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China and international economic dispute settlement: disaggregating the state

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ABSTRACT

Most studies take a unitary state-centric approach to assessing China's relationship with international economic law. In contrast, we provide a more nuanced approach that assesses variation in China's engagement. We examine the role of different Chinese state and non-state actors, considering their interests, ideological frames, institutional contexts, and relation to state power. We illustrate our analytic framework by examining China's response to and engagement with international dispute settlement systems in three areas: international commercial arbitration, international trade dispute settlement, and investor–state arbitration. Our approach is important for global cooperation in discrete policy areas so that the West does not 'other' China in simplistic, binary terms.

INTRODUCTION

China's economy changed significantly as it became integrated with the global market. As China's role in international business, trade, and investment expanded, so did its engagement with international economic law, institutions, and dispute settlement mechanisms. This article approaches China's engagement in a different way than other scholarship. Rather than assessing China as a single unit of analysis, we aim to open the black box of China (to the extent possible in a non-transparent Party-State) and assess the roles of different Chinese actors in China's adaptation to and engagement with international economic dispute settlement. Our more nuanced approach examines different Chinese actors' varying interests, ideas, and the institutional contexts in which they work, including their relation to centralized power in the Party-State. Our approach is important for analytic and normative reasons.

Analytically, these factors shape China's responses and contributions to transnational legal ordering in different fields of international economic law. We apply our framework to three economic law subject areas. One field—international commercial arbitration—involves private actors pursuing their interests and playing dominant roles in that institutional context. A second field—international

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trade dispute settlement—is formally state-to-state, but also engages Chinese businesses, lawyers, and academics, in addition to specialized government officials. A third field—international investment arbitration—is a hybrid one that directly involves both state officials and private actors. In all three fields, Chinese actors invested in transnational legal orders have largely supported and contributed to international dispute settlement practices, while also having impacts on them. Yet the contributions and impacts vary across subject areas. The rise of geopolitical tensions and the securitization of economic policy had important effects in China, as it has had elsewhere. However, the encroachment of national security officials and perspectives also varies across policy domains, and different actors retain prominence, depending on the field and the issue.

This article builds on significant fieldwork in China and our contacts with members of Chinese international economic law networks over time.[1] The first section explains our analytic framework of transnational legal ordering through which we disaggregate the Chinese state. It assesses key factors affecting how different Chinese actors engage in different legal fields—namely, their interests, ideas, institutional contexts, and relations to centralized power in the Party-State. Next, we apply the framework to three areas of international economic dispute settlement, which show variation in light of the different actors and institutional contexts engaged: international commercial arbitration, international trade, and international investment. We then conclude regarding the advantages of our approach from both analytic and normative perspectives regarding China. The article provides the framework for further study, including a book in process.[2]

TRANSNATIONAL LEGAL ORDERING: DISAGGREGATING THE STATE

Transnational legal ordering

Most accounts of China and international economic law focus on China as a unitary state, as if law and legal ordering come only from the centre with defined state interests. Our approach, in contrast, focuses on processes of norm-making and practice involving a much broader range of actors whose roles and impact vary over time, by issue area, and by geographic location within China. The framework of transnational legal ordering is helpful because it disaggregates the state to examine diverse actors across international and domestic contexts.[3] It investigates the actors' interests, their ideas, and the institutions in which they operate. Centralized authorities set overall foreign-related policies, but the policies' generality leaves room for diverse actors to shape implementation and policy development.

Transnational legal ordering is not static, unidirectional, or uniform. Actors import, export, resist, adapt, and repurpose norms, with government officials, businesses, legal and other professionals, academics, and others serving as intermediaries. Conflicts arise not only between states but also among state agencies and constituencies across levels of social organization, sometimes producing transnational legal ordering in only parts of a nation-state (eg in cities and regions). Grasping China's roles therefore requires an approach that foregrounds the heterogeneity of actors, their interests, ideas, and institutional contexts in different issue areas.

Disaggregating China: interests, ideas, and institutional contexts

To assess the response of China to international and transnational dispute settlement, we examine groups of Chinese actors who engage in different legal fields, their varying interests, the norms

[1] Empirical work by the authors includes Gregory Shaffer and Henry Gao, 'China's Rise: How it Took on the U.S. at the WTO' (2018) 2018 University of Illinois Law Review 115. We have done less work in international investment law than the other two domains, but among our aims is to spur further study of these legal fields, among others, in relation to China.

[2] Ji Li and Gregory Shaffer, *Transnational Legal Ordering and China: Disaggregating the State* (forthcoming, CUP).

[3] See, eg, Terence C Halliday and Gregory Shaffer, *Transnational Legal Orders* (Cambridge University Press 2015).

and ideas they bring with them, and the domestic and international institutional contexts in which they operate, including their connections to centralized power in the Party-State.

Interests of Chinese actors

Varying interests of Chinese actors affect their interactions with other parties engaged with international and transnational legal ordering in specific subject areas. We generalize regarding the objectives that key actors typically pursue.

State actors

In China's interactions with international and foreign legal communities, state actors play a crucial role. Seeking to advance their careers, these actors follow developments in official policies. Yet the authoritarian state is fragmented, and these actors do not operate in perfect unity to pursue a single set of clearly defined national interests.[4] Even under Xi Jinping's recentralization of power, policymaking and implementation must be delegated, as no leader governs alone. Regime durability rests on power sharing among a critical mass of the ruling elites,[5] and delegation creates agency problems and conflicts of interest among powerholders with overlapping jurisdictions.

While their specific interests vary, Chinese government officials generally seek to expand their authority. They may cooperate over broad policy goals, but bureaucratic and career incentives shape how they interpret and implement policy. In a fragmented authoritarian state where power is divided both horizontally among agencies responsible for different subject matters and vertically between the central government and provincial and local governments, and can overlap, high-level government bureaucrats seek to guard their jurisdiction and potentially expand it. When issues cut across multiple subject areas, agencies frame them in light of officials' interests, whether to expand departmental influence or avoid responsibility.[6]

Because China is deeply integrated into international and transnational regimes, many officials now participate in transnational processes, especially in economic and regulatory spheres. Engagement occurs through multilateral venues such as the World Trade Organization (WTO) and the United Nations Commission on International Trade Law, regional initiatives like the Regional Comprehensive Economic Partnership (RCEP), and bilateral arrangements including investment treaties and Belt and Road Initiative (BRI) projects. These linkages mean that diverse state actors, often with competing goals, shape how China interacts with different transnational legal ordering processes.

Varying interests of agencies influence this engagement. For example, while agencies overseeing foreign trade, particularly the Ministry of Commerce (MOFCOM), benefit from stable international relations governed by predictable and robust international rules that support economic growth, agencies tied to defence and national security strengthen their domestic authority from escalated geopolitical tensions. In short, the diverse and sometimes competing interests of Chinese state actors are important factors that affect China's participation in and responses to international and transnational legal ordering processes.

Business actors

Millions of entrepreneurs have driven China's economic growth and integration into the world economy. While state-owned enterprises (SOEs) pioneered major outbound investments in

[4] Lee Jones and Shahar Hameiri, *Fractured China: How State Transformation Is Shaping China's Rise* (Cambridge University Press 2021) (an application related to our approach in international relations, with case studies that include finance under the Belt & Road Initiative); Andrew C Mertha, '"Fragmented Authoritarianism 2.0": Political Pluralization in the Chinese Policy Process' (2008) 200 China Quarterly 995.

[5] Anne Meng and others, 'Authoritarian Power Sharing: Concepts, Mechanisms, and Strategies' (2023) 26 Annual Review of Political Science 153, 154.

[6] Wenyan Tu and Ting Gong, 'Bureaucratic Shirking in China: Is Sanction-based Accountability a Cure?' (2022) 249 China Quarterly 259, 261–265.

resource extraction and infrastructure development, privately owned Chinese businesses, as well as foreign-owned businesses, have long been central to China's international trade and investment. In areas such as international commercial arbitration and international investment and trade law, business firms directly or indirectly engage with transnational legal ordering.

Although the Xi era has tightened Party control over business,[7] most Chinese firms at the interface with transnational legal ordering still primarily pursue commercial interests.[8] They are especially affected by transnational economic governance and engage with it directly and indirectly, through expanding in-house counsel and government relations teams, and through organizing industry associations.

Lawyers

The legal profession, virtually nonexistent at the end of the Cultural Revolution, expanded rapidly once the state recognized private legal practice. Today, China's bar boasts more than 830,000 members and 45,000 law firms.[9] Although subject to stringent regulation and often advantaged by ties to state actors and Party-State power,[10] Chinese lawyers, including legal professionals at international law firms in China,[11] generally pursue higher income and professional recognition.

Legal academia

Chinese law schools operate as quasi-government institutions, and legal scholars are in many ways state employees with high job security and stable, if modest, salaries. Within academia, they generally pursue status through publication and policy engagement, often working with officials on legislation, which has become an important part of the lawmaking process. Legal scholars also provide consulting and research services when understaffed government agencies encounter complex or novel issues, giving experts in international economic law meaningful influence over China's participation in international and transnational legal ordering.

Like scholars elsewhere, Chinese legal scholars sometimes supplement their income through professional services. For instance, by August 2024, law teachers and researchers accounted for more than 20 per cent of the over 680 commercial arbitrators at the Beijing Arbitration Commission, one of the largest arbitration commissions in China.[12]

Chinese actors' ideational frameworks

Chinese actors operate within an ideational context that, as John Campbell notes, exerts two distinct types of influence on behaviour and preferences: cognitive and normative.[13] Cognitive components, often 'virtually invisible to the actors themselves',[14] provide schemas and scripts that 'specify cause-and-effect relationships'[15] and 'influence the way a particular phenomenon is

[7] Kasper Ingeman Beck and Kjeld Erik Brødsgaard, 'Corporate Governance with Chinese Characteristics: Party Organization in State-Owned Enterprises' (2022) 250 China Quarterly 486.

[8] Xiaojun Li and Ka Zeng, 'To Join or Not to Join? State Ownership, Commercial Interests, and China's Belt and Road Initiative' (2018) 92 Pacific Affairs 5.

[9] Ping Lin, '我国律师已达83万人, 司法部：将继续深化律师制度改革' ['China Now Has 830,000 Lawyers; The Ministry of Justice Says It Will Continue to Deepen Reforms of the Lawyer System'] [2025] *The Paper* <https://www.thepaper.cn/newsDetail_forward_31568509> accessed 14 December 2025.

[10] See, eg, Rachel E Stern and Lawrence J Liu, 'The Good Lawyer: State-led Professional Socialization in Contemporary China' (2020) 45 Law & Social Inquiry 226, 229.

[11] Rachel E Stern and Su Li, 'The Outpost Office: How International Law Firms Approach the China Market' (2016) 41 Law & Social Inquiry 184.

[12] Data collected from the official website of Beijing Arbitration Commission, Beijing Zhongcai Weiyuanhui (北京仲裁委员会) [Beijing Arb. Comm'n] <https://www.bjac.org.cn/arbitrator/list> accessed 26 March 2025.

[13] John L Campbell, 'Institutional Analysis and The Role of Ideas in Political Economy' (1998) 27 Theory and Society 377, 378.

[14] ibid 381.

[15] ibid 384.

categorized and interpreted'.[16] Normative components pertain to values and attitudes towards objectives and actions. Together, these components form default orientations towards international and transnational law and practice.

Two salient frameworks illustrate this context: Sinicized Marxism and social norms rooted in Confucian heritage. Sinicized Marxism blends Marxist-Leninist doctrine with Chinese traditions and Maoist thought.[17] It provides a materialistic, dialectic worldview,[18] taught universally in high schools and universities,[19] and saturates official discourse, creating default interpretive frames for complex social, economic, and political phenomena.

A sizable body of literature has also assessed social cognitive differences between Chinese and Western cultures, maintaining that distinct normative and cognitive priors developed from differences in social contexts. In this scholarship, Chinese, accustomed to 'high-context communications, collective interests, and hierarchical power distributions', prefer indirect dispute resolution.[20] Under traditional Chinese norms, litigation can trigger complex social meanings, and disputants often avoid litigation to signal desirable attributes to third parties.[21] Importantly, the Party-State can instrumentalize these norms for its own purposes when it promotes 'harmony' through the Party and the promotion of mediation or hybrid dispute resolution methods.[22]

One of course must be wary of cultural stereotypes. Chinese law scholars have long emphasized various political and institutional variables that shape the inclination of Chinese disputants to litigate.[23] Nonetheless, if one accepts, as do we, that societies shape individual perceptions and behaviour, and thus the pursuit of 'interests', then attention to these normative and cognitive priors is important.

Actors, however, may deviate from default frames through socialization with external or subcultural groups, including engagement in international and transnational networks, and investment in transnational institutional knowledge and practice. China's economic liberalization has incentivized many state and non-state actors to acquire expertise in international economic law and practice, aligning their personal interests with sustaining transnational legal regimes. Those without such investments are more likely to remain indifferent or resistant to them.

State actors

The exposure of Chinese officials to the outside world varies significantly. In some functional areas, such as trade, finance, and foreign affairs, it is not uncommon to find globally experienced, English-speaking, senior officials. In 2014, around 18 per cent of minister-level Chinese officials had studied abroad, and 9 per cent had even earned foreign degrees.[24] Those numbers have kept growing. By 2023, 'over twenty per cent of Central Committee members (the 370 most powerful

[16] Tatiana Kostova and Kendall Roth, 'Adoption of An Organizational Practice by Subsidiaries of Multinational Corporations: Institutional and Relational Effects' (2002) 45 Academy of Management Journal 215, 217.

[17] See, eg, Chenshan Tian, 'Mao Zedong, Sinization of Marxism, and Traditional Chinese Thought Culture' (2019) 7 Asian Studies 13, 15–35.

[18] Ji Li, 'The Evolving Rule of Law with Chinese Characteristics and Its Impacts on the International Legal Order' (2023) 8 UC Irvine Journal of International, Transnational, and Comparative Law 151, 168.

[19] Shuqin Xu, 'Ideology and Politics in Junior-Secondary Chinese History Textbooks: Comparing Two Versions Published in the 21st Century' (2021) 51 Compare: Journal of Comparative and International Education 448, 454; Liu, Xu, Zhao Xiantong and Hugh Starkey, 'Ideological and Political Education in Chinese Universities: Structures and Practices' (2023) 43 Asia Pacific Journal of Education 586.

[20] Jeanne M Brett, *Negotiating Globally: How to Negotiate Deals, Resolve Disputes, and Make Decisions Across Cultural Boundaries* (Jossey-Bass Inc Pub 2007) 4.

[21] Jianfu Chen, *Chinese Law: Context and Transformation* (Martinus Nijhoff 2008) 9–10.

[22] Rogier Creemers and Susan Trevaskes, 'Ideology and Organisation in Chinese Law: Towards a New Paradigm for Legality' in Rogier Creemers & Susan Trevaskes (eds), *Law and the Party in China: Ideology and Organisation* 16, 1, 7 (Cambridge University Press 2020).

[23] Randall Peerenboom and Xin He, 'Dispute Resolution in China: Patterns, Causes and Prognosis' (2009) 4 East Asia Law Review 1, 16–24; Carl F Minzner, 'China's Turn Against Law' (2011) 59 American Journal of Comparative Law 935.

[24] Liu Bin and others, 'Zhongguo "Haigui" Congzheng Xianzhuang Baogao "Zenme dao Zhengfu li de Ren Yuelaiyue Shao"' ('中国"海归"从政现状报告"怎么到政府里的人越来越少"') ['Report on the Current Situation of China's "Returnees" in Politics:

party officials in China) have had some foreign education, mostly at Western universities'.[25] Such officials are more invested in existing transnational legal orders, have better knowledge of the 'rules of the game' on the international stage and in transnational processes, and are relatively more inclined to play by or build on those rules.[26] In contrast, in other state organs such as state security and defence, high-ranking officials rarely engage with foreign peers, leaving their internalized, background, domestic ideational assumptions and frames largely intact.

