foreign firms for complying with laws and regulations of other countries that it deems discriminatory. A history of abrupt, politically driven enforcement campaigns, poor due process protections, and making examples of foreign firms deepens this uncertainty. Should China employ countermeasures for the full breadth of potential offenses under its expansive definition

of national security, foreign governments and U.S. and foreign firms may increase self-censorship to avoid being targeted.

Globally, the CCP seeks to promote its authoritarian legal system as a viable and even preferable alternative to rule of law. China's initial successes coupling exports of surveillance technology equipment with capacity-building measures to encourage other countries to adopt elements of its cyber governance regime show its efforts have a receptive audience among authoritarian and authoritarian-leaning regimes. Aside from facilitating the spread of rule by law systems akin to its own, China's attempts to shape international law will gain more impact as it is able to form coalitions of like-minded authoritarian states and challenge initiatives from the United States and its democratic allies and partners.

Appendix I: Extraterritorial Provisions and Countermeasures in Chinese Laws

Table 1: Select Chinese Laws with Extraterritorial Provisions

Title and Date	Extraterritorial Provisions
Data Security Law (2021)	Article 2 indicates the law applies to data processing activities outside China that harm “national security, public interests, or the lawful rights and interests of individuals or organizations of the People’s Republic of China.”
Personal Information Protection Law (2021)	Article 3 of the law states that it applies to all entities that handle the personal information of individuals within China’s borders. Article 40 contains a data localization provision mandating that data containing personal information gathered within China be stored in China. Article 42 establishes a blacklist and other punitive measures for foreign companies that violate the law (potentially including those outside China), potentially limiting or altogether banning their ability to access Chinese personal data. Article 43 establishes retaliatory measures against countries that adopt discriminatory measures against China. Article 53 requires any “personal information processor” outside of China to establish a dedicated entity or appoint a representative within China to be responsible for relevant matters of personal information protection.
Hong Kong National Security Law (2020)	Article 38 extends the jurisdiction of the law to individuals who are not residents of Hong Kong and applies to broadly defined “offenses” conducted outside of Hong Kong, including “secession,” “subversion,” “terrorism,” and “collusion with foreign forces.”
Antiterrorism Law (2015, amended 2018)	Article 11 asserts that the PRC exercises jurisdiction over terrorist activity committed against the government, citizens, or organizations of the PRC located outside China’s territory. Article 71 of the law authorizes counterterrorism operations outside China’s borders.
Cyber Security Law (2017)	Article 75 provides an extraterritorial application of the law stipulating that any foreign entities that hack or interfere with any critical information infrastructure causing “serious consequences” will incur legal liability. Article 75 authorizes the Public Security Bureau to impose sanctions, freeze assets, or “take other necessary punitive measures” against entities in breach of the law.
Antimonopoly Law (2007)	Article 2 extends the applicability of the law to “monopolistic conducts” outside of China that may have the effect of eliminating or restricting competition in China’s domestic market.

**Table 1: Select Chinese Laws with Extraterritorial Provisions—
Continued**

Title and Date	Extraterritorial Provisions
<p>Chinese Criminal Law (1979, amended 2021)</p>	<p>Article 7 applies this law to citizens of the PRC outside China's territory. Article 8 states that this law may be applied to foreigners outside China's territory if the crime committed carries a minimum three-year imprisonment term in China unless the conduct was legal where the crime was committed. Article 10 states that breaches of the law committed outside China's territory may still be investigated, and in some cases punished, even if the offender had already been tried outside China.</p>

Source: Various.²¹⁷

**Table 2: Chinese Laws and Regulations Establishing Reciprocal Measures
against Economic Restrictions**

Title and Date	Countermeasures Established
<p>Foreign Trade Law (1994, amended 2016)</p>	<p>Article 7 in the 2016 revision allows for countermeasures to be adopted by China in response to discriminatory, prohibitive, or restrictive measures taken by another country with respect to trade.</p>
<p>Foreign Investment Law (2020)</p>	<p>While meant to improve the environment for foreign investment and business, article 40 of the law allows reciprocal measures against restrictions on or perceived discrimination against Chinese investors abroad. Ambiguous language awards regulators broad discretionary powers in granting (or blocking) market access.</p>
<p>Unreliable Entity List (2020)</p>	<p>The Unreliable Entity List aims to impose costs on foreign companies that restrict market transactions with Chinese firms, organizations, or individuals to comply with foreign sanctions and blacklists. It creates a working mechanism to designate foreign entities and take punitive measures against them.</p>
<p>Export Control Law (2020)</p>	<p>The law unifies China's previously fragmented export control regime into a single, comprehensive framework. It applies to dual-use, military, and nuclear items as well as to other goods, technologies, and services related to national security. The law provides a basis for export controls to protect the PRC's "national security and interests." Article 48 also allows for reciprocal measures to be taken in response to foreign governments' export controls.</p>
<p>Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures (2021)</p>	<p>The rules are designed to deter what the Chinese government perceives as unjustified extraterritorial application of foreign law, such as secondary sanctions. The rules establish a working mechanism to investigate extraterritorial measures, which may result in a prohibition to comply with said measures.</p>

