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Written Testimony Before the US-China Economic and Security Commission Session I: CCP's Promotion of Rule by Law

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Introduction

In my testimony I will focus on the Chinese Communist Party's (CCP) promotion of the "rule by law", prioritizing the international dimension and implications for the international legal order.

In official documents, the PRC translates "Fǎzhì" (法治) into "rule of law". This is to distinguish the term 法治, which was introduced in 1997, from the term "法制". The latter has been more closely associated with "rule by law" in China. In his reports at the 19th CCP National Congress, Xi Jinping defined "法治" (translated as "rule of law") as the principle that the constitution and the law are above everything else and that everyone is equal before the law," that "no organization or individual has the power to overstep the Constitution or the law; and no one in a position of power is allowed in any way to override the law with his own orders, place his authority above the law, violate the law for personal gain, or abuse the law."¹

I will use the term "rule by law" in this testimony. In China, the primary function of the law is derived from Marxist thinking. Accordingly, Beijing regards the law as an instrument to achieve the development goals of the CCP.² There is neither an individual constitutional complaint procedure nor an independent judiciary in the People's Republic of China (PRC). In fact, the Chinese leadership rejects the concepts of independent judiciary and checks and balances as "erroneous Western thoughts".³

The PRC's policies are systemic, strategic, and long-term-oriented. To grasp Beijing's vision to promote "rule by law", it is essential to view it through the prism of the CCP's ambitions and development goals. When Xi Jinping assumed power in 2012/2013, he laid out long-term visions for the development of China.

¹ Full text of Xi Jinping's report at 19th CCP National Congress, 18 October 2017, http://www.xinhuanet.com/english/special/2017-11/03/c_136725942.htm

² According to the logic of the CCP, after the Communist Revolution, the law was subjected to "the people" (人民). Therefore, only the CCP has the legitimacy to interpret the will of "the people".

³ 坚持走中国特色社会主义法治道路 更好推进中国特色社会主义法治体系建设 (04/2022) http://www.qstheory.cn/dukan/qs/2022-02/15/c_1128367893.htm

Most importantly, the CCP strives to achieve the so-called “China Dream of the great rejuvenation of the Chinese nation”.⁴ Accordingly, by 2049 (the 100-year anniversary of the PRC) it wants to become “a fully developed nation”, “building China into a modern socialist country that is prosperous, strong, democratic, culturally advanced and harmonious”.⁵ The law shall be utilized to achieve this goal, both at the domestic and the international level.

The most fundamental policy shift in China for decades occurred in 2017. Back then the National Congress of the CCP re-defined the so-called “principal contradiction”. According to the CCP narrative, the 'principal contradiction' is what defines a society.⁶ It guides the actions of CCP officials.

In 1981, the redefinition provided the ideological framework for Deng Xiaoping’s reform and opening-up policy, which led to unprecedented economic growth and the international interconnectedness of China. In 2017, the CCP redefined the 'principal contradiction' from between "the ever-growing material and cultural needs of the people versus backward social production" (adopted in 1981) to "unbalanced and inadequate development and the people's ever-growing needs for a better life".⁷

The reinterpretation in 2017 marked the starting point for a re-orientation of the CCP in which 'common prosperity' trumps the focus on numbers-driven economic growth. The promotion of the law by the CCP needs to be viewed within this context. The law serves as a tool to solve the principal contradiction.⁸

With the re-interpretation of the principal contradiction, Xi Jinping Thought emerged as a guiding narrative in China.⁹ As Xi pointed out in April 2023, Xi Jinping Thought covers all

⁴ Robert Lawrence Kuhn, Xi Jinping’s Chinese Dream, 3 June 2013, New York Times, <https://www.nytimes.com/2013/06/05/opinion/global/xi-jinpings-chinese-dream.html>

⁵ Xi Jinping “Achieving Rejuvenation Is the Dream of the Chinese People”, 29 November 2012, <https://www.neac.gov.cn/seac/c103372/202201/1156514.shtml>

⁶ Xinhua Insight: China embraces new "principal contradiction" when embarking on new journey, 20 October 2017, http://www.xinhuanet.com/english/2017-10/20/c_136694592.htm

⁷ Ibid.

⁸ According to the 19th NPC report, “Law-based governance is an essential requirement and important guarantee for socialism with Chinese characteristics. We must exercise Party leadership at every point in the process and over every dimension of law-based governance and be fully committed to promoting socialist rule of law with Chinese characteristics. We must improve the Chinese socialist system of laws, at the heart of which is the Constitution; establish a Chinese system of socialist rule of law; build a socialist country based on the rule of law; and develop Chinese socialist rule of law theory. We must pursue coordinated progress in law-based governance administration and promote the integrated development of the rule of law for the country, the government, and society. We must continue to promote a combination of rule of law and rule of virtue and combine law-based governance of the country and rule-based governance over the party. We must further reform the judicial system and strengthen awareness of the rule of law among all our people while also enhancing their moral integrity.” See: Full text of Xi Jinping's report at 19th CPC National Congress (2017), available at http://www.xinhuanet.com/english/special/2017-11/03/c_136725942.htm

⁹ The key message of XJP Thought is CCP leadership and the core role of Xi Jinping within the CCP. In October 2022, the 'two safeguards' (两个维护) were written into the CCP Constitution, institutionalizing (1) the 'core' status of Xi Jinping within the CCP and reiterating (2) the centralized authority of the Party. Party influence over the economy and the state has increased significantly in recent years. See: Full text of Constitution of Communist Party of China (22 October 2022), available at

realms and respects, including "reform, development, social stability, domestic affairs, foreign relations, national defense, and governance of the Party, the state, and the military."¹⁰

XJP Thought can be boiled down to the so-called 10 affirmations (十个明确),¹¹ 14 commitments (十四个坚持)¹² and achievements in 13 areas (十三个方面成就).¹³ All of those terms include a reference to “rule of law” and “law-based governance”, meaning that the CCP strives to govern the PRC according to the law. There are over 30 types of Xi Jinping Thought (e.g., on the rule of/by law, on diplomacy, or on economic development).¹⁴