Business actors

Chinese business actors, like their global counterparts, are adaptive and pragmatic. Foreign firms have long transmitted external practices and expectations into China.[27] For decades, China's drive to 'modernize' its domestic business sector has often taken Western firms as reference models,[28] and since the 1990s, the values and norms of neoclassical economics have steadily permeated the Chinese business culture. For example, all the top three Chinese business schools are now led by deans with US PhDs,[29] and almost all the faculty members of the top private business school graduated from US business-related PhD programs.[30] Such scholars have helped to inculcate free-market values among Chinese business elites for three decades, and these internalized values and norms are reinforced as Chinese companies expand abroad.[31]

Lawyers and legal scholars

A significant cohort of Chinese legal scholars, students, and practitioners has pursued advanced training in US and European law schools.[32] Foreign credentials, knowledge about foreign and international laws, and foreign language skills bolster career advancement and earnings, making such investment attractive. Over time, this investment and the accompanying professional socialization encourage greater acceptance of mainstream international and transnational legal norms among Chinese lawyers and academics. Yet this community is diverse. Some scholars embrace perspectives akin to Third World Approaches to International Law (TWAIL), emphasizing sovereignty, inequality, and global power asymmetries, and thus engage international regimes with a more critical, Global South-oriented lens.[33]

Domestic and international institutional contexts

To understand how China interacts with and potentially shapes international and transnational legal ordering, one must also consider the institutional contexts in which Chinese actors operate. For our purposes, institutions include formal 'rules of the game' such as statutes and regulations, informal structures such as social conventions, and organizations with their cultures and decision-making

"Why Fewer Are Working in the Government?"'] *Nanfang Zhoumo* (南方周末) [*S. Weekend*] (17 April 2014) <http://www.ccg.org.cn/archives/26213> accessed 14 December 2025.

[25] 'Many of China's Top Politicians Were Educated in the West' *The Economist* (11 March 2023) <https://www.economist.com/china/2023/03/09/many-of-chinas-top-politicians-were-educated-in-the-west> accessed 14 December 2025. Moreover, Singapore has also attracted large numbers of Chinese bureaucrats for training and education. Bertram Lang, 'Authoritarian Learning in China's Civil Society Regulations: Towards a Multi–Level Framework' (2018) 47 Journal of Current Chinese Affairs 147, 156.

[26] Lang (n 25) 157.

[27] Yuhua Wang, *Tying the Autocrat's Hands: The Rise of the Rule of Law in China* (Cambridge University Press 2015).

[28] Beck and Brødsgaard (n 7).

[29] Current deans of business schools at Tsinghua University, Shanghai Jiaotong University, and Peking University received their PhDs from University of Pennsylvania, Harvard, and UCLA, respectively.

[30] For a list of the faculty's profiles, see the school's official website, see 'Jiaoshou/Yanjiu' ('教授/研究') ['Professor/Research'] *CKGSB* (长江商学院) <https://www.ckgsb.edu.cn/faculty> accessed 27 March 2025.

[31] Ji Li, *The Clash of Capitalisms?: Chinese Companies in the United States* (Cambridge University Press 2018) 66, 74.

[32] Pu Yuanshi (卜元石), 'Zhongguo Fake Xuesheng Liuxue Deguo Sishinian de Huigu yu Zhanwang—Jiyu Boshixuewei Lunwen de Kaocha' ('中国法科学生留学德国四十年的回顾与展望——基于博士学位论文的考察') ['Review and Prospects of Chinese Law Students Studying in Germany for Forty Years—An Investigation Based on Doctoral Thesis'] (2018) 2 Faxue Yanjiu (法学研究) [Legal Studies] 3, 5.

[33] Yilin Wang, 'Locating TWAIL Scholarship in China' (2023) 13 Asian Journal of International Law 318.

processes. We differentiate institutions from ideas and interests in that institutions are the structured sets of rules, norms, processes, and social conventions within which actors pursue their interests in light of their ideas, whether to seek economic gain, political power, or other goals.

Chinese state and non-state actors operate within different domestic and international institutional contexts that affect behaviour and preferences. Domestic institutional contexts vary across issue areas and geographically within China. In areas with weak or transitional domestic institutions, we hypothesize greater Chinese reception of transnational legal ordering processes.

The robustness of international institutions matters as well. Well-established international institutions exhibit path dependence and are more likely to resist reshaping when Chinese actors' interests and preferences diverge. Yet that very resilience can spur efforts to pursue alternative international and transnational legal ordering, especially amid intensifying US–China rivalry.

Actors' relation to Party-State power

Chinese actors' ability to shape law and practice also depends on the clarity of centralized state policy and on the actors' relation to Party-State power, especially at the apex (consisting of Xi and the Politburo's Standing Committee). The closer the actor is to the centre, the greater the influence. Where centralized state policy is more open-ended or ambiguous, actors have more flexibility.

Within the government, state security-related, and military departments sit near the core of Party-State power. A government agency's power can also shift by issue and over time. As geopolitics and 'national security' rise in prominence, security-related agencies have expanded authority, while economic regulators have lost relative ground, though they remain important in international economic law domains.

Because the regime's domestic legitimacy partly rests on sustained economic growth, the interests of actors who help generate that growth frequently converge with those of state officials. The Party has deliberately co-opted private entrepreneurs, inviting some to join the CCP and others to participate in policy consultation, thereby drawing a subset of business elites into the circle of Party-State power.[34] Lawyers likewise occupy heterogeneous positions vis-à-vis the state: some maintain close ties with government organs while others are more at arm's-length, yet all operate under tight regulatory supervision.[35] Legal scholars' proximity also varies; those in prominent academic posts often have former students in government, command substantial resources, and regularly advise on legislation and policy.

CHINA AND INTERNATIONAL ECONOMIC DISPUTE SETTLEMENT

We apply our analytic framework to assess the participation of different Chinese actors in transnational legal ordering in three areas of international economic dispute settlement, respectively, international commercial arbitration, state-to-state trade dispute settlement, and investor–state arbitration.

International commercial arbitration

International commercial arbitration exemplifies a successful transnational legal ordering that has produced a fairly settled transnational legal order.[36] The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('the New York Convention'), now ratified by 172 states, commits courts to recognize and enforce arbitration agreements and foreign arbitral awards,

[34] See, eg, Bruce J Dickson, 'Integrating Wealth and Power in China: The Communist Party's Embrace of the Private Sector' (2007) 192 China Quarterly 827; Yue Hou, *The Private Sector in Public Office: Selective Property Rights in China* (2019).

[35] Lawrence J Liu and Rachel E Stern, 'State-Adjacent Professionals: How Chinese Lawyers Participate in Political Life' (2021) 247 China Quarterly 793.

[36] Yves Dezalay and Bryant G Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press1998); Alec Stone Sweet and Florian Grisel, *The Evolution of International Arbitration: Judicialization, Governance, Legitimacy* (Oxford University Press 2017) 45

subject to narrow exceptions.[37] Domestic arbitration statutes implement the convention and are often based on the UNCITRAL Model Law on International Commercial Arbitration (last amended in 2006),[38] which provides a standardized framework that promotes cross-country consistency and harmonization. This international architecture has supported a booming global practice. Hundreds of arbitral institutions operate around the globe, and law firms compete fiercely for this lucrative and fast-growing business.

China has become part of this well-established transnational legal order, reflecting the country's integration into the global economy. Historically suspicious about arbitration and formal dispute settlement, the Chinese government did not join the New York Convention until 1986, a few years after China's adoption of its 'reform and opening up' policy.[39] Although the Chinese government established in 1956 a quasi-government arbitral body for resolving international trade disputes—the Foreign Trade Arbitration Commission within the China Council for the Promotion of International Trade (CCPIT)—it only handled an average of around two cases a year for the first 20 years, and most of these disputes were settled.[40] When the reformers in the Party-State began to expand foreign trade outside the Soviet bloc, this primitive institution was dismissed as highly inadequate. Foreign trade partners and investors pressed Chinese officials to permit the arbitration of transnational disputes under the New York Convention framework.[41] In response, central and local officials in charge of trade and investment affairs began to actively promote international commercial arbitration.

An important government official, Ren Jianxin, played a crucial role at the early stage. As a leader of CCPIT in the early 1980s, Ren was on the frontline of China's reconnection with the Western world and strongly supported the ratification of the New York Convention. Soon after his promotion to vice president of China's supreme court, Ren published an article pledging strict compliance with the treaty obligation of enforcing foreign arbitral awards.[42] As soon as he was further promoted to Vice Chairman of the CCP Central Commission for Political and Legal Affairs, the most powerful Party body overseeing the Chinese judiciary, the National People's Congress added a proposal for an arbitration law on its agenda.

The legislation coincided with Deng Xiaoping's Southern Tour in 1992, which spurred a major shift in the broader political environment and created a rare consensus among Chinese ruling elites to structurally reform the economy and elevate the role of the market.[43] Within that broader context, the central government restructured the system for commercial arbitration with the enactment of the PRC Arbitration Law in 1994. While retaining some unique Chinese characteristics, such as non-recognition of *ad hoc* arbitration, the statute embodied key principles underlying the UNCITRAL Model Law and established a decentralized service market for commercial arbitration.

While the drafters of the law envisioned a self-regulated market, the Arbitration Law delegated the supervision of commercial arbitration to qualified municipal governments.[44] Municipal arbi-

[37] United Nations, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")' *UNCITRAL* <https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2> accessed 27 March 2025.

[38] According to UNCITRAL, 126 jurisdictions (both national and sub-national) in 93 countries have enacted legislation based on the Model Law, as of January 2025. United Nations, 'Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006' *UNCITRAL* <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status> accessed 27 March 2025.

[39] Bruce R Schulberg, 'China's Accession to the New York Convention: An Analysis of the New Regime of Recognition and Enforcement of Foreign Arbitral Awards' (1989) 3 Journal of Chinese Law 117, 117.

[40] Guo Xiaowen (郭晓文), 'Tequ Zhongcai Zaoqi Pian Yi —1980 Niandai de Tequ Shewai Zhongcai' ('特区仲裁早期片忆——1980年代的特区涉外仲裁') ['Memories of the Early Days of SAR Arbitration—Foreign-Related Arbitration in the SAR in the 1980s'] *Shenzhen Shangbao* (深圳商报) [*Shenzhen Business Daily*] (13 August 2020) <https://www.scia.com.cn/home/index/newsdetail/id/2869.html>.

[41] Ji Li and Weixia Gu, 'From Soviet Roots to Global Standards? The Evolution and Impact of China's Commercial Arbitration Regime, China and Transnational Legal Order' (Li & Shaffer, eds., forthcoming, 2026).

[42] Ren Jianxin, *Fifty Years of Political Legal Work* [政法工作五十年] (2005) 115.

[43] Suisheng Zhao, 'Deng Xiaoping's Southern Tour: Elite Politics in Post-Tiananmen China' (1993) 33 Asian Survey 739.

[44] Weixia Gu, 'Piercing the Veil of Arbitration Reform in China: Promises, Pitfalls, Patterns, Prognoses, and Prospects' (2017) 65 American Journal of Comparative Law 779, 802.

tration commissions multiplied, resulting in significant variation in their operation and organization. Today, CIETAC and commissions based in major Chinese cities compete fiercely for arbitration cases, including international ones.[45] However, outside these commercial hubs, municipality-based commissions remain non-competitive and rely heavily on local government support, giving rise to institutional divergence in China's arbitration field.[46]

Transnational disputes between Chinese and foreign parties, given their complexity and higher stakes, usually generate higher fees for arbitration commissions, lawyers, and arbitrators. To attract such cases—typically concentrated in the commercial hubs—arbitration commissions and arbitrators must signal capacity through foreign-language proficiency, overseas training, and practice experience in international law firms. This signalling has played out particularly in China's leading arbitration centres in Beijing, Shanghai, and Shenzhen. For instance, out of around 686 arbitrators serving at the Beijing Arbitration Commission (BAC) by August 2024, over 90 per cent are bilingual, most listing English as a working language. Their transnational links and investment in relevant institutional knowledge shape their ideas and views about arbitration and dispute resolution.

Like their foreign peers, many Chinese legal academics also work as arbitrators, where the practice is lucrative and enhances their status. At the BAC, for example, roughly 136 of its 686 arbitrators (over 20 per cent) were legal scholars as of August 2024,[47] and until recently its directors were drawn from eminent law professors.[48] The scholars' dual roles, exposure to foreign legal communities, and relatively liberal outlook help explain their support for institutional convergence with Western models. Much Chinese arbitration scholarship assumes the superiority of international arbitration norms, particularly those embodied in leading international arbitral institutions and the UNCITRAL Model Law,[49] and this scholarship has contributed to the transnational legal ordering of commercial arbitration in China.

Chinese law schools have also become active participants in the Willem C. Vis International Commercial Arbitration Moot. Over the past two decades, top schools such as the China University of Political Science and Law and the University of International Business and Economics have fielded highly successful teams.[50] Their participation deepened the students' understanding of and investment in international commercial arbitration and fostered connections with the global arbitration community.

Judges overseeing commercial arbitration in major cosmopolitan areas tend to be more open to transnational influence on account of international economic integration. Because Ren Jianxin regarded the reform of commercial arbitration as one of his major accomplishments, the Supreme People's Court (SPC) under his leadership, where he eventually became president, gave strong institutional support. Since the 1994 Arbitration Law, the SPC has filled statutory gaps and clarified ambiguities by drawing extensively on international norms and practice.[51] To ensure compliance with the New York Convention and cultivate an arbitration-friendly environment, the

[45] China International Economic and Trade Arbitration Commission (ed), *Annual Report on International Commercial Arbitration in China (2023–2024)* (China International Economic and Trade Arbitration Commission 2024).

[46] Fuyong Chen, 'Weijing de Zhuanxing: Zhongguo Zhongcai Jigou Xianzhuang Yu Fazhan Qushi Shizheng Yanjiu' ['Unfinished Transformation: An Empirical Study on the Current Status and Development Trends of Chinese Arbitration Institutions'] (Law Press China 2009).

[47] Data collected from the official website of Beijing Arbitration Commission, 'Zhongcaiyuan Mingce Zaixian Chaxun' ('仲裁员名册在线查') *Beijing Zhongcai Weiyuanhui* (北京仲裁委员会) <https://www.bjac.org.cn/arbitrator/list> accessed 27 March 2025.

[48] For more details on the selection of directors, see the official website of Beijing Arbitration Commission, 'Dibajie Zhongcai Weiyuanhui Zhuren ji Weiyuan' ('第八届仲裁委员会主任及委员') *Beijing Zhongcai Weiyuanhui*(北京仲裁委员会) <https://www.bjac.org.cn/page/gybh/organize.html> accessed 27 March 2025.

[49] As noted earlier, China's arbitration law does not fully reflect UNCITRAL's Model Law, but most of those engaged in international commercial arbitration have broadly supported such convergence for foreign-related commercial arbitration.

[50] For instance, these universities won awards in the 30th Moot Court. For more details, see the official website at '30th Vis Moot' *International Commercial Arbitration Moot* <https://www.vismoot.org/previous-moots/30th-vis-moot/> accessed 27 March 2025.

[51] Gu (n 44) 802.

SPC created a review mechanism requiring lower courts to seek its approval before nullifying foreign-related awards.[52] Also, retired Chinese judges often serve as arbitrators, supplementing their modest salaries. Moreover, recent judicial reform significantly increased judges' workload, further incentivizing a collective preference for arbitration. In this dynamic, Chinese courts generally have adopted a 'pro-arbitration' stance, paralleling trends in developed countries.[53]

Regulatory authority over arbitration has been fragmented. The Legislative Affairs Office of the State Council (later merged into the Ministry of Justice) wielded limited influence because the Arbitration Law effectively delegated oversight to about 280 municipalities.[54] Some of these municipal governments (such as Beijing and Shanghai) are much more powerful than the Legislative Affairs Office and the Ministry of Justice. Top leaders of Beijing and Shanghai are members of the powerful CCP Politburo, which does not include the Minister of Justice.[55] When commissions in major commercial hubs challenged CIETAC's monopoly over foreign-related arbitration in China, the central regulator sided with the municipalities, opening the market to competition. Decentralized regulation and the resulting market-driven competition have encouraged the field's partial convergence with international practices.

This convergence is most evident at China's top-tier institutions. Following China's ratification of the New York Convention, arbitration commissions in major cities have aspired to be global players and innovated to attract cases. For instance, the Shenzhen Court of International Arbitration (SCIA) competes with and learns from its neighbouring arbitration institutions in Hong Kong. While most other arbitration institutions in China remain under the supervision and control of municipal governments, SCIA reformed its governance structure by establishing a governing board with one-third foreign directors—an unprecedented move aimed at ensuring its independence from the Shenzhen government.

Leading Chinese arbitration institutions also exert considerable influence over other actors in the field. In response to the initial reticence of some state actors to 'embrace arbitration as an effective substitute for courts', staff at the top-tier arbitral commissions made great efforts to convert them 'to the arbitral cause'.[56] Practices and reforms adopted by leading arbitration commissions also diffuse to lower-tier ones. Since SCIA's governance restructuring, for instance, several other arbitration institutions in China have adopted similar models, gradually diluting government control and enhancing their credibility in the arbitration market.[57]

The adoption of transnational arbitral norms and practices has not been uniform across China, which is predicted by transnational legal ordering theory.[58] Outside the commercial hubs, arbitration institutions face limited market demand and must rely extensively on local government support.[59] Independence from state control is therefore not a priority. Some have even been officially transformed into quasi-government agencies.[60]

Variation is also evident in the composition of cases across different arbitration commissions. While CIETAC arbitrates many foreign-related cases, most commissions, especially those outside

[52] Shen Wei and Shang Shu, 'Tackling Local Protectionism in Enforcing Foreign Arbitral Awards in China: An Empirical Study of the Supreme People's Court's Review Decisions, 1995–2015' (2020) 241 China Quarterly 144, 144.