Table 2: Chinese Laws and Regulations Establishing Reciprocal Measures against Economic Restrictions—Continued

Title and Date	Countermeasures Established
Data Security Law (2021)	The law enhances state authority over the collection, use, and protection of data in China. Article 26 allows for “equal countermeasures” to be taken when a foreign country enacts any measure deemed “discriminatory” or “restrictive” with respect to investment or trade related to data or technology for data development and utilization.
Anti-Foreign Sanctions Law (2021)	The law officially intends to provide a legal framework for countersanctions and other measures against foreign countries that impose sanctions on China. In practice, the law acts as a blocking statute, a retaliatory regime, and proactive sanctions legislation rolled into one.
Draft Personal Information Protection Law (2021)	Article 43 of the law contains clear retaliatory provisions. It allows for countermeasures to be taken if the PRC deems any “country or region” to have taken discriminatory prohibitions, limitations, or other measures against the PRC in the area of personal information protection.
Foreign Relations Law (2023)	The law outlines the PRC’s official foreign policy framework and goals and delegates the foreign affairs authority of various Party-state organs. Articles 32 and 37 lay out the PRC’s intent to strengthen capacity for “protecting overseas interests,” while Chapter III codifies the PRC’s ambitions to “preserve” and “reform” the international order. ²¹⁸

Source: Adapted from Katja Drinhausen and Helena Legarda, “China’s Anti-Foreign Sanctions Law: A Warning to the World,” *Mercator Institute for China Studies*, June 24, 2021; China Law Translate, “Foreign Relations Law (2023),” June 28, 2023.

Appendix II: International Space Law Frameworks

In addition to each country's national space legislation, a state's space activities are governed by various UN resolutions that went into force in the decade following the passage of the 1967 Outer Space Treaty. Unlike countries such as Japan or the UK,* China lacks an overarching, comprehensive domestic space law that delineates the rights and responsibilities of its institutions in space.²¹⁹ This is likely due to the lack of need for such a law, given that there are comparatively few actors in the Chinese space industry.²²⁰ Due to the absence of such a law, the legal framework for Chinese space activity falls to the international space conventions that China is a party to through the UN.²²¹ China is a signatory to the four most widely adopted treaties governing actions in space, detailed below.

Space Governance Architecture

- Space governance architecture consists of agreements between nations concerning exploration, sovereignty claims, the placement of weapons of mass destruction, and state supervision of their space entities.²²² Space law has evolved as a piecemeal series of treaties, primarily through two UN agencies: the UN Office of Outer Space Affairs (UNOOSA) and the UN Committee on the Peaceful Uses of Outer Space (COPUOS).
- **The 1967 Outer Space Treaty** bans the stationing of weapons of mass destruction in outer space, prohibits military activities on celestial bodies, and details legally binding rules governing the peaceful exploration and use of space.²²³
- **The 1968 Rescue Agreement** provides that countries shall take all possible steps to rescue and assist astronauts in distress and promptly return them to their launching country and that countries shall aid launching countries in recovering space objects that return to earth outside the territory of the country from which they were launched.²²⁴
- **The 1972 Liability Convention** provides that a country shall be liable to pay compensation for damage caused by its space objects to the surface of the earth or to aircraft and liable for damage due to its faults in space.²²⁵
- **The 1976 Registration Convention** requires countries to furnish the UN with specific details about each launched space object.²²⁶

A fifth treaty, the Moon Treaty, was entered into force in 1984 but has seen limited support, with only 18 nations party to the agreement. Major space-capable nations, such as the United States, Russia, and China, are not party to the agreement, which would have provided for an international regime responsible for

*For a full list of nations' domestic space laws and regulations, see the United Nations Office for Outer Space Affairs' list of National Space Laws.

Space Governance Architecture—*Continued*

exploitation of resources on the Moon and other celestial bodies.²²⁷

The Rescue Agreement, Liability Convention, and Registration Convention all act to elaborate on provisions of the Outer Space Treaty.²²⁸

The current legal regime that governs space does very little to constrain nations' actions apart from direct, kinetic interference with their space vehicles and a prohibition on the placement of weapons of mass destruction.²²⁹ Current space law also falls short of addressing issues such as those posed by falling space debris or resource extraction from celestial bodies.²³⁰ Current international law in space does not impose any meaningful restrictions on China's or other nations' actions in space, especially when compared to other areas of international law, such as maritime activities.²³¹

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