XJP Thought on the rule by law is the most relevant reference point for the CCP’s promotion of the rule by law domestically and internationally.¹⁵

http://english.www.gov.cn/news/topnews/202210/26/content_WS635921cdc6d0a757729e1cd4.html

Also, “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era”, was added to the Preamble of the PRC’s Constitution in 2018.: See Constitution of the People’s Republic of China (2018), available at <https://npcobserver.files.wordpress.com/2018/12/PRC-Constitution-2018.pdf>

¹⁰ [视频]学习贯彻习近平新时代中国特色社会主义思想主题教育工作会议在京召开 习近平发表重要讲话强调 扎实抓好主题教育 为奋进新征程凝心聚力, 3 April 2023, CCTV,

https://tv.cctv.com/2023/04/03/VIDEZhmwS9m4F9H7ykp06Wvp230403.shtml?spm=C31267.PXDaChrrDGdt.EbD5Beq0unIQ.5&utm_source=substack&utm_medium=email

¹¹ The 10 affirmations are 1. CCP leadership; 2. Nat. rejuvenation through a Chinese (non-Western) modernization path; 3. Focus on solving the new principal contradiction; 4. Economic, political, cultural, social, and ecological advancement, and building a modern socialist country, deepening reform, advanced law-based governance, and strengthening CCP self-governance; 5. Develop and improve the system of socialism with Chinese characteristics and modernize China’s system and governance capacity; 6. Establish a system of socialist rule of/by law with Chinese characteristics and build a socialist rule of/by law country; 7. Uphold and improve the basic socialist economic system; 8. Build a "world-class military" that is loyal to the CCP; 9. Major-country diplomacy with Chinese characteristics that "aims to serve national rejuvenation, promote human progress, promote a new type of international relations, and build a community of shared future for mankind."; 10. Self-governance of the CCP. See: 科学把握“十个明确”的重大意义和实践伟力, CPC News.com, 18 July 2022, available at:

<http://dangjian.people.com.cn/n1/2022/0718/c117092-32477736.html>

¹² The 14 commitments are: 1. Ensuring Party leadership over all work; 2. Committing to a people-centered approach, 3. Continuing to comprehensively deepen reform; 4. Adopting a new vision for development; 5. Seeing that the people are the masters of the country; 6. Ensuring every dimension of governance is law-based; 7. Upholding core socialist values; 8. Ensuring and improving living standards through development; 9. Ensuring harmony between humanity and nature; 10. Pursuing a holistic approach to national security; 11. Upholding absolute Party leadership over the people’s armed forces; 12. Upholding the principle of ‘one country, two systems’ and promoting national reunification; 13. Building a global community of shared future; 14. Exercising full and rigorous governance over the party. See: 十四个坚持”基本方略, 22 August 2018, available at:

<http://theory.people.com.cn/n1/2018/0822/c413700-30244032.html>

¹³ The 13 achievements are: 1. CCP leadership, 2. Self-governance, 3. Economic development, 4. Reform and opening up, 5. Advancing political work, 6. Advancing law-based governance. 7. Cultural advancement, 8. Social advancement, 9. Ecological advancement, 10. Strengthening national defense & armed forces, 11. Safeguarding national security, 12. "1 country, 2 systems" and promoting "national reunification" 13. Bolstering the diplomatic front. See: 十三个方面成就”的新概括新思考, 18 January 2023, available at:

<http://wcdx.net/index.php?app=Cms&m=Index&a=content&catid=32&id=556388>

¹⁴ Matt Ho, “A simple guide to Xi Jinping Thought? Here’s how China’s official media tried to explain it”, SCMP, 18 October 2018, <https://www.scmp.com/news/china/politics/article/2169151/simple-guide-xi-jinping-thought-heres-how-chinas-official-media>

¹⁵ According to a XJP speech from 24 August 2018 “Advance the Rule of Law Under Chinese Socialism”, law-based governance in the PRC includes the following 10 principles: (1) Strengthen the CCP’s leadership role in law-based governance. Leadership of the CCP is the most fundamental guarantee for socialist rule of law. (2) Uphold the

The function of the law in the PRC context deviates significantly from a Western understanding. There is no inherent value of the law in the PRC’s “socialist rule of law with Chinese characteristics”. Following Marxist legal tradition, Beijing regards the law as a tool to achieve the (material) development goals of the party.

“Socialist rule of law with Chinese characteristics” consists of several components.

The CCP’s focus on the strict application of rules by a strong centralized state derives from China’s legalistic tradition. Also, the population and party cadres are expected to cultivate moral and virtuous behavior which resembles the teachings of Confucius. The socialist element is the instrumental function of the law as a tool to achieve the material development goals laid out by the CCP. Another modern aspect of the Chinese rule by law is the inclusion of advanced technology.¹⁶ Within the legal realm, it includes, on the one hand, comprehensive efforts to regulate new-tech. On the other hand, the party focuses on advanced technology within the judicial system, for example in digitalized court proceedings. It is also crucial to highlight, that the PRC has incorporated and is still inspired by a significant degree by Western legal tools (theory and practice), including from the US (e.g., business law, procedural due process, or extraterritorial application of domestic law), as long as they are consistent with the objectives of the CCP.