[53] Weixia Gu, 'Hybrid Dispute Resolution Beyond the Belt and Road: Toward A New Design of Chinese Arb–Med (–Arb) and Its Global Implications' (2019) 29 Washington International Law Journal 117, 171; Susan Finder, 'How China's Supreme People's Court Supports the Development of Foreign-Related Rule of Law' (2024) 8 China Law & Society Review 62, 83.

[54] Gu (n 53) 141.

[55] More information about the current Politburo members can be found at 'Zhongguo Gongchandang di 20 Jie Zhongyang Lingdao Jigou' ('中国共产党第20届中央领导机构') ["The 20th Central Leadership Organization of the Communist Party of China"] *Xinhua wang* (新华网) <http://www.news.cn/politics/leaders/> accessed 28 March 2025.

[56] Stone Sweet and Grisel (n 36) 50.

[57] Li and Gu (n 41).

[58] Terence Halliday and Gregory Shaffer, 'Researching Transnational Legal Orders' in Halliday and Shaffer (eds), *Transnational Legal Orders* (2015) 497 ("the monochromatic shading of all of a state's territory as a signatory to a treaty or not belies the differentiation repeatedly asserted for TLOs, … whether in the other cities, regions, or rural areas within a state").

[59] Chen (n 46).

[60] ibid.

the commercial hubs, rarely encounter transnational disputes. The percentage of foreign-related arbitration cases correlates with the inclination to adopt transnational norms. We therefore observe stronger convergence in major arbitration centres (such as in Beijing, Shanghai, and Shenzhen) than in less internationalized regional and local centres.

While China's top-tier commercial arbitration commissions feature diffusion of transnational legal norms and practices, they have also begun to shape transnational ordering. On the demand side, Chinese disputants account for a growing share of the international commercial arbitration market. For cultural affinity and cost considerations, they 'show a preference for PRC dispute resolution forums, including courts and arbitration.'[61] In the highly competitive international market, this shifting client demand has induced supply-side changes, with Chinese arbitrators and institutions expanding their presence and reshaping the field's composition. For instance, CIETAC has evolved from a Soviet-modelled, largely dormant dispute resolution body prior to the reform era into one of the world's most preferred arbitral institutions. The growing preference for Chinese venues is further evidenced by the rising status of Beijing and Shanghai as arbitration seats, both of which are now ranked among the top ten globally.[62] Moreover, arbitrators with a Chinese background and international expertise enjoy a competitive advantage in transnational cases involving Chinese parties. While demographic shifts in the field may not immediately disrupt the power structure, over time, they will erode the dominance of a Western elite international arbitration community historically lacking diversity—not only in terms of race and gender, but also nationality.[63]

Chinese disputants, arbitrators, and other arbitration professionals function as institutional carriers whose preferences are modified by both transnational legal norms and domestic normative systems. As their participation grows, they are likely to influence discourse and collective preferences in the field. One salient example is the Chinese inclination—especially among disputants and arbitration elites—to integrate mediation into arbitration processes. This orientation is poised to reinforce the global movement towards hybrid dispute-resolution mechanisms and expanded use of mediation, an agenda on which the Chinese government has been increasingly active.[64]

Chinese actors have also promoted alternative arbitration institutions to compete with the existing ones. For instance, in 2015, the Chinese government and 50 African countries officially endorsed a proposal by the China Law Society, the largest professional organization for Chinese lawyers and legal academics, to establish the China–Africa Joint Arbitration Center (CAJAC). With six regional centres (three in China and three in Africa), CAJAC 'provides arbitration, mediation, and conciliation services', allowing disputants to 'bypass the jurisdiction of local courts, local arbitration institutions, and other international arbitration institutions.'[65]

Moreover, in 2018, the SPC established the Chinese International Commercial Court (CICC) for 'one-stop multi-tier dispute resolution platforms',[66] prioritizing arb-med integration. As a permanent SPC body, the CICC is staffed by senior judges 'familiar with international laws and

[61] Matthew S Erie and Monika Prusinowska, 'The Future of Foreign Arbitration in the People's Republic of China: Current Developments and Challenges Ahead' (2020) 28 Asia Pacific Law Review 259.

[62] Queen Mary University of London & White & Case (eds), '2021 International Arbitration Survey: Adapting Arbitration to a Changing World' <https://www.qmul.ac.uk/arbitration/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf> accessed 14 December 2025.

[63] See, eg, Susan D Franck and others, 'The Diversity Challenge: Exploring the Invisible College of International Arbitration' (2014) 53 Columbia Journal of Transnational Law 429.

[64] Yun Sun, 'The Purpose and Promise of China's International Organization for Mediation' *Brookings* (6 June 2025) <https://www.brookings.edu/articles/the-purpose-and-promise-of-chinas-international-organization-for-mediation/> accessed 14 December 2025.

[65] Huiping Chen, 'China's Innovative ISDS Mechanisms and Their Implications' (2018) 112 American Journal of International Law 207, 209. For details about the establishment of CAJAC, see Matthew Erie, 'The Soft Power of Chinese Law' (2023) 61 Columbia Journal of Transnational Law 1.

[66] Gu (n 53) 120.

norms and proficient in English and Chinese.'[67] The majority have 'either visited or studied at a university outside mainland China'.[68] The CICC also enlists bilingual foreign experts to participate in adjudication, although they are not official judges.

The CICC has 'designated five Chinese arbitration institutions and two mediation institutions' as part of its 'integrated' dispute resolution platform.[69] This structure exemplifies the SPC's selective borrowing from foreign models, and in particular that of the Singapore International Commercial Court.[70] It was designed in part for BRI disputes.

The expansion of mediation and hybrid dispute resolution, arguably congruent with Confucian social norms prevalent in East Asia, may gain more traction as Chinese actors endorse and institutionalize it.[71] However, we do not expect a significant impact from these Chinese efforts on the mature and robust institutional landscape of international commercial arbitration. While some Chinese actors, such as government officials and arbitration professionals in less developed regions, may favour greater state oversight of arbitral institutions, top-tier commissions, most legal scholars, and other arbitration professionals in China's commercial hubs are invested in the existing transnational legal order, and fierce market competition continues to constrain greater government control over international commercial arbitration. Consequently, China's arbitration-related innovations are unlikely to disrupt the existing transnational legal order. Changes in arbitrator demographics, arbitration venues, and use of mediation will occur, but within established transnational normative and institutional frameworks.

Overall, China's role in international commercial arbitration has grown, but its approach is incremental rather than revolutionary. The system remains variegated, with decentralized commissions interacting differently with local actors, challenging assumptions of a unitary state model. Despite official rhetoric that China will 'actively participate in the creation of international rules' to 'protect [its] sovereignty, security and developmental interests by legal means',[72] dominant Chinese actors in the decentralized field of commercial arbitration have not sought major changes to existing transnational rules, norms, and practices. Highly integrated into the international legal community and invested in its institutional knowledge, these actors have instead embraced prevailing arbitration norms while making measured adjustments, in contrast to other arbitration commissions that remain more localized and resistant to such norms.

This bifurcation is likely to deepen with the recent comprehensive amendment of the Arbitration Law, effective 1 March 2026. The law reflects dual trends. On the one hand, it reaffirms CCP leadership and local government supervision over arbitration, in line with the broader shift in China's political climate.[73] On the other hand, it aligns further with international norms by allowing *ad hoc* arbitration in certain circumstances, permitting foreign arbitration institutions to take cases in free trade zones,[74] and encouraging Chinese commissions to expand their businesses abroad, to cooperate with foreign counterparts and international organizations, and to engage in the making of international arbitration rules.[75]

[67] ibid 163.
[68] ibid.
[69] Ibid 166–67.
[70] Zhengxin Huo and Man Yip, 'Comparing the International Commercial Courts of China with the Singapore International Commercial Court' (2019) 68 International and Comparative Law Quarterly 903.
[71] Gu (n 53) 127.
[72] ibid 168–69.
[73] 'Arbitration Law of the People's Republic of China' (amended Sept. 12, 2025) arts 2, 26 <http://www.npc.gov.cn/npc/c2/c30834/202509/t20250912_447762.html> accessed 14 December 2025.
[74] ibid arts 82, 86.
[75] ibid arts 12, 86.

International trade dispute resolution

The WTO has 166 members accounting for roughly 98 per cent of global trade. Its system of rules reached deep into national systems, involving significant transnational legal ordering. For example, when China joined the WTO, it created an 'Office for the Clean-up of Laws and Regulations'. The Office oversaw the 'cleaning up' of more than 3,000 laws and regulations, including around 1,150 at the central government level, to conform them with China's WTO commitments.[76]

Although China's negotiation to join the GATT started in 1986, the Chinese government made serious efforts to become a member only in the 1990s after reformers prevailed among the ruling elites and undertook systematic market liberalization. Not an original member of the WTO, China had to agree to a stringent Accession Protocol to join the international organization in 2001, following negotiations with the USA and others.

Reformers in the Chinese government used the WTO accession as an opportunity to push through structural economic changes.[77] Some even viewed the WTO as a constitutional moment given its impact on Chinese public law.[78] The WTO, in other words, had effects beyond interstate economic relations; it was about transnational legal ordering.[79]

Upon joining the WTO, the government launched a campaign to generate enthusiasm regarding the accession,[80] including a 'Who Wants to be a Millionaire'-style show hosted by China's national TV station CCTV that tested people's knowledge on WTO issues.[81] The government sponsored the establishment of WTO centres around the country, among other initiatives. Thousands of seminars and books were organized and published on WTO law.[82] Scores of Chinese officials, judges, and scholars came to the USA for training in WTO law, and scores of experts went to teach WTO law in China under technical assistance programmes.[83]

Unlike international commercial arbitration, international trade dispute resolution is state-to-state. It became a highly institutionalized system through the 2010s. Until December 2019, the WTO's dispute settlement system was automatic and binding, with a unique appellate system. Members commonly appealed panel decisions to a seven-member Appellate Body, which created a large and authoritative jurisprudence.

The Appellate Body was authoritative, but also fragile.[84] In December 2019, it ceased to operate when the USA blocked the appointment of new Appellate Body members once the terms of the existing ones expired. As a result, losing parties now can appeal a panel report 'into the void', and the WTO's dispute settlement mechanism is no longer automatically binding unless the disputing parties agree otherwise. Nonetheless, China still uses the WTO dispute settlement system, including pursuant to a binding 'interim' appellate mechanism that it joined.

Because trade dispute resolution before the WTO is inter-state, Chinese government officials play a central role. The state designated MOFCOM as the lead government agency. It is the key intermediary between the WTO and national ministries engaged in domestic policy.[85] Many

[76] 'Zhang Yuqing Interview' in Lu Xiaojie and others (eds), *Rushi Shinian Fazhi Zhongguo* [*10 Years in the WTO, Rule of Law in China*] (2011) 6-11.

[77] See, eg, Yeling Tan, 'Disaggregating "China, Inc.": The Hierarchical Politics of WTO Entry' (2020) 53 Comparative Political Studies 2118, 2119–21.

[78] Tom Ginsburg, 'The Judicialization of Administrative Governance: Causes, Consequences and Limits' in Tom Ginsburg and Albert HY Chen (eds), *Administrative Law and Governance in Asia* (Routledge 2009) 1, 10.

[79] Gregory Shaffer, 'How the WTO Shapes Regulatory Governance' (2014) 9 Regulation & Governance 1, 12.

[80] Yang Guohua, 'China in the WTO Dispute Settlement: A Memoir' (2015) 49 Journal of World Trade 1, 3.

[81] Henry Gao, 'China's Changing Perspective on the WTO: From Aspiration, Assimilation to Alienation' (2022) 21 World Trade Review 342, 344.

[82] Julia Qin, 'Trade, Investment and Beyond: The Impact of WTO Accession on China's Legal System' (2007) 191 China Quarterly 720, 737.

[83] Asian Development Bank, 'Technical Assistance to the People's Republic of China for WTO Membership and Foreign Trade Reform' (2001); Yang (n 83) 3–5.

[84] Gregory Shaffer and others, 'The Extensive (But Fragile) Authority of the WTO Appellate Body' (2015) 79 Law & Contemporary Problems 237, 272–73.

[85] Interview with official, MOFCOM Research Institute (20 July 2016).

MOFCOM officials who participated in China's accession negotiations now hold key positions in the WTO and China's representation before it.

While China's overall trade policy is formulated at the central level, primarily by MOFCOM, effective implementation depends heavily on coordination with other central agencies and, more importantly, the cooperation of local governments. This challenge was well recognized before China's WTO accession, when Working Party members emphasized that WTO commitments must apply uniformly across China's entire customs territory—including special economic zones and other special regions—at all levels of government.[86] Concerns over local deviations led to calls for a mechanism allowing individuals to report non-uniform practices to the central government,[87] which China attempted to address in its very first commitment in its Accession Protocol.[88] The Protocol requires WTO rules to apply nationwide, mandates uniform, impartial, and reasonable administration of trade-related laws, and obliges local measures to conform with WTO obligations, with a reporting channel for inconsistent practices.

Agreement, however, did not guarantee implementation. After accession, China launched an unprecedented education campaign to familiarize officials with WTO rules, yet significant obstacles persisted. Resistance to dispute settlement was rooted in Confucian non-litigation traditions, misperceptions of litigation as a breakdown of diplomacy, and lack of prior experience.[89] Over time, China overcame this 'litigation phobia' through practice, but institutional weaknesses remained. MOFCOM's relatively low bureaucratic rank made it difficult to compel other ministries to comply. Only after WTO cases validated MOFCOM's warnings did it establish authority as the expert on WTO matters. Political considerations also played a role in trade dispute settlement. China's self-identification as a developing country made it reluctant to challenge other developing members despite facing many restrictive measures from those countries. More recently, MOFCOM has had to counterbalance 'wolf warrior' diplomats, whose politically motivated toughness—such as sanctioning European Parliament members immediately after the CAI negotiations—has at times undermined hard-won trade and investment deals negotiated by MOFCOM.

The ministry recruited Chinese lawyers familiar with international legal norms to work on trade disputes, and they became increasingly active.[90] Legal professionals in the MOFCOM socialized in the international trade law field played leading roles in China's trade dispute resolution before and in the shadow of the WTO. Their engagement has facilitated transnational legal ordering in many legal areas in China covered by the WTO, including customs, import relief law, intellectual property law, services regulation, and regulatory standard-setting.[91]

On 20 November 2001, the State Council and the Central Committee of the CCP issued a joint Notice on China's WTO Accession to all ministries and provincial governments, in which they called for Party organs and government organizations to strengthen the study of WTO rules and the training of WTO experts.[92] Other ministries, however, opposed the integration, which spawned 'struggles between pro-trade departments such as MOFCOM and more conservative ministries'.[93] To assist other ministries in aligning with internationally accepted rules, a high-level

[86] *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) para 71.
[87] ibid para 72.
[88] *Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) s 2(A).
[89] 'China's Participation in the WTO: A Lawyer's Perspective' (2007) 11 Singapore Year Book of International Law 41, 72–73.
[90] Shaffer and Gao (n 1) 151.
[91] Gregory Shaffer, *Emerging Powers and the World Trading System: The Past and Future of International Economic Law* (CUP 2021) 25–27, ch 6.
[92] 'Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu Woguo Jiaru Shijie Maoyi Zuzhi Youguan Qingkuang de Tongbao' ['Announcement by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on China's Accession to the WTO'] Zhongbanfa (20 November 2001).
[93] Xiaowen Zhang and Xiaoling Li, 'The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China' (2014) 23 Journal of Contemporary China 143, 158. One practitioner stated, "MOFCOM always stands on the liberal side." Interview with Senior Partner in Beijing, China (25 July 2016).

seminar was organized on WTO issues for provincial governors and ministers in February 2002. President Jiang Zemin delivered the opening speech, urging senior officials to 'study WTO rules … in this new exam', and to 'pass the exam and strive for good results'.[94]

WTO disputes inevitably involved multiple Chinese government agencies and served as a mechanism to potentially bring these agencies into compliance with WTO rules and related international standards and practices. As other agencies became more socialized into the WTO framework, they increasingly began to frame discussions in WTO terms. For example, Peng Jun, one of China's leading international trade lawyers, recalls an instance where an official from the CCP Propaganda Department discussed the implementation of a ruling using WTO treaty interpretation rules.[95] This occurred at a seminar in December 2009 on the implementation of the Appellate Body decision in the *China-Publications* case. Overall, through these processes, MOFCOM leveraged its expertise in WTO rules to enhance its position within China's bureaucratic hierarchy, where it initially held a relatively lower status.

