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Beijing's Strategy for Asserting Its "Party Rule by Law" Abroad

By Jordan Link, Nina Palmer, and Laura Edwards



Chinese Communist Party leader Xi Jinping leads top officials pledging their vows to the party during a gala in Beijing on June 28, 2021. (Photo by Ng Han Guan/AP)

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Summary

- The Chinese Communist Party (CCP) seeks to expand the applicability of its "rule by law" (as opposed to "rule of law") paradigm, enhancing its ability to use the law as a tool to increase its international influence and advance its political and economic objectives.
- The CCP is taking three steps to expand rule by law abroad: expanding its control over the legal system at home, increasing the extraterritoriality of PRC laws, and crafting new legal tools to block US extraterritorial laws and shape the behavior of foreign actors.
- These legal developments have significant implications for US industry. Companies will experience escalating risk from increasingly assertive intellectual property jurisdictional claims and efforts to control speech abroad.
- The PRC's increasingly assertive development of "legal weapons" is likely to further strain US-China relations and potentially destabilize the rules-based order that underpins global stability and cooperation.
- US policymakers can counter CCP efforts by publicly identifying these moves as a threat to democratic governance, working with partners to formalize support for the rule of law in trade and security relationships, and revitalizing US participation in the United Nations to strengthen rule of law norms.

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ABOUT THE REPORT

Informed by multiple Chinese sources, including open-source government documents, statements by high-ranking officials, reports in state-affiliated media, and Chinese-language academic publications, this report explores the Chinese Communist Party's ongoing efforts to extend the applicability of its legal system abroad as a means of securing its position at home and advancing its foreign policy objectives. The report was commissioned by the China Program at the United States Institute of Peace.

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The views expressed in this report are those of the authors alone. They do not necessarily reflect the views of the United States Institute of Peace. An online edition of this and related reports can be found on our website (www.usip.org), together with additional information on the subject.

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A man reads “Xi Jinping: The Governance of China,” a selection of speeches by the Chinese leader, at the Hong Kong Book Fair on July 20, 2022.
(Photo by Kin Cheung/AP)

Introduction

Xi Jinping and the Chinese Communist Party (CCP) have their eyes set on asserting more influence over the international legal system. In June 2021, the National People’s Congress of the People’s Republic of China (PRC) announced the new Anti-Foreign Sanctions Law (AFSL), which asserts the PRC’s “right to take corresponding countermeasures” against foreign countries that take what PRC officials regard as discriminatory measures against China or its citizens and organizations. This new law allows the CCP not just to retaliate against foreign sanctions but to take measures against any foreign action it perceives as a threat. The new law also serves as a pointed warning for any country practicing “hegemony” or “power politics,” language commonly used by PRC officials to refer to the United States. According to Foreign Ministry spokesperson Zhao Lijian, the law is a step toward “enriching the legal toolkit” of the PRC government as it seeks to fight against foreign sanctions.¹ However, the AFSL is just one of many avenues through which the government is working to expand the extraterritorial applicability of its legal regime.

The AFSL follows a series of similar laws promulgated under Xi’s leadership. These new regulations are designed to blunt the impact of US and other foreign laws in China while asserting CCP legal regimes and preferences. The AFSL also arrives against the backdrop of the expanding extraterritorial jurisdiction of PRC laws, such as the Hong Kong National Security Law and various laws governing technology and trade. The increasing extraterritorial applicability of PRC laws is intended to counter American legal hegemony by replicating US—and sometimes European—laws with expansive extraterritorial applications.

“Rule by law” (as opposed to “rule of law”) has a long history in CCP jurisprudence. Party officials often refer to developing the “rule of law” (法治) in China.² However, the domestic legal apparatus of the Chinese government functions in a fundamentally different way than that of liberal democracies. China’s legal system is marshaled by the CCP as a political tool to maintain the party’s power and to ensure domestic political stability.³ In contrast, in liberal democracies, a legal system governed by “rule of law” refers to “a principle of governance” that holds everyone and all institutions, including the state, to publicly promulgated laws.⁴ Therefore, the party’s translation of 法治 as “rule of law” is misleading and mischaracterizes the role the law plays within China. More accurate translations of 法治 include “law-based governance,” “ruling the country in accordance with the law,” and “rule by law.” This report characterizes the CCP governance model as “party rule by law” in order to draw attention to the fact that in China the law is a political tool wielded by the party without the consent of the governed. Under Xi’s leadership, the party-state has increasingly utilized the law as a tool for enforcing political discipline, making the party-state apparatus more responsive to directives from above, and suppressing dissent.⁵

The expansion of extraterritoriality in Chinese law and the CCP’s aspirations to accelerate the development of “foreign-related rule of law” (涉外法治) should concern US policymakers. The CCP is expanding the jurisdiction of its laws so that it can simultaneously bolster control at home and suppress opposition abroad. Additionally, this strategy is clearly aimed at blunting the effectiveness of US foreign policy tools such as export controls and sanctions.