principle that the people enjoy the principal status in our society. (3) Uphold the socialist rule of law with Chinese characteristics. Under no circumstances should we imitate the models and practices of other countries and adopt the Western models of constitutionalism, separation of powers and judicial independence. (4) Develop a system of socialist rule of law with Chinese characteristics. It is a legal manifestation of the Chinese socialist system (complete system of laws, highly efficient enforcement system, sound system of party regulations). (5) Push forward coordinated progress in law-based governance, exercise of state power, and government administration, and promote the integrated development of the rule of law for the country, the government, and society (systematic, holistic, and coordinated pursuit). (6) Govern the country and exercise state power within the framework of the Constitution (uphold constitution-based governance – led by the CCP – the CCP must confine its activities to the areas perceived by the constitution and the law). (7) Ensure sound lawmaking, strict law enforcement, impartial administration of justice, and the observation of law by all. (8) Properly handle the dialectical relationships concerning law-based governance. In implementing law-based governance we must correctly deal with the relationship between leadership by the Party and the rule of law, between reform and the rule of law, between the rule of law and the rule of virtue, and between law-based governance and rule-based Party discipline. Socialist rule of law must uphold CCP leadership, while CCP leadership must rely on socialist rule of law. Reform and the rule of law are like two wings of a bird. We must promote reform under the rule of law and improve the rule of law in the process of reform. We must integrate the rule of law with the rule of virtue so that they complement and reinforce each other. We must bring into play the complementary roles of law-based governance and rule-based Party discipline and ensure that the CCP governs the country in accordance with the Constitution and the laws and govern and discipline itself strictly with Party rules and regulations. (9) Develop a contingent of high-caliber legal personnel with moral integrity and professional competence (loyal to the Party). (10) Make sure that leading officials play key role in implementing the rule of law. See: 习近平：加强党对全面依法治国的集中统一领导 更好发挥法治固根本稳预期利长远的保障作用, 24 August 2018, available at: <http://politics.people.com.cn/n1/2018/0824/c1024-30249776.html>

¹⁶ The rapid adoption of new tech can be witnessed across all areas of governance in China.

On 16 November 2020, the CCP outlined 11 key elements of Xi Jinping Thought on the rule by law.¹⁷ The so-called “11 persistences” (十一个坚持) are as follows:

- 1) CCP leadership in governing the country according to law is the essential feature and inherent requirement of the socialist rule of law with Chinese characteristics. According to the CCP narrative, “Party leadership is the soul of our country’s socialist rule of law and the biggest difference between Chinese and Western rule of law.”¹⁸
- 2) People-centered approach is the source of strength for comprehensively advancing the rule of law. The CCP claims to have the legitimacy to interpret the will of “the people”.
- 3) Adhering to the path of socialist rule of law with Chinese characteristics is the development path and correct direction for comprehensively advancing the rule of law. Xi stated that “under no circumstances should we try to duplicate the models and practices of other countries or adopt Western models as “constitutionalism”, “separation of powers”, and ‘judicial independence’.”¹⁹ This underlines the CCP’s search for a genuine Chinese approach to “the rule of/by law”.
- 4) Adhering to the rule of law and governing the country according to the constitution is the focus of comprehensively advancing the rule of law. While there is no constitutional review mechanism in China, references in official documents to the Chinese constitution have increased significantly over the past couple of years.
- 5) Adhering to the modernization of the national governance system and governance capacity on the track of the rule of law is the only way to achieve good law and good governance. This underlines the instrumental understanding of the law but also an acknowledgment that a functioning legal system is a prerequisite for a modern state.
- 6) Adhering to the construction of a socialist rule of law system with Chinese characteristics is the development goal and general starting point for comprehensively advancing the rule of law. Xi stated “We need to step up legislation in key areas such as national security, technological innovation, public health, biosafety and biosecurity, eco-civilization, risk management, and law-based governance of foreign-related matters.” There is also a clear acknowledgment to regulate “the digital economy, internet finance, artificial intelligence, big data, and cloud computing”.²⁰
- 7) Adhering to the joint promotion of the rule of law, the governance of the country, and the administration according to the law, and the integrated construction of a country under the rule of law, a government under the rule of law, and a society under the rule of law, is the strategic layout for comprehensively advancing the rule of law. This underlines the holistic and systemic approach of the CCP to legal reform. The whole state and population should be under the rule of the law (while the CCP maintains its interpretative

¹⁷ 习近平法治思想“十一个坚持”, 16 April 2021, <http://gysj.cngy.gov.cn/new/show/20210416065221862.html>

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

superiority).

- 8) Ensuring sound lawmaking, strict law enforcement, impartial administration of justice, and the observance of law by all.
- 9) Adhering to the overall promotion of domestic rule of law and foreign-related rule of law is an inevitable requirement for building a country with a strong rule of law. Accordingly, the PRC aims to “actively participate in the reform and construction of the global governance system, strengthen the construction of foreign-related rule of law system, strengthen the application of international law, and maintain the international system with the UN at its core.”²¹ Besides, the PRC aims to “propose plans to reform international rules and mechanisms that are unjust, unreasonable and against positive international trends to promote reform in global governance and contribute to building a global community of shared future.”²² This underlines the PRC’s goal to play an active role in reforming the international legal order.
- 10) Adhering to the construction of high-caliber legal personnel with moral integrity and professional competence. Regarding foreign-related matters, the PRC aims to “strengthen foreign-related legal education, with the focus on training personnel for foreign-related law enforcement, judicature, and legal services, and cultivating and recommending legal professionals for international organizations, so as to better serve the overall work on foreign affairs.”²³ This underlines the PRC’s ongoing capacity build-up in the realm of (international) law.
- 11) Adhering to the "key minority" of leading cadres is a key issue in comprehensively advancing the rule of law. In addition to the people and the state, the CCP itself shall be better governed under the rule of law.

²¹ Ibid.

²² Ibid.

²³ Ibid.

In its first “Plan on Building the Rule of Law in China (2020–2025)”, Beijing laid out its vision for a coherent and genuine Chinese legal system.²⁴ Accordingly, by 2025, Beijing aims to “improve the socialist rule of law with Chinese characteristics”.²⁵ By 2035, it strives to establish a “law-based country” (依法治国), meaning governing in accordance with the law.²⁶

The plan focuses on utilizing the law to make the state more efficient to achieve the outlined development goals while maintaining CCP leadership. Where it serves one-party rule, the document draws on Western aspects of the rule of law, especially when it comes to regulating civil law matters, jurisdiction and procedural matters.