Although the state assumed the central role in WTO trade dispute resolution, Chinese private actors also have strong interests. Given the complexity of WTO trade law and the dominance of the English language in the proceedings, when China became active in litigating WTO disputes, the government always hired a leading foreign law firm to represent it, but paired the firm with a Chinese one pursuant to a bidding process. These foreign lawyers played a role in transnational legal ordering through working with MOFCOM officials and Chinese lawyers to transfer international trade law expertise.

While MOFCOM still employs both foreign and Chinese lawyers in most cases where China is a complainant or respondent, there have been instances where Chinese lawyers handled a case independently.[96] In February 2014, Chinese lawyer Peng Jun became the first to deliver oral arguments directly in a panel hearing, marking a significant milestone for Chinese legal representation in WTO disputes.[97] After that, Chinese lawyers handled some WTO disputes on their own. MOFCOM typically has hired only Chinese lawyers for cases where China is a third party.[98]

Specialized Chinese legal scholars also rose in prominence. MOFCOM organized regular seminars on current WTO cases to which it invited trade law scholars, from whom it occasionally sought advice. Some professors were seconded to MOFCOM as officials for fixed terms, while others were included in MOFCOM delegations to WTO panel and Appellate Body hearings. To promote the WTO's importance for China, the government required international trade law as a mandatory course in Chinese law schools.[99] In the two decades following China's accession, scholars were financially supported by the government to engage in WTO-related research. As a result, Chinese scholars appear to have published more articles and books on international trade law than the rest of the world combined.[100] Despite recent setbacks with the WTO, trade law continues to be a significant area of legal research in China.

Transnational legal ordering processes vary over time. In the 2007 compliance panel in the *EC-Bananas* case, Chinese legal scholar and former MOFCOM official Zhang Yuqing served on

[94] Jiang Zemin, 'Zai Jilie de Guoji Jingzheng Zhong Zhangwo Zhudong' ('在激烈的国际竞争中掌握主动') ['Seize the Initiative Amidst Intense International Competition'] in *Jiang Zemin wenxuan: Disanjuan* (江泽民文选: 第三卷) [*Selected Works of Jiang Zemin: Volume III*] (People's Press 2006) 458; see also Gao (n 81) 344–45.

[95] Peng Jun, 'Wo Yu WTO de Jige Shunjian' ('我与WTO的几个瞬间') ['Several Moments with the WTO'] in Yang Guohua & Shi Xiaoli (eds), *Wo yu WTO: Falüren de Shijiao* (我与*WTO:* 法律人的视角) [*My Experience with the WTO: A Legal Perspective*] (2016) 222.

[96] ibid.

[97] Yang Chen and Peng Jun (杨晨 & 彭俊), *Juebu tuoxie (zhongguo qiye guojijingmao moca anjian jishi)* (绝不妥协(中国企业国际经贸摩擦案件纪实) [*Never Compromise: A Documentary on Chinese Enterprises in International Trade Friction Cases*] (2021) 312.

[98] Interview by Henry Gao with a Chinese lawyer and a former MOFCOM official (26 March 2025).

[99] Shaffer and Gao (n 1) 142.

[100] ibid 130.

a WTO panel,[101] but significant participation of Chinese nationals as panelists in WTO cases did not follow. The relevant lack of Chinese nationals serving on panels reflects, in part, the fact that China was often a party to WTO cases, and nationals do not serve on such panels. While WTO dispute settlement has declined in recent years due to rising geopolitical tensions with the USA and neutering of the system by the USA, China has continued to engage actively in WTO cases, including bringing disputes against the USA during the trade war and cooperating with the E.U. in establishing a Multi-Party Interim Appeal Arbitration Arrangement (MPIA).

At the WTO Appellate Body, a Chinese national served from 2008 until the Appellate Body's suspension of operations in 2019. In 2020, Yang Guohua, a leading law professor at Tsinghua University in Beijing who formerly handled WTO cases in MOFCOM, became one of the initial members of the MPIA, the interim arrangement that a group of WTO members created to hear appeals of cases between them while the Appellate Body is not functioning. Yang served as arbitrator in the first WTO appeal through arbitration following the demise of the Appellate Body at a time when the MPIA was being formally created, in the *Turkey—Pharmaceutical Products (EU)* case.[102]

China's leading WTO scholars are graduates from China's elite law schools, and they couple their degrees with overseas experience. Each of the eight Chinese academics on China's Indicative List of WTO Panelists had studied overseas or been a visiting scholar abroad. Although they have not served on WTO panels—except for Zhang Yuqing—they are part of Chinese networks with which the government engages. Over 40 per cent of international law academics across all of China's law schools have received at least one law degree outside the country.[103] These professors' academic careers became tied to Chinese engagement with the international trade law regime.

Chinese companies and trade associations also have had high stakes in the trade regime because China is the largest exporter in the world. They accordingly built expertise in trade law, which includes issues of intellectual property, customs, import relief, trade sanctions, and trade in services. Larger Chinese companies like Baosteel and Huawei increasingly hired in-house counsel, including trade lawyers, for issues involving antidumping and countervailing duty cases, customs, trade sanctions, and intellectual property matters. In addition, some small and medium-sized companies created industry associations that were independent of the Chinese state to work with private law firms and the government on foreign and domestic antidumping investigations.[104] These trade law cases involve both domestic and international law, and some eventually lead to WTO cases.

MOFCOM introduced an informal process for trade disputes nicknamed the 'Quadrilateral Coordination' mechanism, which involved the cooperation of the central government, local government, industry association, and individual companies.[105] The government was spurred to do so by private businesses and has included business representatives in government delegations to address regulatory barriers.[106] Although WTO panels have become less active, customs law, and antidumping and countervailing duty cases in domestic and foreign proceedings remain active areas of professional practice.[107]

Reflecting the evolving interests of Chinese companies, the government has been actively engaged in the incorporation of new issues such as e-commerce and investment into the WTO. As the world's largest e-commerce market, China benefited greatly from online platforms such

[101] *EC–Bananas Compliance Panel, Note by the Secretariat: European Communities–Regime for the Importation, Sale and Distribution of Bananas, Constitution of the Panel*, WT/DS27/84 (13 August 2007).

[102] *Turkey–Pharmaceutical Products (EU), Arbitration Award*, WT/DS583/ARB25 (25 July 2022).

[103] Anthea Roberts, 'Cross-Border Student Flows and the Construction of International Law as a Transnational Legal Field' in Bryant Garth & Gregory Shaffer (eds), *The Globalization of Legal Education: A Critical Perspective* (OUP 2022).

[104] Shaffer and Gao (n 1) 162 (on the development of independent trade associations to address antidumping restrictions on trade).

[105] Henry Gao, 'Public–Private Partnership: The Chinese Dilemma' (2014) 48 Journal of World Trade 983.

[106] See, eg, Mertha (n 4) 995, 1008–11 (on the role of a Chinese company owner as a "policy entrepreneur" to get the government to address EU "child safety standards" on his industry's lighters).

[107] See, eg, 'Number of Trade Remedies Cases Since 1997' *MOFCOM* <https://cacs.mofcom.gov.cn/cacscms/view/statistics/ckajtj> accessed 14 December 2025.

as Alibaba. Hoping to expand its global reach, Alibaba aggressively promoted its Electronic World Trade Platform (eWTP) concept,[108] where it launched an e-commerce initiative along with the WTO and the World Economic Forum in late 2017, with the tacit support of the Chinese government.[109] While that initiative waned after Alibaba fell out of favour, China maintains a major role in e-commerce negotiations,[110] joining the WTO Joint Statement Initiative on E-Commerce when talks began in January 2019 and signing the text upon its conclusion in July 2024—even though, ironically, the USA, which originally launched the initiative, declined to participate.

The Chinese government actively participated in the WTO trade dispute resolution. By the end of 2019, China was the WTO's third most active party in dispute settlement (after the USA and the European Union [EU]). Mark Daku and Krzysztof Pelc use textual analysis to show that 'across a single decade, China effectively doubled its average level of influence over panel and AB rulings', affecting the meaning of WTO legal norms.[111] Given its relative success in WTO dispute settlement, especially in import relief cases used against Chinese products, China became a supporter of the institution. When the system was up for review, the Chinese government proposed only incremental reforms to it.

Paradoxically, it was the USA that neutered the WTO dispute settlement system, in large part as a reaction to the success of transnational legal ordering in China. China learned to use the WTO dispute settlement system effectively against the USA.[112] One can view China's engagement with the WTO dispute settlement as part of a transnational legal ordering process that had the unintended effect of upending the trade legal order itself because of US concerns.

Following the demise of the WTO Appellate Body, China, the EU, and 13 other WTO members[113] committed to an *ad hoc* system of appeals between them through arbitration—known as the MPIA.[114] Under it, the parties agree to use arbitration for appeals until an appellate mechanism is again operational. The MPIA's members appointed a group of WTO experts to serve on these appeals, modelled in part after the Appellate Body system, which included law professor Yang Guohua.[115] As of July 2025, China was a party to seven of 13 MPIA disputes, six of them as a respondent and one as a complainant.[116]

China accepted binding third-party adjudication for trade commitments in other international agreements as the state and non-state actors became more comfortable with trade dispute settlement. For instance, China joined the RCEP, which is the world's largest regional free trade agreement and provides for third-party trade dispute resolution that is 'broadly similar to the mechanism for dispute settlement under the DSU'.[117]

[108] Henry Gao, 'Digital or Trade? The Contrasting Approaches of China and US to Digital Trade' (2018) 21 Journal of International Economics 297, 308–10.

[109] 'WTO, World Economic Forum and eWTP Launch Joint Public–Private Dialogue to Open Up E-commerce for Small Business' *WTO* (13 December 2017) <https://www.wto.org/english/news_e/news17_e/ecom_11dec17_e.htm> accessed 14 December 2025.

[110] Henry Gao, 'Across the Great Wall: E-Commerce Joint Statement Initiative Negotiation and China' in Shin-yi Peng, Ching-Fu Lin and Thomas Streinz (eds), *Artificial Intelligence and International Economic Law: Disruption, Regulation, and Reconfiguration* (CUP 2021) 295–318.

[111] Mark Daku and Krzysztof J Pelc, 'Who Holds Influence Over WTO Jurisprudence?' (2017) 20 Journal of International Economics 233, 250.

[112] Shaffer (n 91).

[113] European Commission Press Release IP/20/538, EU and 15 World Trade Organization Members Establish Contingency Appeal Arrangement for Trade Disputes (26 March 2020). The membership has since grown from the initial 16 to 27 WTO Members after the Philippines joined in 16 May 2024.

[114] Joost Pauwelyn, 'WTO Dispute Settlement post 2019: What to Expect?' (2018) 22 Journal of International Economics 297.

[115] 'The WTO Multi-party Interim Appeal Arrangement Gets Operational' *European Commission* (3 August 2020) <https://www.eeas.europa.eu/delegations/world-trade-organization-wto/wto-multi-party-interim-appeal-arrangement-gets-operational_en?s=69> accessed 14 December 2025.

[116] 'Multi–Party Interim Appeal Arbitration Arrangement (MPIA)' *WTO Plurilateral* <https://wtoplurilaterals.info/plural_initiative/the-mpia/> accessed 27 March 202.

[117] Massimo Lando, 'Enhancing Conflict Resolution 'ASEAN Way': The Dispute Settlement System of the Regional Comprehensive Economic Partnership' (2022) 13 Journal of International Dispute Settlement 98, 101. The DSU is the WTO's Dispute Settlement Understanding.

With the increased salience of geopolitical competition and national security, trade policy has shifted towards a focus on greater state autonomy, especially following the election of President Trump in the USA. This trend has created an institutional opening for other Chinese actors to deploy greater coercion and power-based bargaining, using China's huge market as leverage to advance other policy interests, such as regarding Taiwan, Tibet, the South China Sea, and investigations over the COVID-19 outbreak. China's national security constituencies have become more engaged in trade policies, which parallels developments in the USA and elsewhere. Direct involvement of other Chinese powerholders and the incorporation of their concerns have eroded the dominance of MOFCOM professionals in this area. Nonetheless, even the implementation of China's national security policies can depend on the composition of involved state actors, such as whether they are led by MOFCOM or security agencies.[118]

China has become increasingly coercive in its use of trade as a tool to pressure third countries that are economically vulnerable. These actions violate WTO law, such as Chinese measures imposed against Australia,[119] South Korea,[120] Lithuania,[121] Norway,[122] and other countries deemed to offend China's core interests. In parallel, it has developed leverage to counter US pressure on it, such as to threaten to ban the export of critical minerals needed in major US industries, including the military.[123] As the geopolitical environment continues to deteriorate, we expect to see further decline of the power of MOFCOM professionals and greater influence of national defence and security constituencies. These changes will complicate China's interactions with the international legal community in the international trade law field, including its use of dispute settlement.

Overall, China accepted significant constraints on its sovereignty in joining the international trade regime and accepting binding dispute settlement. The cohort of officials, scholars, and practitioners who heavily invested in engaging with international trade rules and norms remains supportive of the multilateral international trade legal order. Chinese actors with transnational ties played leading roles. Rising geopolitical tensions between the USA and China, combined with a radical shift towards protectionism under the Trump administration, have undermined the legal regime, leading to disenchantment among Chinese trade officials.[124] When trade issues overlap with national security concerns, as they increasingly do, other Chinese state actors intervene, and their influence will in the long run erode the liberal trade law order, which has been in a crisis mode since Trump's first presidency and appears doomed by his second term, at least as regards trade relations with the USA. China has attempted to uphold the WTO regime with its other trading partners, where possible, and deepen relations through regional and bilateral trade agreements, such as part of the BRI.

Transnational legal ordering (and disordering) processes are dynamic, creating (and curtailing) opportunities for different actors within China. Although the era of active international trade litigation involving China before a binding dispute settlement process may have largely passed, Chinese actors' engagement with international trade dispute settlement has had significant effects on their acceptance of and approach to dispute settlement in economic fields.

[118] Weijia Rao, 'Transnational Legal Ordering and National Security-Driven Trade and Investment Law' in Li and Shaffer (eds) (n 2) (on file with authors) (noting differences where MOFCOM or security agencies implement such policies).

[119] Jianli Yang, 'China–Australia Trade War Shows No Sign of Abating' *The Diplomat* (15 February 2023) <https://thediplomat.com/2023/02/china-australia-trade-war-shows-no-sign-of-abating/> accessed 14 December 2025.

[120] Yukyung Yeo, 'The Limits of Pressure: China's Bounded Economic Coercion in Response to South Korea's THAAD' (2023) 77 Australian Journal of International Affairs 276, 277.

[121] Andrew Higgins, 'In an Uneven Fight with China: a Tiny Country's Brand Becomes Toxic' *N.Y. Times* (21 February 2022) <https://www.nytimes.com/2022/02/21/world/europe/china-lithuania-taiwan-trade.html> accessed 14 December 2025.

[122] James Reilly, 'China's Unilateral Sanctions' (2012) 35 Washington University Law Review 121, 128.

[123] 'The Sophisticated China Squeeze' (2025) The Economist 31.

[124] Gao (n 81).

Investor–state arbitration

China's approach to investment dispute settlement involves a different, though at times overlapping, constellation of actors than in trade or commercial arbitration, shaping distinct outcomes. Transnational legal ordering in this field has produced Chinese convergence towards what had been mainstream Western approaches, much as in the international trade regime. Like international trade dispute settlement, the field developed significantly in the 2000s. Rather than acting as a revisionist power, China again aligned with prevailing investment law norms. Still, China has been far less active in the use of formal investment dispute settlement than in the trade regime and in international commercial arbitration, although Chinese actors have been parties in more cases in recent years. Unlike in the trade regime, Chinese businesses may directly bring investment claims. They have done so against developing countries, unlike MOFCOM in trade cases, which illustrates how different institutional settings provide opportunities to different sets of Chinese actors.

International investment law is governed mainly by bilateral investment treaties (BITs), supplemented by customary international law. These treaties impose obligations on host states regarding the treatment of foreign investors, covering issues such as expropriation, discrimination, and the 'fair and equitable treatment' of investors. According to the United Nations Conference on Trade and Development (UNCTAD), more than 2,200 investment treaties remain in force out of over 3,800 signed.[125] No overarching multilateral investment treaty sets forth substantive obligations, unlike the WTO's framework for trade.