This report explores Beijing’s ambitions, actions, and plans to grow its international legal authority and their potential ramifications for US interests and international stability. Based on translations of statements made by Chinese officials and academics, the report identifies Beijing’s strategy to manage external political and economic risks via legal means. The report then articulates the implications these efforts will have for US businesses and for US-PRC relations at a time of rising tensions and growing concern over a possible Chinese invasion of Taiwan. Next, the report looks ahead to future steps the CCP may take to further enhance its legal toolkit to address what it perceives as international threats. Finally, the report offers recommendations for US policymakers, which include publicly identifying the CCP’s ongoing efforts to assert its legal jurisprudence abroad, forming a coalition of nations to assess how Beijing’s legal influence could run counter to local interests, increasing engagement in international institutions such as the United Nations where international rules and standards are set, and initiating a campaign to inform the US legal and business community of Beijing’s efforts to shape international legal norms.

Why Beijing Wants to Assert Its Legal Regime Abroad

Xi Jinping has been transparent about his desire to increase the applicability of China’s laws internationally. In a 2018 speech given at the first meeting of the Central Committee for the Comprehensive Rule of Law, which was established to strengthen the CCP’s leadership over law in China, Xi declared, “In foreign struggles, we must take up legal weapons, occupy the

commanding heights of the rule of law, and dare to say no to spoilers and disrupters globally.”⁶ The desire to craft laws that hamper the effectiveness of foreign sanctions and other legal actions stems from the government’s long-standing and increasing discomfort with an international system shaped by US influence in the post–Cold War era. As Chinese Foreign Minister Wang Yi noted during a meeting in July 2021 with US Deputy Secretary of State Wendy Sherman, “China did not participate in the development [of the rules-based international order], so why should we comply with it?”⁷

Throughout his leadership, Xi has emphasized the need to shape domestic rule of law. In practice, this means tightening CCP control over China’s legal apparatus while institutionalizing legal processes that enable the party to maintain power. The CCP uses laws to hold all elements of society accountable except itself. However, this system is incompatible with most internationally recognized definitions of rule of law. For example, the United Nations defines the rule of law as

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.⁸

The CCP’s efforts to sharpen and increase the number of legal tools at its disposal have until recently been largely domestic facing; however, the campaign began explicitly turning outward in early 2019. In Central Committee sessions in both February 2019 and January 2021 intended to set forth the CCP’s priorities for legal reforms, Xi emphasized the need to accelerate the development of the PRC’s legal system to facilitate greater extraterritorial application of its laws.⁹ This effort was formally endorsed in the 14th Five-Year Plan, an authoritative, high-level strategy for whole-of-government planning from 2021 through 2025, which called on China to “strengthen the construction of a legal system for foreign-related matters and strengthen the training of foreign-related legal personnel.”¹⁰ In June 2021, a research center called the Center for the Study of Xi Jinping Thought on Rule of Law was established in Beijing. According to Wang Chen, a Politburo member and head of the China Law Society, the center “aims to encourage the legal academics and professionals to advance their research on Xi Jinping Thought on the Rule of Law and further implement it.”¹¹ Xi’s repeated guidance, high-level government and party policy documents, and the creation of new institutions to support the development of the “rule of law” suggest that this is a top priority for the government and the CCP.

Chen Yixin, head of the Central Political and Legal Affairs Commission, the CCP organization with direct authority over China’s judicial system, and a close ally of Xi, has signaled the importance of developing foreign-related rule by law as it relates to implementing Xi’s vision for strengthening rule by law more broadly. In a lengthy article published in December 2021 in the party newspaper *People’s Daily*, Chen laid out 10 major relationships that officials must grasp when studying “Xi Jinping Thought on the Rule of Law.” On the relationship between domestic rule of law and foreign-related rule of law, Chen made two important points. First,

the CCP must enrich its “legal toolbox” to cope with challenges and risks presented by foreign legal actions, including “counter-sanctions, counter-interference, and counter-legal jurisdiction.” Second, cadres must “propose reform plans for unjust and unreasonable international rules and international mechanisms, promote changes in global governance, and promote the building of a community with a shared future for mankind.”¹² Importantly, the phrase “a community with a shared future for mankind” (人类命运共同体) is CCP shorthand for achieving global acceptance of the party’s governance model.¹³ This language around strengthening the legal toolbox to cope with external risks and challenges is already being echoed throughout the CCP apparatus, as evidenced by Foreign Ministry spokesperson Zhao referencing the concept when explaining the implementation of the AFSL to reporters.¹⁴