On 6 December 2021, Xi Jinping further substantiated the CCP’s vision of “rule by law”.²⁷ In his speech titled “Develop the System of Socialist Rule of Law with Chinese Characteristics” he stated:

- **First, follow the right direction:**

This refers to upholding CCP leadership, the system of Chinese socialism, and the principle of “the people” as masters of the country. Also, based on China’s culture and conditions, the CCP must not be “misled by erroneous Western ideas”.²⁸

- **Second, speed up legislation in key areas:**

Xi listed legislation on national security, scientific and technological innovation, public health, biosafety and biosecurity, the eco-environment, and risk prevention. Also, he called for more efforts to make laws regulating the development of the digital economy, internet finance, artificial intelligence, big data, and cloud computing. Besides he urged the improvement of laws and closing loopholes to address problems of strong public concern, such as telecom and online fraud, new types of drug abuse, and those in the entertainment industry (e.g., “fanatical celebrity cults, unregulated fan misconduct and exploitation, and dual contracts for tax evasion”). He also called for a revision of the anti-monopoly law and anti-unfair competition law and efforts to guarantee that everyone is equal before the law, to safeguard the consistency, dignity, and authority of the legal

²⁴ China Law Translate, “Plan on Building the Rule of Law in China (2020–2025)“, 10 January 2021, <https://www.chinalawtranslate.com/en/%E6%B3%95%E6%B2%BB%E4%B8%AD%E5%9B%BD%E5%BB%BA%E8%AE%BE%E8%A7%84%E5%88%92%EF%BC%882020-2025%E5%B9%B4%EF%BC%89/>

²⁵ Ibid. By 2025, the CCP aims to (a) further develop the institutional framework for the rule of law in China, (b) establish a more complete socialist legal system with Chinese characteristics (in which the constitution plays a central role), a more solid governance system with clear administrative responsibilities defined by law and a more efficient judicial system, (3) make progress on the formation of a “rule of law society” and (4) improve the application of internal party regulations.

²⁶ Ibid. By 2035, it aims to (a) have basically completed a state, a government, and a society under the rule of law, (b) have basically formed a socialist rule of law system with Chinese characteristics, (c) fully guarantee the people’s right to equal participation and equal development and (d) modernize the national governance system and governance capabilities. See also: Moritz Rudolf, “Xi Jinping Thought on the Rule of Law New Substance in the Conflict of Systems with China”, SWP Comment, April 2021, available at: https://www.swp-berlin.org/publications/products/comments/2021C28_Jinping_RuleOfLaw.pdf

²⁷ 坚持走中国特色社会主义法治道路 更好推进中国特色社会主义法治体系建设, April 2021, http://www.qstheory.cn/dukan/qs/2022-02/15/c_1128367893.htm

²⁸ Ibid.

system, and to call to account anyone who violates the Constitution or other laws.²⁹

- **Third, further reform in the “rule by law”:**

This refers to

- (1) reforming of the judicial system (both, the courts and the procuratorate);
- (2) ensuring social equity;
- (3) establishing a complete, procedure-based and effective system of constraints to strengthen oversight over legislative, judicial, supervisory and law enforcement powers;
- (4) training legal personnel;
- (5) reforming the management system of judicial and law enforcement personnel.

Xi reiterated “never should anyone defer to the Western legal system or copy Western practices in the name of reform.”³⁰

- **Fourth, apply legal means in international matters:**

Xi stated that China’s “capacity to defend the interests of the people and the country with legal means has grown remarkably. We must continue our efforts in this field at home and abroad. Prioritizing areas with urgent needs, we will strengthen foreign-related legislation, improve laws and regulations against sanctions, interference, and abuse of long-arm jurisdiction, and establish a legal system applicable beyond our borders. We should make cooperation in law enforcement and judicial activities an important topic on the agenda of bilateral and multilateral relations and extend the security chain for protecting our overseas interests. We should train more professionals in foreign-related legal affairs.”³¹

- **Fifth, strengthen theoretical research and public education on the rule of law:**

Xi stated that the PRC needs to sum up its experience in “developing and practicing the rule of law, elucidate our traditional culture in this area with stories and examples, and increase the international influence of our legal system and theories of the rule of law so that we can have a stronger voice on the global stage.”³²

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

Domestically the key implications of the CCP promoting the rule by law under Xi Jinping are as follows:

While the PRC's judicial reform agenda dates back decades, Xi raised its significance within the development agenda of the PRC and embedded it into a strategic and ideological context.³³

For most people in the PRC, the new push of judicial reform means less day-to-day arbitrariness. This applies above all to civil and administrative law, questions of jurisdiction and improving processes.

Judicial reform appears to be focused on pragmatically adopting tools from the West, as long as they can be embedded in the Chinese context of one-party rule. Notably, the party decides what is subject to the state legal system and what is "sensitive" and to be handled by the party.³⁴ Sensitive matters are defined by the CCP and assessed outside the law and are therefore not under the control of the state judiciary.³⁵

There are clear efforts to cultivate a (moral) law-abiding population and CCP loyal judiciary. At the same time the PRC is increasing its ability to monitor and persecute those who break the law or who are questioning one-party rule.

Viewed objectively, the Chinese approach to integrating digital technology into the judicial process is avant-garde. For several years, the PRC has been putting processes online. Covid advanced the adoption of this by more courts.

It remains to be seen, whether China's vision will be attractive to third countries. At least when it comes to increasing the efficiency of state action and reducing arbitrariness through technology, it seems plausible.