Most BITs contain arbitration clauses through which states consent to investor–state dispute settlement (known as ISDS) before arbitral tribunals.[126] This mechanism allows investors from one state party to bring claims directly against another state party for treaty breaches. The institutional context of ISDS differs from both state-to-state dispute settlement and private international commercial arbitration. Modelled on commercial arbitration but involving private actors suing states, ISDS is often viewed as a hybrid public–private order.[127] Claims directly engage private investors, counsel, and arbitrators as well as state officials. The claims that Chinese investors have brought reflect this difference in institutional settings, both in terms of the limited number of cases (in comparison with commercial arbitration) and the identity of the respondents (in comparison with international trade dispute settlement).

By granting private investors standing, ISDS opens avenues for actors outside government that cannot directly participate in trade dispute resolution under the WTO, yielding a different portfolio of complainants and respondents. Because the system enables investors to seek monetary remedies in arbitration under ICSID or other rules, it attracted many claimants and fostered a market for the financing of claims, known as 'third-party funding.'[128] To date, investors have filed over 1,300 ISDS cases against host countries, including many developing countries.[129] The practice is lucrative for counsel and arbitrators, though involving significantly fewer opportunities compared to commercial arbitration and dominated by a cohort of 'power brokers' with deep European and American roots.[130]

[125] UNCTAD, 'International Investment Agreements Navigator' *UNCTAD Investment Policy Hub* <https://investmentpolicy.unctad.org/international-investment-agreements> accessed 27 March 2025.

[126] Todd Allee and Clint Peinhardt, 'Delegating Differences: Bilateral Investment Treaties and Bargaining Over Dispute Resolution Provisions' (2010) 54 International Studies Quarterly 1, 2–6.

[127] See, eg, Zachary Douglas, 'The Hybrid Foundations of Investment Treaty Arbitration' (2003) 2003 British Yearbook of International Law 151, 151–55; Anthea Roberts, 'Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System' (2013) 107 American Journal of International Law 45, 50.

[128] Maya Steinitz, 'Third-Party Funding: Investment Arbitration' in Anne Peters & Rüdiger Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford UP 2008) (article updated June 2021) <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3475.013.3475/law-mpeipro-e3475> accessed 14 December 2025.

[129] UNCTAD (n 125).

[130] Malcolm Langford, Daniel Behn and Runar Hilleren Lie, 'The Revolving Door in International Investment Arbitration' (2017) 20 Journal of International Economics 301; Sergio Puig, 'Social Capital in the Arbitration Market' (2014) 25 European Journal of International Law 387.

ISDS cases typically follow one of three sets of international rules: those of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the ICSID Convention) under the World Bank,[131] the *ICSID Additional Facility* open to countries that are not parties to the convention,[132] and the *UNCITRAL Arbitration Rules*.[133] With 154 contracting states, ICSID rules are the most commonly used, and the ICSID system is distinguished by its defined arbitration procedures and relatively more institutionalized administration. Some investor–state disputes are also arbitrated before traditional commercial arbitration centres, subject to their rules, such as the International Chamber of Commerce and the Stockholm Chamber of Commerce, among others.[134] CIETAC and the arbitration commissions in Beijing and Shenzhen have taken some steps to attract investor–state arbitration, but they continue to face considerable obstacles compared to incumbent institutions.[135]

Since its first BIT with Sweden in 1982, China has become second only to Germany in the number of ratified BITs. In total, China has signed 147 BITs (108 in force) and 31 other treaties with investment provisions (28 in force).[136] These agreements sometimes complement its trade pacts—for example, the 2009 China–ASEAN Agreement on Investment followed earlier agreements between the parties for Trade in Goods (in 2005) and Trade in Services (in 2008)—and form key legal infrastructure for the BRI and China's economic expansion around the world.[137]

Chinese state actors spearheaded China's engagement with the international investment arbitration regime. China's post-Cultural Revolution reforms began with a focus on attracting foreign direct investment (FDI) to China.[138] Primary bureaucratic jurisdiction over this domain was assigned to MOFCOM and its institutional predecessors, whose mandate centres on promoting trade and investment. Accordingly, MOFCOM typically leads the negotiation and drafting of international investment agreements.[139] The Ministry of Foreign Affairs (MFA) also participates, but with a broader portfolio that balances economic objectives with diplomatic and political considerations. Even so, MFA officials, like their MOFCOM counterparts, are highly exposed to, and invested in, international rules and norms.

These government officials have led an incremental evolution towards China's acceptance of ISDS. This evolution reflects not only shifts in central government priorities as China became more outward-oriented, but also changing coalitions of the Chinese actors involved, including Chinese SOEs and private companies investing abroad, and a variegated socialization of Chinese government and non-government actors with prevailing international norms within particular institutional contexts.

[131] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States [ICSID Convention] (Washington, 18 March 1965), 575 U.N.T.S. 159 [hereinafter ICSID Convention].

[132] This facility was created for states that are not signatories of the Convention in order for them to resolve investment disputes with investors of a signatory state, or vice versa. International Centre for Settlement of Investment Disputes [ICSID], ICSID/11, 'Additional Facility Rules' (April 2006).

[133] United Nations Commission on International Trade Law [UNCITRAL], 'UNCITRAL Arbitration Rules (as revised in 2010)' (2011).

[134] Christopher F Dugan and others, *Investor–State Arbitration* (OUP 2008) 79–80.

[135] Manjiao Chi, 'The ISDS Adventure of Chinese Arbitration Institutions: Towards a Dead End or a Bright Future' (2020) 28 Asia Pacific Law Review 279 (noting challenges of reputation, neutrality, and Chinese law regarding sovereign immunity, enforcement, and the lack of arbitrability of administrative claims against the state, among others).

[136] UNCTAD (n 125).

[137] Gregory Shaffer and Henry Gao, 'A New Chinese Economic Order?' (2020) 23 Journal of International Economics 607.

[138] Li (n 31) 12.

[139] Shangwubu Zhuyao Zhize nei she Jigou he Renyuan Bianzhi Guiding (商务部主要职责内设机构和人员编制规定) [Provisions on the Main Responsibilities, Internal Organizations and Staffing of the Ministry of Commerce] (promulgated by the State Council, no. 29, Apr. 25, 2003, effective Aug. 12, 2005) (annulled by Guowuyuan guanyu Xuanbu Shixiao yipi Guowuyuan Wenjian de Jueding (国务院关于宣布失效一批国务院文件的决定) [Decision of the State Council on Declaring the Invalidity of a Group of State Council Documents], no. 68, 31 August 2015, effective 7 September 2015), 000014349/2003-00236 <https://www.gov.cn/zhengce/content/2005-08/12/content_8167.htm> [hereinafter Provisions on the Main Responsibilities].

The first generation of BITs, from roughly 1982 to 1999, provided foreign investors with either no direct access or very limited access to ISDS.[140] In the early years of the post-Cultural Revolution era, Chinese government officials and legal scholars, coming out of decades of isolation from the Western world, were unfamiliar with ISDS. The treaty partners introduced the regime to Chinese officials during negotiations. The Federal Republic of Germany, when signing its BIT with China in 1983, specifically noted that amendment of ISDS provisions should be discussed as soon as China ratified the ICSID Convention.[141] Other BIT negotiations in these early years also contemplated China's ratification of the ICSID Convention, which the Chinese officials agreed to consider.[142] The pressure from foreign governments placed ISDS on China's foreign policy agenda and drew the attention of Chinese international law scholars, who began debating the issue in 1985.[143] Their views diverged: some favoured embracing the international institution, while others emphasized safeguarding sovereign prerogatives. At this stage, the sovereignty-protective position largely prevailed, which also aligned with the prevalent approaches among developing countries of the time.[144] Even China's signing of the ICSID Convention in 1990 did not immediately alter its ISDS practices. The signing was likely a signal to foreign investors of the government's commitment to opening up amid the sharp post-1989 decline in investment.[145]

In the years following Deng's Southern Tour, reformers spearheaded significant economic liberalization, pursuant to which China signed a growing number of BITs. This second generation of BITs, roughly from between 1997 and 2011, began to incorporate greater investor-protection features, including ISDS.[146] This shift occurred within the context of ongoing structural economic liberalization within China and increasing Chinese outbound FDI, providing new opportunities for different sets of Chinese actors. This period witnessed the rise of government officials within the bureaucratic ranks who were steeped in prevailing liberal norms guiding international trade and investment policy.

China's third generation of BITs, consisting of most BITs concluded since 2007, adopts more expansive ISDS provisions, aligning more closely with the existing US approach reflected in the 2004 US Model BIT.[147] This major shift coincided with the rise of Wang Qishan, a leading figure in the reformist faction, who joined the Politburo in 2007 and became vice premier overseeing finance and commerce.[148] Wang reportedly directed MOFCOM negotiators to speed up BIT negotiation with the US government, which had insisted on applying its model BIT, including the ISDS part, and have it signed within a year.[149] MOFCOM officials often worked with Chinese lawyers and academics, including veterans of China's WTO litigation teams.[150] The resulting treaty architecture positioned Chinese firms, including SOEs, to make fuller use of investor–state protections.

As China ratified more BITs with ISDS, it caught growing scholarly attention. Scholars engage in extensive research on investment law, and they follow and participate in academic debates in

[140] Congyan Cai, 'China–US BIT Negotiations and the Future of Investment Treaty Regime: A Grand Bilateral Bargain with Multilateral Implications' (2009) 12 Journal of International Economics 457, 461–62.

[141] An Chen, 'ICSID与中国：我们研究"解决投资争端国际中心"的现实动因和待决问题' ['ICSID and China: Realistic Motives and Pending Issues in Studying the ICSID'] in 中国特色话语 [*Discourse with Chinese Characteristics*] (2018) 1423.

[142] ibid 1433.

[143] ibid 1435.

[144] Jarrod Hepburn and others, 'Investment Law Before Arbitration' (2020) 23 Journal of International Economics 929, 932.

[145] Tyler Cohen and David Schneiderman, 'The Political Economy of Chinese Bilateral Investment Treaty Policy' (2017) 5 The Chinese Journal of Comparative Law 110.

[146] Yuwen Li and Cheng Bian, 'China's Stance on Investor–State Dispute Settlement: Evolution, Challenges, and Reform Options' (2020) 67 Netherlands International Law Review 503.

[147] Li and Bian (n 146) 518–20.

[148] '王岐山简历' ['Biography of Wang Qishan'] 中华人民共和国中央人民政府 [*Central People's Gov't of the PRC*] (17 March 2018) <https://www.gov.cn/guoqing/2018-03/17/content_5275066.htm> accessed 14 December 2025.

[149] An Chen and Qingling Li, '国际投资法中"身份混同"问题之宏观剖析与中国应对' ['A Macroscopic Analysis of the Issue of "Identity Confusion" in International Investment Law and China's Response'] in 中国特色话语 [*Discourse with Chinese Characteristics*] (2018) 1559, 1583.

[150] Interview with Chinese lawyer in Beijing, China (25 July 2016).

China and in the West, such as regarding the evolution of China's BITs, doctrinal developments, and ISDS reform options. Leading Chinese scholars in this field have consulted with the government since the 1980s.[151] Few have advocated major reforms of the existing ISDS regime.

Given the nature of investor–state arbitration, where the state can be a respondent and subject to substantial damages, Chinese officials have adopted a more top-down, state-centric approach to this legal regime than to international commercial arbitration. MOFCOM has long sought to curb investment treaty breaches by tightening oversight over subnational governments, though early efforts had only limited effects. With the enactment of the PRC Foreign Investment Law in 2019, MOFCOM established a centralized complaint-and-mediation mechanism, which strengthened its capacity to monitor and address potential treaty violations by government bodies.[152]

As of 31 December 2024, foreign investors had brought only nine cases against China, and Chinese investors had initiated just twenty ISDS claims against their host states.[153] Most of these cases were filed more recently, indicating growing Chinese engagement. Since 2020, Chinese investors submitted 13 (of the 20) ISDS cases, and foreign investors have filed four of the nine total cases against China.

Compared to international commercial arbitration, a different, but overlapping set of Chinese actors occupy the field of investment arbitration. MOFCOM officials defend China when it is sued. The ministry often hires domestic law firms and academics to assist it in these cases, but it has also hired foreign firms. For example, among the six ICSID cases brought against China, three involve foreign law firms.[154] The list of law firms that MOFCOM uses for investment cases[155] overlaps significantly with the list that it has for WTO cases,[156] with over half of the designated law firms appearing on both lists. When Chinese investors sue foreign governments, they use outside counsel, whether Chinese or foreign. This approach mirrors the strategy Chinese actors have taken in trade law disputes and again illustrates transnational legal ordering processes. These cases potentially can implicate China's foreign relations with the host government, so that the Chinese investors will need to be cognizant of government sensitivities.

The small number of cases against China is likely attributable to the following factors. First, earlier generations of Chinese BITs contain restrictions on the use of ISDS, though the restrictions may be voided by a more liberal interpretation of the most-favoured-nation clause.[157] Second, foreign investors often prefer to settle investment disputes with the Chinese government for 'fear of retaliation, harm to existing investments, and loss of potential investment opportunities'.[158] Third, MOFCOM's strengthened supervision might have prevented some investment disputes from escalation. Only two cases have been fully litigated against China, respectively brought by investors from Singapore and Korea. The Chinese government won both. China also settled one case with an investor from Malaysia, and other cases are listed as 'pending' or 'discontinued'.

[151] Chen (n 141) 1433.

[152] Zhenyu Xiao, 'Institutionalizing Investor–State Dispute Prevention in China' (2024) 117 AJIL Unbound 253.

[153] For an updated list of the cases, see (n 125).

[154] The three cases are *Goh Chin Soon v People's Republic of China*, ICSID Case No. ARB/20/34; *Hela Schwarz GmbH v People's Republic of China*, ICSID Case No. ARB/17/19 (registered); and *Ansung Housing Co., Ltd v People's Republic of China*, ICSID Case No. ARB/14/25. See the info on the foreign law firms involved at <https://icsid.worldbank.org/cases/case-database>.

[155] '2024 Nian Shangwubu Lüshi Shiwusuo Ku Zhaobiao Xiangmu—Guoji Maoyi he Touzi Zhengduan Ziku—Guoji Touzi Falü Shiwu (Jingnei)' ('2024年商务部律师事务所库招标项目—国际贸易和投资争端子库—国际投资法律事务(境内)') ['2024 Ministry of Commerce Law Firm Database Tender Project—International Trade and Investment Dispute Sub-database—International Investment Legal Affairs (Domestic Firms)'] *Zhonghua Renmin Gongheguo Shangwubu* (中华人民共和国商务部) [*Ministry of Commerce of the People's Republic of China*] (29 October 2024) <https://tfs.mofcom.gov.cn/gzdt/art/2024/art_5611d1a581334152ab1c792812f3a5e3.html> accessed 14 December 2025.

[156] ibid.

[157] Ming Du, 'Explaining China's Approach to Investor–State Dispute Settlement Reform: A Contextual Perspective' (2022) 28 European Law Journal 281, 292.

[158] See, eg, Gu (n 53) 145–50; Mark McLaughlin, 'Global Reform of Investor–State Arbitration: A Tentative Roadmap of China's Emergent Equilibrium' (2018) 6 Chinese Journal of Comparative Law 73.

This stands in sharp contrast to the large number of WTO cases brought against China. One explanation for this disparity is that in WTO disputes, foreign firms can shield themselves behind their own governments, since such disputes are formally litigated only between states. By contrast, investment disputes must be initiated directly by the investor in its own name. Moreover, in investment arbitration, the Chinese central government appears only as the formal respondent, while the real conflict often lies between the foreign investor and local authorities accused of misconduct. As a result, the risk of retaliation against the investor is much more immediate and tangible.

Chinese investors filed an increasing number of BIT-based claims against host states in recent years, the vast majority targeting developing countries. This portfolio of cases looks markedly different from cases pursued by China in the inter-state trade regime. Whereas China has never brought a WTO claim against a developing country (other than Turkey, which was brought in conjunction with related claims against the EU), Chinese investors have initiated ISDS proceedings against developing countries across every region, including Ghana and Nigeria in Africa; Trinidad and Tobago in the Caribbean; Mongolia in Central Asia; Ukraine in Eastern Europe; Saudi Arabia and Yemen in the Middle East; Ecuador, Mexico, and Peru in Latin America; and Cambodia, Laos, and Vietnam in Southeast Asia.

Compared to international commercial arbitration, however, Chinese outbound investors and foreign investors in China have not created the same bottom-up pressure for institutional engagement. A few Chinese law firms have circulated client memos introducing ISDS, but Chinese investors' knowledge gaps, limited capacity,[159] and the political sensitivity of investor–state claims have constrained demand for legal services. This has slowed the development of an ISDS market in China. Chinese arbitral institutions had largely ignored investment arbitration until 2016, when SCIA revised its rules to cover 'investor–state disputes as one of its arbitrable matters'.[160] Rather than innovating locally, SCIA adopted wholesale the *UNCITRAL Rules* for *ad hoc* investment treaty arbitration.[161] Since then, CIETAC and BAC have followed suit.[162]

Unlike the relatively stable international regime for commercial arbitration, ISDS now faces a legitimacy crisis. The USA, the EU, and many developing countries have questioned its fairness and efficiency.[163] Governments have proposed various reforms within an ISDS review process in UNCITRAL, ranging from replacing investment arbitration with a permanent court and an appellate mechanism to relying solely on domestic courts or mediation mechanisms, such as ombudspersons.[164]

In these discussions, Chinese officials—primarily in MOFCOM and the MFA—have defended the system's utility. They have resisted 'paradigmatic reform' that would abolish direct investor access, but have been receptive to narrower reforms, such as a 'multilateral appeal mechanism',[165] reflecting their experience with the WTO dispute settlement mechanism.[166]

More recently, geopolitical tensions have complicated the domestic institutional context for investment law and arbitration. National security constituencies have pressed into MOFCOM's turf.[167] Recently, some agencies have tightened regulatory oversight of foreign investors, as seen

[159] Ji Li, 'In Pursuit of Fairness: How Chinese Multinational Companies React to U.S. Government Bias' (2021) 62 Harvard International Law Journal 375, 399.

[160] Gu (n 53) 145–50.

[161] ibid.

[162] Chi (n 135).

[163] See, eg, Thomas Dietz and others, 'The Legitimacy Crisis of Investor–State Arbitration and the New EU Investment Court System' (2019) 26 Review of International Political Economy 749.

[164] Anthea Roberts, 'Incremental, Systemic, and Paradigmatic Reform of Investor–State Arbitration' (2018) 112 American Journal of International Law 410.

[165] Li and Bian (n 146) 505–06.

[166] Roberts (n 141) 422–23.

[167] For instance, the newly institutionalized foreign investment screening mechanism is composed of multiple government agencies, including those representing national security interests. Ji Li & Ruonan Tang, 'Superpower Rivalry and the "Modernization" of Foreign Investment Risk Review' (2023) 2023 University of Illinois Law Review 461, 500–01; Rao (n 118).

in the Cyberspace Administration of China's (CAC) new rules on automobile data security,[168] and government restrictions on the use of Tesla vehicles by military personnel and state employees.[169] So far, MOFCOM technocrats have sought to preserve their autonomy by managing ISDS cases quietly and professionally, often appointing experienced foreign arbitrators.[170] Though only a few cases have been brought against the Chinese government, and none of these cases have drawn much public attention, tensions between MOFCOM and other state agencies are building and an external shock such as a high-profile case challenging the validity of a major Chinese regulation enforced by a powerful line ministry could disrupt the power equilibrium among the state actors and diminish MOFCOM's leadership in this area.

Overall, state actors highly socialized with the international legal community and invested in the existing international economic order have largely dominated the field of investment arbitration in China. Nonetheless, other officials advancing different interests can undermine their initiatives, as illustrated by the saga surrounding the EU–China Comprehensive Agreement on Investment (CAI).[171] After a marathon 7-year negotiation, MOFCOM finally concluded the CAI talks in 2020. Then, in December 2020, the European Parliament adopted sanctions on various Chinese officials in its Resolution on Forced Labor and the Situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region. In retaliation, on 22 March 2021, the MFA imposed sanctions on ten EU individuals, including five Members of the European Parliament.[172] In response, the European Parliament refused to review the CAI until China lifted its sanctions on the five parliamentarians. Although China eventually lifted these sanctions in 2025,[173] the opportunity for ratification had already passed, as the geopolitical environment in 2025 differs markedly from that of 2020 when the agreement was concluded.

Because the international institutional context for ISDS is undergoing a legitimacy crisis, Chinese officials' relatively conservative approach, backed by Chinese investors' interests, could have a stabilizing effect on transnational legal ordering in this area. Rising geopolitical tensions may constrain transnational legal ordering to a greater extent in this field than that of commercial arbitration. However, ISDS provides support for Chinese business investments under China's outbound policies, such as its BRI, including in developing countries. Chinese officials in MOFCOM have so far converged towards positions that support the ISDS mechanism for cross-border investment disputes.

CONCLUSION

Much of the ongoing debate about China's response to, engagement with, and impacts on international legal orders has adopted a unitary, state-centric approach. By contrast, this article demonstrates the additional analytic and empirical insights gained by disaggregating the Chinese state and examining the varying interests, ideational frameworks, and institutional contexts of different

[168] 'Tesla to Store China Data Locally in New Data Center' *Wall Street Journal* (26 May 2021) <https://www.wsj.com/business/autos/tesla-to-store-china-data-locally-in-new-data-center-11622015001> accessed 14 December 2025.

[169] 'China to Restrict Tesla Use by Military and State Employees' *Wall Street Journal* (19 March 2021) <https://www.wsj.com/world/china/china-to-restrict-tesla-usage-by-military-and-state-personnel-11616155643> accessed 14 December 2025.

[170] For information about the arbitrators appointed by the Chinese government in all the ICSID cases, see 'AsiaPhos Limited and Norwest Chemicals Pte Ltd v People's Republic of China (ICSID Case No. ADM/21/1)' *ICSID* <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ADM/21/1> accessed 27 March 2025.

[171] Henry Gao, 'The EU–China Comprehensive Agreement on Investment: Between Strategic Opportunity and Strategic Autonomy' (2022) 2022 Asian Yearbook of International Economic Law 47.

[172] 'Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Announces Chinese Sanctions on Certain EU Institutions and Individuals' ['外交部发言人宣布中方对欧盟有关机构和人员实施制裁'] (22 March 2021) <https://www.mfa.gov.cn/web/wjdt_674879/zcjd/202103/t20210322_9180639.shtml> accessed 14 December 2025.

[173] 'Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Lin Jian Hosts Regular Press Conference on May 6, 2025' ['外交部发言人林剑主持例行记者会'] (6 May 2025) <https://www.fmprc.gov.cn/fyrbt_673021/jzhsl_673025/202505/t20250506_11616274.shtml> accessed 14 December 2025.

groups of Chinese actors. Our approach sheds light on variation in China's interactions with different international economic law orders and their dispute settlement mechanisms over time.

The development of commercial arbitration reflects an iterative process of interaction between international norms and various state and non-state actors in the field. When China reopened to global trade in the 1970s, foreign parties pressed for arbitration, catalysing reformers like Ren Jianxin and officials overseeing foreign trade to promote institutions capable of meeting these expectations. Ratification of the New York Convention in 1987 anchored China within a global normative framework, while Deng Xiaoping's Southern Tour greatly expanded the political space for institutional experimentation.

The 1994 Arbitration Law established a decentralized system in which commissions in Beijing, Shanghai, and Shenzhen aligned with international practices, engaging in organizational and normative innovation to compete for cases. These leading institutions, guided by globally connected elites, became carriers of transnational norms, reinforcing convergence. At the same time, commissions in less internationalized regions, reliant on local governments, remained insulated from global practices. The resulting bifurcation illustrates how transnational legal ordering produces uneven domestic effects: convergence where actors are embedded in global networks, divergence where local institutions and interests dominate. The latest comprehensive amendment to the Arbitration Law captures this duality, incorporating international practices while simultaneously entrenching Party-State oversight, underscoring how China's arbitration system is shaped by the ongoing negotiation between global norms and domestic political contexts. The changes unfolding in China are reshaping the demographics of international commercial arbitration and shifting the market's centre of gravity, but their institutional and normative impact is likely to remain incremental.

Trade dispute resolution under the WTO, in contrast to international commercial arbitration, is state to state. Government actors therefore assumed a more important role. To sustain the momentum of economic liberalization following Deng's Southern Tour, the reformers within the Party-State negotiated China's entry into the WTO and radically changed Chinese laws and regulations, exposed a large number of officials, business managers, and scholars to liberal international trade norms, and increasingly used WTO dispute settlement. Although the government was at first concerned about the system and tried to avoid litigation, over time, it became active in litigating against the USA and EU. These processes led numerous state and non-state actors to invest heavily in international norms and institutional knowledge as embodied in WTO dispute settlement.

China's joining the WTO empowered MOFCOM within the Chinese bureaucracy, although its role has declined as issues have become securitized. China's relative success in this field, ironically, spurred actors within the USA to neuter the effectiveness of the WTO dispute settlement system while Chinese actors defended it. Chinese actors then worked with the EU and other leading trading partners to create an institutional alternative to the Appellate Body under the MPIA. These actors hope to preserve rule-based trade dispute resolution.

In investment dispute resolution, there have been significant changes in China's positions over time, leading to convergence towards what were once mainstream Western norms. When ISDS was first introduced by foreign investors and capital-exporting states in the 1980s, most Chinese officials and international law scholars resisted the concept, invoking sovereignty as a foundational principle. This early rejection reflects how entrenched domestic ideational frameworks mediated China's initial encounter with transnational norms. By the 1990s, however, political and economic shifts—including Deng Xiaoping's Southern Tour and reformers' push to globalize China's economy—created new conditions for norm internalization. China ratified the ICSID Convention in 1993 and later began signing BITs with ISDS provisions more protective of investors, signalling a shift from resistance towards engagement. Soon after Wang Qishan, a reform-minded leader, joined the Politburo and became the vice prime minister in charge of trade and investment,

MOFCOM embraced a more investor-protective ISDS posture, further embedding international norms into China's treaty practice.

Unlike commercial arbitration and WTO dispute settlement, ISDS occupies a hybrid space: it grants private investors standing to bring claims against sovereign states before international arbitral bodies. This design has reshaped China's participant mix. MOFCOM defends China in investor-brought cases and has aimed to consolidate oversight of other agencies to ensure treaty compliance. Meanwhile, Chinese companies—including SOEs—increasingly invoke ISDS against foreign governments, particularly developing countries. This dynamic contrasts sharply with China's trade policy, in which MOFCOM has avoided litigating against developing countries.

Different Chinese bureaucratic interests interact with MOFCOM, a more liberal, internationalized ministry, that affect transnational legal ordering processes involving international economic law and dispute settlement. The challenges arise on multiple fronts. At the central government level, different agencies often have conflicting mandates that can undermine MOFCOM's efforts to promote trade and investment. For example, the CAC emphasizes data security, sometimes at the expense of the free flow of data important for trade and investment, while the MFA pursues sovereignty-protective diplomacy, prioritizing political grandstanding over China's economic interests. These conflicting priorities create implementation difficulties: the Ministry of Industry and Information Technology focuses on indigenous innovation, which can clash with China's WTO obligations, and the Ministry of Agriculture prioritizes food security over maintaining subsidy levels consistent with WTO commitments. At the local government level, officials may relax regulations to attract foreign investment, creating a more favourable business environment. However, if other priorities—such as environmental protection—clash with investment, local authorities could seize foreign property without adequate compensation, triggering disputes that MOFCOM must defend.

Adopting the framework of transnational legal ordering in which the Chinese state is disaggregated is important analytically and normatively. Analytically, it provides a fuller and sharper understanding of China's engagement with international economic law orders. For instance, a state-centric realist approach cannot explicate the regional variation in commercial arbitration in China, nor clashes between ministries, nor implementation challenges that give rise to disputes, nor the timing of major shifts in these issue areas. Building understanding of the varying groups of Chinese actors that predominate in different issue areas helps us better predict whether and how China will embrace, modify, or reject existing international economic law orders in different domains and institutional settings.

Normatively, adopting a reductive view of China across issue areas can also be dangerous. Cooperation and coordination between the USA, China, and others remain critical, from managing an array of cross-border economic disputes and potential financial crises, to addressing international public goods challenges like climate change, to avoiding the Thucydides trap of war.[174] Transnational legal ordering affects most areas of law. Treating China reductively deepens Schmittian 'friend-enemy' conceptions of the relationship.[175] Developing a deeper understanding of decision-making in China, as with any other regulatory state, facilitates the prospects of cooperative and creative problem-solving.

Two major changes in the Chinese domestic context create uncertainty regarding the future of China's adaptation to, engagement with, and impacts on international economic law and dispute settlement. On the one hand, many Chinese officials with substantial international exposure and investment in transnational and international institutions are rising in the power hierarchy,

[174] Graham Allison, *Destined for War: Can America and China Escape Thucydides's Trap* (Houghton Mifflin Harcourt 2014).

[175] Carl Schmitt, *The Concept of the Political* (G. Schwab tr, University of Chicago Press1996) 33 ("The friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing. War follows from enmity. War is the existential negation of the enemy".).

potentially rendering China more receptive to existing international economic law and dispute settlement in many issue areas. On the other hand, rising geopolitical risks, the deviation of the USA from international norms, and Xi's concentration of power have amplified and expanded the influence of state actors championing national security and defence interests, potentially steering China away from cooperative engagement. How these conflicting trends unfold will have profound ramifications.

Waging External Struggle through Law: China's Evolving Legal Strategies and Pelosi's Taiwan Visit

Keith J. Hand*

U.S. House Speaker Nancy Pelosi's recent Taiwan visit gave China a pretext to launch large-scale military exercises and rehearse new capabilities for striking Taiwan. To complement this military response, China deployed its growing toolkit of domestic legislation on national security and foreign affairs. This mobilization of domestic law should come as no surprise. China's "Three Warfares" doctrine has embraced the concept of "legal warfare" to support military operations and seize the political initiative.[1] China has also used domestic law as a tool to pressure adversaries in the gray zone between peacetime competition and military conflict.[2] In recent years, senior Party leaders have called for stronger "foreign-related" legislation to match U.S. legal capabilities and safeguard the country's sovereignty and development interests. China's response to the Pelosi visit demonstrates that it will use domestic law and legal institutions to impose concrete costs on rivals, deter provocations, signal strength to domestic and foreign audiences, and legitimize conflict narratives. As U.S.-China tensions deepen, these tools of legal struggle will become increasingly prominent components of China's comprehensive approach to external conflict and competition.[3]

Expanding China's Domestic Legal Toolkit for National Security and Foreign Affairs

Chinese leaders have long used the domestic legal system to advance their foreign policy goals. While China adopted some early statutes on national security and territorial issues, the focus of initial foreign-related legislation was on building diplomatic relations; regulating foreign trade, investment, and economic affairs; and preparing China for entry to the World Trade Organization.[4]

In the mid-1990s, China began to place greater emphasis on domestic laws related to national security. For example, China expanded its suite of domestic legislation on maritime issues to legitimize and fortify claims to disputed waters,[5] accelerated the development of its military law regime, and adopted a series of laws to rationalize the military and national security apparatus.[6] Military strategists also developed new doctrines of legal warfare to mobilize law as an instrument of military and related political struggle. In 2003, the People's Liberation Army formally incorporated the "Three Warfares" doctrine (waging political warfare, psychological warfare, and legal warfare) into its political guidelines and strategic training.[7]

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The 2005 Anti-Secession Law signaled a shift in Chinese thinking about the role of domestic law in the national security and foreign affairs arena. Adopted in March 2005 as a "legal weapon" to fight Taiwan secessionism, the short, nine-article statute set out core elements of the mainland's Taiwan policy and provided that the state "shall employ non-peaceful means and other necessary measures" should major incidents to advance Taiwan's secession occur or the possibility for peaceful unification be "completely exhausted."[8] In so doing, China declared that it was legally bound to respond to secessionist activity and sought to legitimize future military action.[9] The law also established a domestic legal counterweight both to efforts on Taiwan to invoke the Republic of China constitution and law as authority for a referendum on the island's status[10] and to the U.S. Taiwan Relations Act, which incorporates U.S. policy on providing "defensive" military assistance to Taiwan.[11] The Anti-Secession Law represented a turning point in China's use of domestic law, as the Party-state codified cross-straits policy to deter specific threats to Chinese sovereignty.

These domestic legal developments accelerated under Xi Jinping. Under Xi's leadership, the Party deepened its commitment to "socialist rule of law" and legal institutions as core instruments of governance. In 2014, the Party Central Committee's historic decision on legal reform called for China to strengthen "foreign-related legal work," including the "use of legal methods to safeguard [China's] sovereignty, security and development interests."[12] That same year, Xi introduced his comprehensive national security outlook and specified a range of development interests, including enterprise, economic, technological, information, and financial interests, as essential components of national security.[13] To advance this comprehensive security vision, the Party created a new National Security Commission, a key function of which is coordinating the "construction of a rule of law system on national security."[14] While China's concept of national security incorporates an important emphasis on internal security,[15] these developments also signaled that law and legal argument were primed to assume new prominence in China's approach to external conflict and competition.