³³ More information on China's judicial reform can be found here: Supreme People's Court Monitor, "Dean Jiang Huiling on Chinese Judicial Reform" 20 January 2022, <https://supremepeoplescourtmonitor.com/2022/01/20/dean-jiang-huiling-on-chinese-judicial-reform/>, and here: Supreme People's Court Monitor, Dean Jiang Huiling (蒋惠岭) on the Last 10 Years of Judicial Reform, 29 March 2023,

<https://supremepeoplescourtmonitor.com/2023/03/29/dean-jiang-huiling-%e8%92%8b%e6%83%a0%e5%b2%ad-on-the-last-10-years-of-judicial-reform/>

³⁴ See for more details: Jamie P. Horsley, "Party leadership and rule of law in the Xi Jinping era" September 2019, available at: <https://www.brookings.edu/research/party-leadership-and-rule-of-law-in-the-xi-jinping-era/>

³⁵ More information on this matter can be found here: Supreme People's Court Monitor "Guidance on the Special Handling of Four Types of Cases & Its Implications" 21 February 2022, <https://supremepeoplescourtmonitor.com/2022/02/21/guidance-on-the-special-handling-of-four-types-of-cases-its-implications/>

International Dimension

The Chinese leadership strives to become a relevant actor in the realm of international law and redefine international rules. Since 2014, Beijing's capacity build-up in international law has become more robust and strategic, reflecting China's increasing power and global interconnectedness. According to the Plan on Building the Rule of Law in China (2020–2025), Beijing aims to promote its “rule by law” concept internationally.³⁶

At the international level, the PRC also follows an instrumentalist approach of the law. The law shall serve as a tool to safeguard China's core interests and to carry out international struggles.³⁷ For instance, during the 4th Plenary Session of the 18th CCP Central Committee, Xi called upon the PRC to utilize international law to “safeguard China's sovereignty, national security, and development interests.”³⁸

In recent years, the PRC has become more active and self-confident in the realm of international law. Beijing's self-confident utilization of international legal arguments in grey areas of international law is a remarkable new development. While the PRC refused to participate in the South China Sea Arbitration (2013-2016),³⁹ today it confidently uses international law, to defend its political position. During the “spy balloon” affair, Beijing argued that it cannot be determined whether US law and the ICAO are superseded by outer space law (since the balloon was flying at an altitude of 18km). Also, the Chinese Foreign Ministry referred to force majeure and criticized the shoot-down of the balloon as a violation of international law.⁴⁰

The PRC is striving for discourse power in contested areas of international law. For instance, within the UN, the PRC has become more active in reinterpreting and defining international legal termini. Also, the PRC has become more strategic to organize majorities within the UN system, for instance, when it advocated for its position or when it succeeds to get preferred candidates elected to crucial UN positions.⁴¹

The PRC enjoys a high degree of discourse power within the UN Human Rights Council (UNHRC). The PRC has a collectivistic understanding of human rights as opposed to a Western individual-centered approach to human rights. Beijing can rely on a majority of UNHRC members, to pass (legally non-binding) resolutions, to defend its views regarding the human

³⁶ China Law Translate, “Plan on Building the Rule of Law in China (2020–2025)“, 10 January 2021, (See paragraph 25)

<https://www.chinalawtranslate.com/en/%E6%B3%95%E6%B2%BB%E4%B8%AD%E5%9B%BD%E5%BB%BA%E8%AE%BE%E8%A7%84%E5%88%92%EF%BC%882020-2025%E5%B9%B4%EF%BC%89/>

³⁷ 习近平谈法治最新金句 剖析高级干部走上犯罪道路原因, 15 February 2019,

<http://jhsjk.people.cn/article/30707597>

³⁸ Communiqué of the 4th Plenary Session of the 18th Central Committee of CPC, 23 October 2014,

http://www.china.org.cn/china/fourth_plenary_session/2014-12/02/content_34208801.htm

³⁹ The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China), <https://pca-cpa.org/en/cases/7/>

⁴⁰ Charlie Dunlap, J.D." “The Chinese balloon shoot-down incident and the law: some observations”, 5 February 2023, <https://sites.duke.edu/lawfire/2023/02/05/guest-post-the-chinese-balloon-shoot-down-incident-and-the-law-some-observations/>

⁴¹ See: Rudolf, M., “The Belt And Road Initiative - Implications For The International Order” (2021) pp. 277-280.

rights situation in Xinjiang or Hong Kong.⁴²

Also, the PRC has become more vocal across the entire UN system. Traditionally the PRC did not play a significant role in the sixth (legal) committee of the UN.⁴³ Today, Chinese officials participate in very large numbers. They come very well-prepared, take the floor, and outline the Chinese position in a well-structured manner.

For Beijing, the law shall serve as a tool to establish the so-called "Community of shared future for mankind" (CSFM). The CSFM is Beijing's vision of a reformed international order, free from the existing biases towards the West. Xi Jinping introduced the concept to a global audience in 2015, when he delivered his first speech before the United Nations General Assembly in New York.⁴⁴ Xi highlighted five aspects, which form the core of the CSFM.

- Equal Partnerships
- A new security architecture
- Common Development
- Inter-civilization exchanges
- Green Development

Building the CSFM is a key goal of the Chinese leadership. It is the most used buzzword of the Chinese leadership when referring to reforming the international (legal) order. In 2017 and 2018 respectively, the term CSFM was incorporated into the preambles of the CCP and PRC constitution, highlighting its importance within the Chinese system.

Since 2021, the PRC leadership launched three global initiatives which appear to be implementation steps of the CSFM. Those initiatives underline the PRC's efforts to reshape the international order. International law is viewed as the main tool to achieve this goal.

⁴² E.g., <https://www.ohchr.org/en/news/2022/10/human-rights-council-adopts-21-texts-and-rejects-one-draft-decision-extends-mandates>

⁴³ See: Kim, "China, the United Nations and World Order," p. 110.

⁴⁴ Statement by H.E. Xi Jinping President of the People's Republic of China At the General Debate of the 70th Session of the UN General Assembly, 28 September 2015, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/201510/t20151012_678384.html

In September 2021, Xi Jinping proposed the Global Development Initiative (GDI) at the UN.⁴⁵ The GDI projects China's prioritization of development (e.g., over the pursuit of individual human rights) to the UN level.

The GDI includes eight priority areas, namely

1. Poverty alleviation,
2. Food security,
3. Pandemic response and vaccines,
4. Development finance,
5. Climate change and green development,
6. Industrialization,
7. Digital economy,
8. Connectivity in the digital era.

Efforts to tie Beijing's development-focused approach to the UN's 2030 Sustainable Development Goals date back before the launch of the GDI. For instance, Beijing has been working on connecting the Belt and Road Initiative (BRI) with the UN's Sustainable Development Goals for several years.⁴⁶ With the GDI, those efforts are being reinforced and Beijing reaches out directly to the global south.