Initial lawmaking efforts implemented this agenda by building out China's system of national security legislation. Statutes such as the comprehensive 2015 National Security Law and more specific laws on terrorism, counterespionage, and cybersecurity embraced Xi's national security outlook both textually and in the breadth of matters addressed. Such laws also imposed new obligations on individuals and entities to comply with regulatory requirements and proactively support the work of national security organs.[16]

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As U.S.-China competition intensified, China faced new pressure to expand its domestic legal capacity. Since 2016, the U.S. has applied a range of potent domestic laws to pressure China. The trade war, export controls, campaigns against Chinese tech giants ZTE and Huawei, sanctions related to Xinjiang and Hong Kong, and other actions demonstrated the significant reach of U.S. law. They also exposed asymmetries in China's domestic legal capacity. One leading Chinese theorist concluded that the U.S. is waging economic war against China that "is carried out through legal means."[17] Other scholars characterized U.S. legal action as an escalation of "gray zone" strategies to pressure China.[18] Domestic Chinese media railed against U.S. "long-arm jurisdiction" and declared that China must develop reciprocal capacities to fight back.[19]

Senior Party and state leaders called for new legal tools to meet these challenges. At a Central Work Conference on Rule of Law in 2020, Xi Jinping emphasized that China "must accelerate the strategic deployment of foreign-related rule of law work… apply legal methods; effectively face challenges; guard against risks; comprehensively utilize legislation, law enforcement, judicial, and other methods to struggle; and resolutely defend national sovereignty, dignity, and core interests."[20] At a Politburo session the following year, Xi urged officials to "use rule of law to carry out international struggle" and "strengthen legislation in the field of foreign affairs; further improve the laws and regulations of anti-sanction, anti-interference, and anti-'long-arm jurisdiction'; and promote the construction of a legal system applicable outside China's jurisdiction."[21] Senior political and legislative officials now repeat the mantra that China must enrich its "legal toolkit" (法律工具箱) to manage increasingly complex external risks.[22] The Party Central Committee also incorporated a detailed agenda to promote "rule of law thinking and methods in international affairs" into its 2020-2025 Plan on Building the Rule of Law in China.[23] Such efforts represent an external dimension of Xi's broader effort to leverage law to legitimize Party-state action.[24]

State entities have taken four related steps to strengthen domestic law and legal institutions as tools of international struggle. First, lawmakers have enacted a basket of reciprocal legislation that parallels U.S. legal capacity and authorizes Chinese countermeasures. For example, the 2020 Measures for the Security Review of Foreign Investment expanded the scope of foreign investments subject to national security review. The 2020 Provisions on the Unreliable Entity List (UEL Provisions) direct agencies to impose a range of economic and travel restrictions on foreign parties that endanger China's sovereignty, security, or development. The following year,

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China adopted Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, which empower agencies to prohibit the enforcement of foreign legislation with "unjustifiable" extraterritorial effects and give Chinese parties a legal right to recover compensation from counterparts that fail to comply.[25] To bolster this framework, the National People's Congress Standing Committee enacted the 2020 Export Control Law, which establishes a concrete framework for restricting the export of items with military or dual uses or that otherwise relate to "national security, " and the 2021 Anti-Foreign Sanctions Law (AFSL), which empowers administrative agencies to impose countermeasures against foreign parties when a foreign country adopts sanctions or interferes in China's internal affairs.[26] *Xinhua* captured the thrust of this new body of legislation when it warned that "if anyone holds the sanctions stick in their hands, attempts to slander or smear China, or interfere in China's internal affairs, China… will resolutely counteract it in accordance with laws and regulations."[27] One Western commentator suggested the dueling legislation may herald a "regulatory arms race."[28]

Second, lawmakers have strengthened the extraterritorial reach of domestic legislation. China has embraced the exercise of jurisdiction over acts outside of Chinese territory that are perpetrated by its own nationals, cause harm to its nationals, or threaten state sovereignty and territorial integrity.[29] Although this is not a new phenomenon (China's Criminal Law has long included provisions with extraterritorial effect), Xi's instruction that China must "promote the construction of a legal system applicable outside of China's jurisdiction" has made the adoption of extraterritorial provisions a higher priority. For example, key provisions of the reciprocal legislation noted above empower the Chinese government to regulate or sanction foreign parties for acts beyond China's borders. Another recent example is the 2018 Hong Kong National Security Law, which applies to offenses committed both by Hong Kong residents and foreigners outside the Hong Kong Special Administrative Region (Articles 37 and 38).[30]

Third, China has continued to promulgate domestic legislation to support its maritime and territorial claims. For example, the 2020 Coast Guard Law and 2021 revisions to the Maritime Traffic Safety Law reinforced ambiguity about the scope of the "jurisdictional waters" subject to maritime law and safety enforcement, giving China legal flexibility to promote its claims in disputed waters.[31] The 2021 National Land Boundary Law set out detailed provisions on the delineation, defense, and management of national land boundaries and imposed legal obligations on the state to safeguard territorial sovereignty and land boundary security.[32] China

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cites such statutes to argue that it exercises authority to regulate foreign activity in contested areas and is legally obligated to act on such issues.[33]

Finally, Chinese law enforcement and judicial organs have adopted a more assertive posture in foreign-related matters. For example, in a series of prominent cross-border intellectual property disputes in 2020 and 2021, Chinese courts issued injunctions that prohibited foreign companies from pursuing intellectual property claims overseas and threatened them with massive fines to enforce compliance.[34] Law enforcement authorities are imposing exit bans on foreign citizens to compel cooperation with investigations and increasingly targeting individuals and activities outside of China's borders.[35] Nuances in China's rules and practices regarding dual nationality can generate foreign tensions in such cases.[36] And, China's arrest of Michael Kovrig and Michael Spavor immediately after Canadian authorities detained Huawei CFO Meng Wanzhou, along with its release of the "two Michaels" mere hours after Meng was allowed to leave Canada three years later, raised concerns about hostage diplomacy. The sequence of events in these cases sent a clear message that China will deploy its criminal justice system in a tit for tat manner to impose concrete costs for provocations and defend its national interests.

Deploying Legal Strategies in Response to Pelosi's Taiwan Visit

China's response to Nancy Pelosi's Taiwan visit provides an opportunity to assess the application of these legal tools in practice. While many foreign analysts focused on the scale of the mainland's military response, Chinese authorities also announced legal countermeasures against individuals and entities in the U.S. and Taiwan. In some instances, officials carefully explained the legal basis for such countermeasures. In others, they stated only generally that China was acting in accordance with laws and regulations. China's legal response incorporated core elements of the domestic legal capacities and strategies discussed above, including the invocation of domestic law to legitimize action related to contested sovereignty issues, the application of reciprocal legislation to respond to foreign provocations, the assertion of jurisdiction over extraterritorial acts, and mobilization of the domestic judicial apparatus to strike back and demonstrate resolve.

One key element of China's legal response was signaling an intention to pursue criminal liability for secessionist activity. On Aug. 3, mainland officials declared that China has a "clear legal basis" for punishing "Taiwan independence diehards" and would criminally prosecute them.[37] The detailed statement cited specific legal authorities, including provisions of the 2005 Anti-

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Secession Law and the 2015 National Security Law stipulating that China's sovereignty and territorial integrity are inviolable; that all Chinese people are obligated to safeguard national sovereignty, unity, and territorial integrity; and that those endangering national security will be investigated. The statement then referenced Criminal Law provisions on engaging in or inciting secession or undermining national unity (Article 103) and heavier criminal penalties that apply when such crimes involve collusion with foreign actors (Article 106). Contemporaneous *People's Daily* commentaries explained that Article 6 of the Criminal Law extends criminal jurisdiction to acts that have consequences within Chinese territory. They also cited provisions of the Criminal Law (Articles 88 and 89) and Criminal Procedure Law (Article 291) that authorize the suspension of time limits for prosecution and the trial of national security crimes in absentia.[38]

Chinese authorities took concrete steps to show that this legal rhetoric has teeth. On Aug. 3, state security officials in Wenzhou detained Taiwanese businessman Yang Zhiyuan on allegations of separatist activity and endangering national security.[39] Domestic legal commentary described Yang's lengthy Taiwan independence activity outside of mainland China as the legal basis for the criminal investigation.[40] Officials from the Taiwan Affairs Office characterized Yang's case as precedent setting, explaining that it was the first time mainland authorities had criminally investigated "Taiwan independence elements" for crimes of secession.[41] Wenzhou state security officials reportedly transferred Yang to residential surveillance on Aug. 10 and, as of this writing, his case is ongoing.[42]

Then, on Aug. 16, Chinese authorities added seven Taiwanese officials and lawmakers to a previously announced list of three "Taiwan independence diehards." China imposed "punitive measures" on these individuals (see below) and stated that they would be "held accountable for life in accordance with the law."[43] Although China is unlikely to detain the listed individuals, the announcement and related commentary conveyed the message that Chinese law is a potent weapon to deter secessionist acts and that "Taiwan independence diehards" cannot escape the net of mainland justice anywhere in the world. The discourse also suggests that China could escalate its legal response to cross-straits tensions by holding criminal trials in absentia.

In addition to criminal investigations, China announced non-criminal "punitive measures" (惩戒措施) against ten "Taiwan independence diehards," two Taiwanese foundations, and four Taiwanese business entities, as well as "sanctions" (制裁措施) on Nancy Pelosi and her immediate family members. Specifically, China prohibited the listed Taiwanese individuals and

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their families from entering mainland China or the Hong Kong and Macao Special Administrative Regions, banned their affiliated organizations from collaborating with mainland parties, and prohibited their affiliated enterprises and owners from profiting in China.[44] The Taiwanese foundations and enterprises were banned from cooperating or engaging in transactions with mainland parties, and their administrators were prohibited from entering the country. To punish Pelosi for her Taiwan visit, the Ministry of Foreign Affairs (MFA) announced that China would impose unspecified "sanctions… in accordance with relevant laws of the People's Republic of China."[45] In so doing, it added Pelosi to a growing list of senior U.S. officials that China has sanctioned in recent years.[46]

The MFA's Aug. 5 statement did not cite specific laws or regulations for sanctions against Pelosi. However, an extensive *People's Daily* response to the Pelosi visit confirmed that China sanctioned Pelosi under the Anti-Foreign Sanctions Law.[47] Although framed as a legal measure to counteract foreign sanctions, the text of the AFSL sweeps more broadly, stipulating in Article 3 that China may take "corresponding countermeasures" when a "foreign country… uses various excuses or relies on domestic law to contain or suppress China, adopt discriminatory restrictive measures against Chinese citizens or organizations, or interfere in China's internal affairs." Article 15 further provides that the statute may be "referenced" when "it is necessary to adopt countermeasures against foreign countries, organizations, or individuals for… acts that endanger China's sovereignty, security, and development interests." This provision gives Chinese authorities discretion to apply the AFSL by analogy to counter a wide range of foreign provocations. The law authorizes several concrete countermeasures, including travel restrictions; assets freezes; and prohibitions on transactions or cooperation with targeted parties and their immediate family members, management personnel, or affiliates (Article 6).

Here again, domestic media attempted to show that China's countermeasures would have concrete impact. For example, media outlets published detailed discussions of Pelosi-family investments and financial interests related to China.[48] They also published the text of a China Asset Management Association "Notice on Implementing Countermeasures Requirements and Improving Relevant Mechanisms." Citing the AFSL and the MFA announcement, the Notice directed private equity funds to strictly comply with China's countermeasures and prohibit transactions with Pelosi and her immediate family.[49] Such stories cultivate the impression that the Pelosi family will suffer losses and signal to domestic audiences that the China's sanctions are not merely symbolic.[50]

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China also shaped the narrative about its legal actions by arguing that the U.S. has long abused such mechanisms. After citing a lengthy list of U.S. sanctions on other countries, the *People's Daily* observed that the "U.S. has used Xinjiang, Hong Kong, human rights, and other internal issues of China to sanction Chinese institutions and personnel" and "extended the concept of national security; concocted various pretexts; abused export control measures; deployed state power to unreasonably suppress Chinese institutions and enterprises; gravely undermined fair competition, market economic principles and international economic and trade rules; and listed more than 1,000 Chinese enterprises and institutions on various sanctions lists." It argued that in this context, China could hardly be blamed for applying similar measures to respond to the provocation of Pelosi's Taiwan visit.[51] Such discourse cast China's response as a defensive countermeasure.

The legal basis for non-criminal "punitive measures" imposed on Taiwan individuals and entities is less clear. One day after the measures were announced, a Taiwan Affairs Office spokesman declared that there is "ample legal basis" for them.[52] However, in contrast to the detailed discussion of legal authorities for criminal sanctions, officials did not cite any specific legislation to support this assertion. The concrete countermeasures set out in the AFSL and Provisions on the Unreliable Entity List correspond closely with the language and substance of these measures. However, the AFSL technically applies only to the acts of foreign countries (and individuals and entities that implement them), while the UEL Provisions cover "foreign entities." Implicitly designating Taiwanese activities as "foreign" would generate tensions with the mainland's "One-China principle."

In discussing the legal basis for pursuing *criminal* responsibility against "Taiwan independence diehards," Chinese officials cited general provisions of the 2005 Anti-Secession Law and the 2015 National Security Law. Arguably, the same provisions would provide a basis for fashioning non-criminal punitive measures that might be modeled after, but not explicitly grounded in, the AFSL or UEL Provisions. The awkwardness of referencing AFSL or UEL Provisions that apply to "foreign" parties in this context, and the general nature of the other statutes, may explain why Chinese officials refrained from citing specific legislation for these measures. The *Global Times* implicitly recognized this gap when it characterized the Anti-Secession Law as a "framework and principle law" and observed that China may need to adopt more specific legislation "targeting Taiwan secessionists."[53]

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China may soon face pressure to take such a step. In a bipartisan vote in mid-September, the U.S. Senate Foreign Relations Committee advanced the Taiwan Policy Act for consideration by the full Senate. As currently drafted, the Act would deepen U.S. diplomatic and economic ties with Taiwan, strengthen commitments to enhance Taiwan's military deterrent, and provide for sanctions in the event of significant mainland escalation of military action.[54] In her initial public statement on this development, Taiwan Affairs Office spokeswoman Zhu Fenglian undertook ritual denunciations of the bill as an interference in China's internal affairs and a violation of the One-China principle.[55] Within days, Zhu focused more specifically on China's legal deterrent. Emphasizing China's active use of "legal weapons" to punish Taiwan separatist activities, she declared that China would introduce new legal measures to strengthen its weapons "in accordance with developing circumstances."[56] These events highlight the potential for an escalation of legal struggle with the U.S. over the Taiwan question.

Conclusion

China's response to the Pelosi Taiwan visit demonstrates that it views domestic law as a core instrument of external struggle and will deploy it to shape conflict narratives and pressure adversaries. As one Chinese legal commentator observed in reflecting on recent cross-straits tensions, "global law has become the main method for countries to deal with domestic and international affairs, and legal struggle has become an important method and basic tool for the anti-secession struggle."[57] By invoking domestic law, China seeks to legitimize its responses to external provocations and impose concrete costs to deter escalation. Wielding "legal weapons" also gives Chinese leaders a way to project strength and resolve short of military action and manage domestic pressure to stand up to foreign bullying.[58] U.S. policymakers should recognize that China is developing and deploying these domestic legal tools in a systematic manner.

As the response also suggests, this legal framework remains a work in progress. Official vagueness in discussing legal authorities for the non-criminal "punitive measures" against Taiwanese parties contrasted sharply with careful efforts to detail the legal basis for criminal prosecutions. In the former case, officials may have decided that the relevant legal authorities lack adequate detail. National People's Congress sources have expressed concern about "weak links" in foreign-related legislation and the need to operationalize the principles in general legislation, while also preserving sufficient "legal flexibility" to address a complex matrix of emerging external challenges.[59]

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Pelosi's visit gave Chinese leaders an opportunity to assess some of these gaps and tensions in their domestic legal toolkit. Subsequent developments highlight the challenge they face in balancing legal operability and flexibility. China has built a high degree of discretion into its current body of foreign-related legislation, giving it the flexibility to calibrate legal countermeasures as necessary to address fluid external conditions. If Congress advances the Taiwan Policy Act, Chinese leaders may sacrifice some the flexibility they prize and enact more specific provisions to maintain the potency and legitimacy of their legal signals on Taiwan. U.S. lawmakers should consider whether such an escalation of legal competition would be conducive to cross-straits stability.

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[1] Peter Mattis, *China's Three Warfares Doctrine in Perspective*, War on the Rocks, Jan. 18, 2018.

[2] Bonnie Lin, Christina L. Garafola, Bruce McClintock, et. al, Competition in the Gray Zone: Countering China's Coercion Against U.S. Allies and Partners in the Indo-Pacific, RAND Corporation Research Report, 2022.

[3] I refer to "legal struggle" rather than "lawfare" in an effort to capture the full range of Chinese legal action and strategies discussed, particularly in the realm of sanctions, export controls, and economic competition. Traditional definitions of "lawfare" emphasize law as an alternative instrument to achieve military outcomes. Broader definitions incorporate the concept of law as a legitimizing instrument, but still focus on its function in reinforcing the legitimacy of "strategic, operational, or tactical objectives." Jill I. Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 Cornell L. Rev. 1086, 1094-98 (2021). As one legal scholar has observed, the term "lawfare" may "overdramatize" legal tactics that reflect competition rather than warfare. Jonathan G. Odom, *Understanding China's Legal Gamesmanship in the Rules Based International Order*, in China's Global Influence: Perspectives and Recommendations (Scott D. McDonald and Michael C. Burgoyne eds., 2019). In a similar vein, Mattis argues that China's Three Warfares doctrine should be understood as a part of a comprehensive Party-state political influence strategy that finds expression in a broad range of laws, policies, and bureaucracies outside of the military sphere. Mattis, supra note 1. Certainly, China's effort to develop foreign-related legal capacity incorporates "lawfare" elements and objectives, and some scholars may view China's legal response to Pelosi's visit as a form of lawfare. The point here is not to argue that such perspectives are incorrect, but instead to suggest that some conceptualizations of lawfare may fail to fully capture the dynamics and tools analyzed here.

[4] Jiaqiang Shewai Lingyu Lifa, Jiakuai Goujian Xitong Wanbei, Xianjie Peitao de Shewai Falü Guifan Tixi [Strengthen Legislation in the Foreign-related Domain, Accelerate Construction of a System of Complete and Linked Foreign-related Legal Norms], National People's Congress of China, May 30, 2022.

[5] Issac B. Kardon, *China's Maritime Interests and the Law of the Sea: Domesticating Public International Law*, in China's Socialist Rule of Law Reforms under Xi Jinping (John Garrick and Yan Chang Bennet eds., 2016).

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[6] For a discussion that places one statute in the context of this broader effort, see Murray Scot Tanner, *The Impact of the 2009 People's Armed Police Law on the People's Armed Police Force*, in The Politics of Law and Stability in China (Susan Trevaskes et. al. eds., 2014).

[7] Sangkuk Lee, *China's Three Warfares: Origins, Applications, and Organizations*, 37 J. Strategic Stud. 198 (2014).

[8] Zhonghua Renmin Gongheguo Fanfenlie Fa [PRC Anti-Secession Law], adopted Mar. 14, 2005, art. 8.

[9] Dean Cheng, *Winning without Fighting: Chinese Lawfare*, Heritage Foundation Report, May 18, 2012.

[10] *Draft Anti-Secession Law Explained*, China Daily, March 8, 2005.

[11] Taiwan Relations Act, Sec. 2, 22 U.S.C. 3301 et. seq. (1979).

[12] Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti de Jueding [CPC Central Committee Decision on Several Major Problems in Comprehensively Advancing Ruling the Country in Accordance with Law], Xinhua, Oct. 28, 2014.

[13] Xi Jinping: Jianchi Zongti Guojia Anquanguan, Zou Zhongguo Tese Guojia Anquan Daolu [Xi Jinping: Persist in the Comprehensive National Security Outlook, Follow the Path of National Security with Chinese Characteristics], CPC News, Apr. 15, 2014.

[14] *Xi Jinping to Lead National Security Commission*, Global Times, Jan. 25, 2014.

[15] Sheena Chestnut Greitens, *Xi Jinping's Quest for Order*, Foreign Affairs, Oct. 3, 2022.

[16] Murray Scot Tanner, *Beijing's New Intelligence Law: From Defense to Offense*, Lawfare, July 20, 2017.

[17] Jiang Shigong, *Meng Wanzhou Won't be the Last: The Hidden Logic of the American 'Hand-over'*, Beijing Cultural Review, September 26, 2021 (translated by David Owensby and reposted at Reading the China Dream).

[18] Jin Kai, *Deconstructing the U.S. Trade War against China*, The Diplomat, Aug. 20, 2018.

[19] See, e.g., Qiao Xinsheng, *Time is Ripe to Counter US 'Long-Arm Jurisdiction,'* China Daily, Jan. 11, 2021; Zheng Mingda, Yi Falü Lijian Jianjue Hanwei Guojia Zhuquan Liyi [Use the Sharp Sword of Law to Resolutely Defend State Sovereignty and Interests], Xinhua Net, June 10, 2021; Xinhua Guoji Shiping: Meiguo Lanshi "Changbi Guanxia" Yongxin Xian'e [Xinhua Global Commentary: The United States Abuses "Long-arm Jurisdiction" with Sinister Intentions], Xinhua Net, Dec. 12, 2021.

[20] Xi Jinping Zai Zhongyang Quanmian Yifa Zhiguo Gongzuo Huiyi Shang Qiangdiao: Jiandingbuyi Zou Zhongguo Tese Shehuizhuyi Fazhi Daolu, Wei Quanmian Jianshe Shehuizhuyi Xiandaihua Guojia Tigong Youli Fazhi Baozhang [Xi Jinping Emphasizes at the Central Work Conference on Comprehensively Ruling the Country in Accordance with Law: Resolutely Follow the Path of Socialist Rule of Law with Chinese Characteristics, Provide a Powerful Rule of Law Guarantee for Comprehensively Building a Modern Socialist Country], Xinhua Net, Nov. 17, 2020.

[21] Xi Jinping, Jianchi Zou Zhongguo Tese Shehuizhuyi Fazhi Daolu, Genghao Tuijin Zhongguo Tese Shehuizhuyi Fazhi Tixi Jianshe [Persist in Following the Path of Socialist Rule of Law with Chinese Characteristics, Better Promote the Construction of a Rule of Law System with Chinese Characteristics], Seeking Truth, Feb. 15, 2022.

[22] See, e.g., Chen Yixin, Xuexi Guanche Xi Jinping Fazhi Sixiang Xuyao Bawohao Shida Guanxi [To Study and Implement Xi Jinping Thought on the Rule of Law, It Is Necessary to Grasp Ten Major Relationships], Legal Daily, Dec. 7, 2021; Strengthen Legislation in the Foreign-related Domain, *supra* note 4.

[23] Zhonggong Zhongyang Yinfa Fazhi Zhongguo Jianshe Guihua 2020-2025 [CPC Central Committee Publishes the 2020-2025 Plan for Building a Rule of Law China], People's Daily, Jan. 11, 2021.

[24] For one recent discussion of the Party's effort to leverage law as a legitimating tool, see Taisu Zhang and Tom Ginsburg, *China's Turn Toward Law*, 59 Va. J. Int'l L. 307 (2019).

Electronic copy available at: https://ssrn.com/abstract=4208433

[25] Waishang Touzi Anquan Shencha Banfa [Measures for the Security Review of Foreign Investment], issued Dec. 19, 2020; Provisions on the Unreliable Entity List, issued Sept. 19, 2020; Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, issued Jan. 9, 2021.

[26] Zhonghua Renmin Gongheguo Chukou Guanzhi Fa [PRC Export Control Law], adopted Oct. 17, 2020; Zhonghua Renmin Gongheguo Fanzhicai Fa [PRC Anti-Foreign Sanctions Law], adopted June 10, 2021, arts. 3, 15.

[27] Use the Sharp Sword of Law, *supra* note 19.

[28] Jeanette Chu, The New Arms Race: Sanctions, Export Controls Policy, and China, Center for Strategic and International Studies, Mar. 25, 2022.

[29] Zhengxin Huo and Man Yip, *Extraterritoriality of Chinese Law: Myths, Realities, and the Future*, 9 Chinese J. Comp. L. 328 (December 2021).

[30] Zhonghua Renmin Gongheguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa [PRC Law on Upholding National Security in the Hong Kong Special Administrative Region], adopted June 30, 2020. Other examples of recent laws that extend jurisdiction to acts outside of China include the 2015 National Security Law (Article 15), the 2016 Cybersecurity Law (Article 75), the 2019 amendments to the Securities Law (Article 75), the 2021 Anti Organized Crime Law (Article 2), the 2021 Data Security Law (Article 2), and the 2021 Personal Information Protection Law (Articles 3, 41, 58).

[31] Lan Ahn Nguyen Dang, *Implications of 2020 and 2021 Chinese Domestic Legislative Moves in the South China Sea*, China Brief, vol. 21, no. 14, July 16, 2021.

[32] Zhonghua Renmin Gongheguo Ludi Guojie Fa [PRC National Land Boundary Law], adopted Oct. 23, 2021.

[33] Odom, supra note 3.

[34] Josh Zumbrun, *China Wields New Legal Weapon to Fight Claims of Intellectual Property Theft,* The Wall Street Journal, Sept. 26, 2021.

[35] Thomas E. Kellogg, *No Exit: China's Growing Use of Exit Bans Violates International Law*, Lawfare, Jan. 16, 2019; Martin Purbrick, *Future Global Policeman? The Growing Extraterritorial Reach of PRC Law Enforcement*, China Brief, vol. 22, no. 9, May 13, 2022.

[36] Jasper Habricht and Eva Lena Richter, *De Facto Dual Nationality in Chinese Law and Practice*, 20 China: An International Journal 24 (2022)

[37] Zhonggong Zhongyang Taiban Fayanren Shouquan Jiu Yifa Chengzhi "Taidu" Wanggu Fenzi Fabiao Tanhua [CPC Central Committee Taiwan Work Office Spokesperson Authorized to Issue Statement on Punishing "Taiwan Independence" Diehards in Accordance with the Law], Xinhua Net, Aug. 3, 2022.

[38] Yin Baohu, Dui "Taidu" Wanggu Fenzi Shishi Xingshi Chengchu Juyou Mingue Falü Yiju [Implementing Criminal Punishment Against "Taiwan Independence" Diehards Has a Clear Legal Basis], People's Daily Online, Aug. 5, 2022.

[39] *Taiwan Resident Suspected of Endangering National Security Detained in E. China*, Xinhua, Aug. 4, 2022.

[40] Falü Wuqi Lijian Chuqiao, Dalu Ruhe Jingzhun Faji "Taidu" Shili? [The Sharp Sword of Legal Weapons Unsheathed: How Does the Mainland Precisely Strike at "Taiwan Independence" Forces?], Sina Finance, Aug. 11, 2022.

[41] Guotaiban: Minjindang Dangju Suowei "Kangyi" Wanjiubuliao "Taidu" Fenzi Bei Yifa Chengchu Mingyun [Taiwan Affairs Office: The So-called "Protest" of DPP Authorities Cannot Save "Taiwan Independence" Elements from the Fate of Punishment in Accordance with Law], Xinhua Net, Aug. 4, 2022. Although Chinese officials noted the precedent-setting nature of the charge, China has criminally prosecuted and imprisoned other Republic of China citizens for their political advocacy. For example,

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China prosecuted Taiwanese human rights activist Lee Ming-che for subversion. Jin Gu, *A Conversation with Lee Ming-chu: 'I Was a Human Rights Field Worker Doing Field Research in a Chinese Prison*, VOA News, Aug. 13, 2022.

[42] Wenzhou Shi Guoanju Dui Yang Zhiyuan Zhuan Wei Zhiding Jianshi Juzhu [Wenzhou State Security Bureau Transfers Yang Zhiyuan to Residential Surveillance], Lianhe Morning News, Aug. 11, 2022. Residential surveillance is a form of detention often used in state security cases. In mid-September, Chinese officials confirmed that Yang's family had been notified of his detention and that his case was being processed. Guotaiban: Guojia Zhuijiu "Taidu" Wanggufenzi Xingshi Zeren Juyou Mingue Falü Yiju [Taiwan Affairs Office: State Punishment of the Criminal Responsibility of "Taiwan Independence" Diehards Has a Clear Legal Basis]. Beijing Daily, Sept. 14, 2022.

[43] Zhonggong Zhongyang Taiban Fayanren Shouquan Xuanbu dui Lieru Qingdan de Yipi "Taidu" Wanggu Fenzi Deng Renyuan Shishi Zhicai [CPC Central Committee Taiwan Work Office Spokesperson Authorized to Declare the Implementation of Sanctions against a Listed Group of "Taiwan Independence" Diehards], Xinhua Net, Aug. 16, 2022.

[44] *Id.*

[45] Foreign Ministry Spokesperson Announces China's Sanctions on U.S. House Speaker Nancy Pelosi, Ministry of Foreign Affairs Website, Aug. 5, 2022.

[46] Such officials include Senators Tom Cotton, Ted Cruz, Josh Hawley, Marco Rubio, and Pat Toomey, Representative Chis Smith, Secretary of State Michael Pompeo, Health and Human Services Secretary Alex Azar, U.S. Ambassador to the United Nations Kelly Craft, National Security Advisor Robert O'Brien, Deputy Assistant Secretary of State for East Asian and Pacific Affairs David Stillwell, Deputy National Security Advisor Matthew Pottinger, and others. In these past cases, China has not specified the legal basis for the sanctions. Nathan Bush and Ray Yu, China's Expanding Economic Sanctions Regime, DLA Piper Brief, Mar. 31, 2021.

[47] Peiluoxi Cuan Tai de Ruogan Shishi [Relevant Facts on Pelosi's Infiltration of Taiwan], CPC News Net, Aug. 25, 2022.

[48] Kong Xue, Yishou Fanhua Yishou Laojin! Jiemi Peiluoxi Jiazu Shangye Wangluo [Oppose China with One Hand and Dig Gold with the Other! Exposing the Business Network of the Pelosi Family], Beijing News, Aug. 16, 2022.

[49] Zhongjixie: Simu Ying Yange Luoshi dui Peiluoxi ji qi Zhixi Qinshu Caigu de Zhicai Cuoshi [China Asset Management Association: Private Equity Should Strictly Implement Sanctions Measures against Pelosi and Her Immediate Family], Sina Finance, Aug. 18, 2022.

[50] Although not a central theme in China's domestic media, if U.S. businesses fear Chinese retaliation for contributing to or employing targeted individuals, the impact of Chinese sanctions on such individuals could be amplified. I am grateful to a colleague for this thoughtful observation.

[51] Relevant Facts on Pelosi's Infiltration of Taiwan, *supra* note 47.

[52] Guotaiban: Guojia dui "Taidu" Wanggu Fenzi Caigu Chengjie Cuoshi Juyou Chongfen de Falü Yiju [Taiwan Affairs Office: There Is Ample Legal Basis for the State to Adopt Punitive Measures Against "Taiwan Independence" Diehards], Xinhua Net, Aug. 17, 2022.

[53] *China Punishes Diehard "Taiwan Secessionists," Foundations and Companies in Accordance with the Law*, Global Times, Aug. 3, 2022.

[54] Lawrence Chung, *US Taiwan Policy Act: How Would it Change Washington's Relations with the Island and What Was Beijing's Reaction*, South China Morning Post, Sept. 15, 2022. President Biden intensified mainland concern over this development by again stating that the U.S. would defend Taiwan in the event of a Chinese attack. Humeyra Pamuk, Michael Martina, and Danvi Brunnstrom, *U.S. Sending 'Dangerous Signals' on Taiwan, China Tells Blinken*, Reuters, Sept. 23, 2022.

Electronic copy available at: https://ssrn.com/abstract=4208433

[55] Guotaiban Fayanren Zhu Fenglian Da Jizhe Wen [Taiwan Affairs Office Spokesperson Replies to Reporter's Question], CPC Central Committee Taiwan Work Office, State Council Taiwan Affairs Office Website, Sept. 16, 2022.

[56] Zhonggong Zhongyang Xuanchuanbu Juxing Dang de Shibada Yilai Dui Tai Gongzuo he Liang'an Guanxi Fazhan Qingkuang Fabuhui [CPC Central Committee Propaganda Department Holds Press Conference on the Development of Work on Taiwan and Cross-straits Relations Since the 18th Party Congress], CPC Central Committee Taiwan Work Office, State Council Taiwan Affairs Office Website, Sept. 21, 2022.

[57] Zhao Qingsi, Yunyong Falü Shouduan Youli Ezhi "Taidu" Shili Fenlie Guojia [Use Legal Methods to Forcefully Restrain "Taiwan Independence" Forces from Splitting the Nation], Observer Net, Aug. 10, 2022.

[58] Allan Dafoe, Samuel Liu, Brian O'Keeffe, and Jessica Chen Weiss, *Provocation, Public Opinion, and International Disputes: Evidence from China*, 66 Int'l Stud. Q. 2, 10-11 (June 2022).

[59] Strengthen Legislation in the Foreign-related Domain, *supra* note 4.

Electronic copy available at: https://ssrn.com/abstract=4208433