The Global Security Initiative (GSI) may be viewed as the PRC's vision of collective security reform. Xi Jinping proposed the GSI during the Boao Forum in April 2022.⁴⁷ In February 2023, the PRC issued the GSI Concept Paper, which substantiates Beijing's vision of a new international approach to security.⁴⁸

The GSI highlights six aspects, namely:

1. Common security;
2. Sovereignty and territorial integrity;
3. Focus on the UN Charter;
4. Legitimate security concerns of all countries;
5. Peaceful dispute resolution via dialogue and consultation;
6. Security in traditional & non-traditional domains.

⁴⁵ Xi Jinping's statement at the General Debate of the 76th Session of the United Nations General Assembly, 21 September 2021, http://www.news.cn/english/2021-09/22/c_1310201230.htm

⁴⁶ UN Department of Economic and Social Affairs, "Jointly building the "Belt and Road" towards the Sustainable Development Goals" <https://www.un.org/en/desa/jointly-building-%E2%80%9Cbelt-and-road%E2%80%9D-towards-sustainable-development-goals>

⁴⁷ Xi Jinping Delivers a Keynote Speech at the Opening Ceremony of the Boao Forum for Asia Annual Conference 2022, 21 April 2022, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202204/t20220421_10671083.html

⁴⁸ The Global Security Initiative Concept Paper, 21 February 2023, https://www.fmprc.gov.cn/mfa_eng/wjbxw/202302/t20230221_11028348.html

Notably, “legitimate security concerns” have been raised by the PRC when it comes to evaluating China’s position on the Russian war in Ukraine.⁴⁹

On 15 March 2023, Xi Jinping announced the Global Civilization Initiative (GCI)⁵⁰ which incorporates the PRC’s “Modernization does not equal Westernization” narrative into a strategic umbrella.

The GCI includes four elements, namely:

1. Respect for the diversity of world civilizations
2. Common values of all mankind
3. Historical and cultural values of all countries
4. International cultural exchanges & cooperation

The GCI criticizes Western claims of universality and biases of the global order, for favoring the West while discriminating against the developing world.

The Belt and Road Initiative (BRI),⁵¹ is the most concrete and comprehensive tool for building the Community of Shared Future of Mankind. The BRI is Beijing’s key foreign policy agenda item and vision of global (China-centered) interconnectedness.

It includes five key cooperation areas, namely:

1. Intergovernmental policy coordination;
2. Reduction of trade barriers;
3. (Infrastructure) connectivity;
4. Financial integration;
5. People-to-people exchanges.

Since its launch in 2013, the PRC rebranded the BRI several times. The priority cooperation areas and geographical focus have evolved in a flexible way as well.⁵²

In 2017 the BRI was incorporated into the CCP’s constitution. Accordingly, the CCP shall “pursue the Belt and Road Initiative.”⁵³ Therefore, BRI is here to stay.

Legal cooperation programs under the BRI accompany China’s efforts to gain international discourse power over legal issues. Beijing systematically reaches out to BRI states to promote its legal positions. Since July 2018, Beijing has been promoting this process

⁴⁹ China’s Position on the Political Settlement of the Ukraine Crisis, 24 February 2023, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202302/t20230224_11030713.html

⁵⁰ 习近平在中国共产党与世界政党高层对话会上的主旨讲话 (全文), 15 March 2023, https://www.fmprc.gov.cn/zyxw/202303/t20230315_11042301.shtml

⁵¹ Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, 28 March 2015, https://www.fmprc.gov.cn/eng/topics_665678/2015zt/xjpcxbayzlt2015nnh/201503/t20150328_705553.html

⁵² See: Rudolf, M., “The Belt And Road Initiative - Implications For The International Order” (2021) pp. 242-247. For instance, in 2018, international legal cooperation emerged as an official cooperation area under the BRI.

⁵³ See: http://www.xinhuanet.com/english/download/Constitution_of_the_Communist_Party_of_China.pdf

under the umbrella of the Belt and Road Legal Cooperation Forum.⁵⁴ Legal cooperation, as “soft connectivity”, is intended to complement the desired “hard connectivity” (e.g., the development of cross-border infrastructure networks).

Beijing promotes the BRI as a mechanism to give different legal traditions and legal concepts from around the world international validity. The PRC criticizes the dominance of Western positions in the international legal discourse and offers to facilitate a “more democratic” international (legal) order. In addition to standardization efforts to promote international economic relations, China intends (with moderate success) to establish an international BRI dispute resolution mechanism. Also on the agenda is the establishment of what has been named a “Clean Silk Road”, an initiative that calls for international cooperation on anti-corruption and the global fight against “terrorist, separatist and extremist forces”. During the Second Belt and Road Forum for International Cooperation in April 2019,⁵⁵ the CCP’s Central Commission for Discipline Inspection together with the Chinese Ministry of Foreign Affairs and the China Law Society hosted a sub-forum titled “Building a Clean Silk Road through Consultation and Cooperation for Shared Benefits”.⁵⁶ This sub-forum focused on the international fight against corruption, the establishment of a network of extradition treaties and a training program for lawyers from BRI countries.

The “Belt and Road Legal Cooperation Research and Training Program” launched in the autumn of 2019 serves to convey and disseminate China’s international law practice, legal concept, and the theory of “socialist law with Chinese characteristics”.⁵⁷ Existing legal exchange programs with developing countries have been embedded in a strategic framework. The program is aimed at members of the (international) legal departments of the respective foreign and justice ministries. Representatives of 22 states, such as Egypt, Ethiopia, Pakistan, Serbia, and Turkey, took part in the first 11-day seminar.⁵⁸ Those seminars aim to promote the PRC’s approach and practice of the law to BRI countries. While those efforts stalled during the past three years (due to the COVID-pandemic) they are likely to reemerge with more vigor in the years to come.

⁵⁴ Forum on the Belt and Road Legal Cooperation Opens in Beijing, 2 July 2018, https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zizig_663340/tyfls_665260/tfsxw_665262/201807/t20180704_599949.html

⁵⁵ List of Deliverables of the Second Belt and Road Forum for International Cooperation, 27 April 2019, <http://www.beltandroadforum.org/english/n100/2019/0427/c36-1312.html>

⁵⁶ Full text: Beijing Initiative for the Clean Silk Road, 26 April 2019, <http://www.chinadaily.com.cn/a/201904/26/WS5cc301a6a3104842260b8a24.html>

⁵⁷ The First Session of the Belt and Road Legal Cooperation Research and Training Program Opens in Beijing, 14 October 2019, https://www.fmprc.gov.cn/mfa_eng/gjhdq_665435/2675_665437/2782_663558/2784_663562/201910/t20191016_524183.html

⁵⁸ Ibid.

At the international level, the key implications of the CCP promoting the rule by law are as follows:

First, more Chinese international law expertise:

On 6 December 2021, Xi Jinping declared that the PRC needs better-trained international lawyers and a larger number of professionals who have “a global outlook, a good command of foreign languages and understanding of international rules, as well as international negotiations skills.”⁵⁹

Also, Xi has repeatably encouraged Chinese diplomats to “participate in global governance, to make rules and to set agendas,” prioritizing the areas of global security, health, climate, economics, and cyber affairs.

On February 26th, the Chinese Communist Party (CCP) issued the “Opinions on Strengthening Legal Education and Legal Theory Research in the New Era”.⁶⁰ The document describes comprehensive reform plans for legal education in China. It further reiterates the goal to expand China’s international law expertise and to develop a Chinese theory of international law.

It appears to be just a matter of time before large numbers of better-trained Chinese diplomats and international lawyers emerge on the global stage.

Second, more Chinese engagement in international rule-setting:

The PRC aims to play a decisive role in formulating international rules in key strategic fields. The Chinese leadership has defined the following areas: the high seas, polar regions, cyberspace, outer space, nuclear security, anti-corruption, and climate change. Also, China has determined the following domestic regulatory priorities: development of the digital economy, internet finance, artificial intelligence, big data, and cloud computing. In those areas, Beijing also wants to set international standards.⁶¹

This is not surprising as any emerging country has an incentive to have its interests reflected in the international order. In doing so, the PRC has been very active in reaching out to the global south to build coalitions for the future of global norm-setting (e.g., in Africa, when it comes to internet regulatory standards).

⁵⁹ 坚持走中国特色社会主义法治道路 更好推进中国特色社会主义法治体系建设, April 2022

http://www.qstheory.cn/dukan/qs/2022-02/15/c_1128367893.htm

⁶⁰ 中共中央办公厅 国务院办公厅印发《关于加强新时代法学教育和法学理论研究的意见》, 26 February 2023. http://www.gov.cn/zhengce/2023-02/26/content_5743383.htm

⁶¹ 习近平法治思想“十一个坚持”, 16 April 2021, <http://gysj.cngy.gov.cn/new/show/20210416065221862.html>

Third, promotion of “foreign-related rule of law” (涉外法治):

Improving the so-called “foreign-related rule of law” includes four components.

1) Beijing wants to strengthen its ability to protect Chinese citizens and entities from foreign sanctions, “interference, and abuse of long-arm jurisdiction”.⁶² The PRC leadership puts a lot of emphasis on this due to increasing US-China tensions. Also, Beijing has a lot of catching up to do in this area (especially compared to the US). Recent legislation in the areas underlines that China is prioritizing catching up here.⁶³

2) Promoting “Foreign-related rule of law” focuses on increasing China’s ability to apply its laws extraterritorially. Over the past 10 years, Chinese laws with extraterritorial clauses have increased significantly (e.g., Art. 27 of the Counter-Espionage Law (2014), Art. 11 of the Anti-Terrorism Law (2015), Art. 75 of the Cybersecurity Law (2017), Art. 82 of the Nuclear Security Law, Art. 37 and 38 of the Hong Kong National Security Law (2020), Art. 44 of the Export Control Law (2020), Art. 2 of the Data Security Law (2021), Art. 2 of the Personal Information Protection Law (2021), and the Anti-Foreign Sanctions Law (2022)).

This appears to be a normal development for a powerful and globally connected state. At this point, the PRC appears to be unable and (for the most part) unwilling to enforce its laws very efficiently abroad. Notably, the PRC appears to be striving to follow in the footsteps of the US.⁶⁴ This is a key priority area for Beijing.

3) “Foreign-related rule of law” also means that the leadership in Beijing encourages Chinese courts to increase their ability to apply foreign law. The reason for this development is the BRI, which 149 countries have joined.⁶⁵ Notably, so far there are only a few cases where Chinese courts applied foreign law.⁶⁶ Nevertheless, the Chinese leadership wants to increase this number and turn China to become an international dispute resolution center.

4) Beijing has expressed the goal to train more Chinese jurists to understand and apply foreign and international law.⁶⁷ The capacity-building process is ongoing.

⁶² 坚持走中国特色社会主义法治道路 更好推进中国特色社会主义法治体系建设, April 2022

http://www.qstheory.cn/dukan/qs/2022-02/15/c_1128367893.htm

⁶³ China Law Translate, “Law of the PRC on Countering Foreign Sanctions” 10 June 2021,

<https://www.chinalawtranslate.com/en/counteringforeignsanctions/>

⁶⁴ 最高人民法院关于人民法院涉外审判工作情况的报告, 29 October 2022, <https://www.court.gov.cn/zixun-xiangqing-377231.html>

⁶⁵ See: https://www.yidaiyilu.gov.cn/info/iList.jsp?cat_id=10037

⁶⁶ Supreme People’s Court Monitor, “Supreme People’s Court’s Specialized Report on Foreign-Related Adjudication Work” 8 February 2023, <https://supremepeoplescourtmonitor.com/2023/02/08/supreme-peoples-courts-specialized-report-on-foreign-related-adjudication-work/>

⁶⁷ 最高人民法院关于人民法院涉外审判工作情况的报告, 29 October 2022, <https://www.court.gov.cn/zixun-xiangqing-377231.html>

Fourth, increasing international judicial cooperation, in particular cooperation in the field of law enforcement.⁶⁸

Beijing strives to increase its engagement in international cooperation in the fight against violent terrorist, ethnic separatist and religious extremist forces, drug trafficking, and transnational crime. The PRC also wants to expand international anti-corruption cooperation, to “increase efforts in overseas pursuit of stolen goods, repatriation, and extradition.”⁶⁹ Since 2019, those efforts have been incorporated into the BRI (“clean silk road”).⁷⁰ For this purpose, Beijing has been building a global network of bilateral extradition treaties. The European Court of Human Rights decision from November 2022 will prevent any extraditions from Europe to China,⁷¹ thereby strengthening incentives for Beijing to primarily focus on the global south for those efforts. Nevertheless, Beijing appears to be willing and increasingly capable to pursue its domestic security priorities outside of its borders (notably to a much smaller degree in comparison to the US).

Fifth, building modern international dispute resolution mechanisms.

With the so-called BRI International Commercial Courts, the PRC aims to promote greater capacity of its own arbitration institutions. The Chinese leadership wants China to become an international arbitration center. Also, it aims for more cooperation between arbitration tribunals from China and BRI countries.

Beijing’s successful facilitation between Saudi Arabia and Iran and its recent efforts concerning the war in Ukraine underline that China wants to assume an international role in conflict resolution. On February 16, the inauguration ceremony of the Preparatory Office of the International Organization for Mediation took place in Hong Kong.⁷² It will be the first international intergovernmental institution focusing on international conflict resolution via mediation, which aims to provide a new platform for the peaceful resolution of international disputes. We can expect much more efforts by the PRC to engage in bilateral dispute resolution in the future.⁷³

⁶⁸ China Law Translate, “Plan on Building the Rule of Law in China (2020–2025)“, 10 January 2021, <https://www.chinalawtranslate.com/en/%E6%B3%95%E6%B2%BB%E4%B8%AD%E5%9B%BD%E5%BB%BA%E8%AE%BE%E8%A7%84%E5%88%92%EF%BC%882020-2025%E5%B9%B4%EF%BC%89/>

⁶⁹ Ibid.

⁷⁰ Cui Hui, “Clean Silk Road: The key to safeguard the BRI” 26 April 2019,

<https://news.cgtn.com/news/3d3d674e78676a4d34457a6333566d54/index.html>

⁷¹ Vivianne Yen-Ching Weng and Yu-Jie Chen, “Liu v. Poland: A Game Changer for the Extradition Agendas of Autocracies (like China)?”, 17 November 2022, <https://www.ejiltalk.org/liu-v-poland-a-game-changer-for-the-extradition-agendas-of-autocracies-like-china/>

⁷² Int’l Organization for Mediation to facilitate dispute settlement: Chinese FM, 16 February 2023,

<https://english.news.cn/20230216/1a95d40e0ed8481f988586ebc4133ab1/c.html>

⁷³ Moritz Rudolf, “Xi Jinping Thought of the Rule of Law and Beijing’s goal to redefine international norms” April 2023, <https://www.democraticfutures.de/policy-paper-moritz-rudolf-english>

Recommendations:

Given the prioritization of the Chinese leadership to develop and promote China’s approach to “rule by law”, it is relevant systematically study and understand this trend.

Bilateral exchanges of jurists from the PRC and the US may be beneficial for the US, since announcement and implementation tend to diverge in the PRC. Also, the PRC’s incorporation of new-tech into the judicial system deserves close attention from political decision-makers.

The effectively defend the international legal order, nuances matter when it comes to assessing the PRC’s utilization of international law. The international legal order is participatory by design and built for nations to contribute to its development. China's interactions in the UN and other global fora may be challenging, but it isn't necessarily an attack on those systems. In other words, China's contributions can't be 'bad' simply because they come from China. Nevertheless, 'bad' contributions and concrete violations of international law by the PRC should be firmly addressed through those same mechanisms. Otherwise, there is a risk of undermining the so-called international rules-based order in the attempt to uphold it.

Even if the PRC challenges aspects of the so-called rules-based international order, it is impossible to wish away the PRC. We are merely witnessing the first phase of a more self-confident China which utilizes the law to pursue its interests at the global level. China is a global stakeholder and plays a determining factor in the future development of the global order.

Political decision-makers should anticipate (and prepare) to face better-trained Chinese diplomats and international lawyers, negotiating complex international legal issues (e.g., regarding the high seas, polar regions, cyberspace, outer space, nuclear security, global health, and climate change). Comprehensive knowledge of the Chinese positions is imperative for future negotiations. Therefore, a technical debate and exchanges between Washington and their Chinese counterparts on international legal issues should occur sooner rather than later.

It is also recommended to strengthen capacity-building projects for members of departments of justice, etc. in the global south. They are negotiating with Chinese parties without the requisite training.

The PRC will most likely be sitting at the table when fundamental reforms of the UN system will be up for debate. Even if the Chinese proposal to end the war in Ukraine won’t solve the conflict, it has shown that the PRC is aiming for a central role in negotiations about the post-war arrangement. It is crucial to think ahead and prepare for this scenario (e.g., by building a broad global coalition).

For decision-makers in the US (and like-minded states), it is crucial to regain ground within existing international institutions. The PRC views the existing international order as the outgrowth of century-old power asymmetries favoring Western states. Many states of the global south share Beijing’s view that a fundamental reform of the global order is overdue. The PRC appears to be in the process of international coalition building to reform the international legal order, while the US is more and more inward-looking. Xi has a third term and a loyal standing

committee while the US is entering the 2024 election mode. This should concern US decision-makers.

To achieve realistic political goals, the room for maneuvering a values-based foreign policy approach (following a democracy vs. autocracy narrative) appears to be rather small. To attain majorities, it is necessary to (pragmatically) reach out to “third states” and to build political coalitions beyond the G-7. Given the PRC’s ambitions in the realm of international law, hubris will not be enough to uphold the international order.

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