Previous articles in the People’s Daily also articulated the party’s vision for implementing a “foreign-related legal system” (涉外法治体系). Beijing wants to “actively participate in the formulation and improvement of international rules” in order to “influence the development of international law” while “strengthening international law enforcement and judicial cooperation, and promoting the convergence of domestic laws and international rules.”¹⁵

Within the party, there is a clear effort to implement some laws internationally. Frequent government and CCP references to “a new historical era” reflect the widespread belief that American hegemony and Western influence are faltering and that now is the time to assert greater influence. As Wang Chen noted in April 2021:

The profound changes unseen in a century mean the turbulent reconstruction of the world order: the “rising of the East and the decline of the West” in world power and the evolution of the international rule of law. . . . General Secretary Xi Jinping was far-sighted . . . and put forward “promoting domestic rule of law and foreign-related rule of law in an all-round way” and “promoting domestic governance and international governance in a coordinated way.”¹⁶

Beijing’s Strategy for Asserting Party Rule by Law Abroad

The CCP’s strategy to assert its legal regime abroad hinges on three key motivations. First, the party is bolstering its authoritarian conceptualization of rule by law and its use of the law as a political tool to maintain primacy at home. Second, the party is seeking to extend the extraterritorial application of domestic law to increase its influence abroad. Third, Beijing is creating what it refers to as new “legal weapons” to blunt the impact of foreign legal tools such as sanctions, to implement PRC laws abroad, and to shape the global legal environment to fit its own vision.

This intended extraterritorial application of PRC law abroad is technically not incompatible with sovereignty under international law. Many states exercise legal jurisdiction beyond their territories. However, the CCP’s strategy for asserting party “rule by law” abroad matters because Beijing operates under an authoritarian understanding of the purpose and limits of the law that is fundamentally different from the current standards of international law.

Chinese President Xi Jinping, center, speaks with Wang Chen, a Politburo member and head of the China Law Society, during a plenary session of the National People's Congress at the Great Hall of the People in Beijing, on March 11, 2018. (Photo by Mark Schiefelbein/AP)

CREATING THE SYSTEM OF PARTY RULE BY LAW

China's domestic governance system, like the systems in many other authoritarian regimes, is dictated by rule *by* law, not rule *of* law. As noted above, this conceptualization refers to a system in which the CCP uses the law as a tool to ensure party control of Chinese society while the CCP itself is not bound by that same law.¹⁷ This system outlaws in practice what liberal democracies consider fundamental freedoms, such as freedom of speech, assembly, and privacy, and applies laws unequally across ethnic, gender, and political spectrums, all in the interest of protecting party control.

Xi Jinping has spoken clearly and consistently on this subject. In 2020, for example, he declared:

To fully govern the country by law is to strengthen and improve the party's leadership, improve the system and working mechanism for party leadership to fully govern the country by law, promote the institutionalization and legalization of party leadership, and ensure the effective implementation of the party's line, principles, and policies through the rule by law.¹⁸

In other words, the first and foremost purpose of the law is its use as a tool to preserve the power and primacy of the CCP.

Recent evidence suggests Xi and the CCP will persist in developing party rule by law. In 2020, Xi promulgated "Eleven Upholds," a set of political guidelines designed to steer the party as it works to implement Xi's conception of the CCP's rule by law. The first precept is "upholding party leadership on overall law-based governance."¹⁹ Wang Chen has explicitly rejected legal models that do not unify power in the party, averring that "we must never copy the models and practices of other countries, and must not follow the Western so-called 'constitutionalism,' 'separation of powers,' and 'judicial independence.'"²⁰

China's domestic legal context and the party's goals at home matter because the party views domestic and international legal frameworks as inextricably linked. Foreign Minister Wang Yi commented in 2014 that "diplomacy is an extension of internal affairs; China, with its firm commitment to promote rule of law internally, is inevitably a firm protector and active builder of international rule of law."²¹ By linking domestic and international law, the party seeks to achieve its



ultimate goal of enabling the PRC to occupy the same role vis-à-vis other states internationally as the CCP plays for Chinese citizens domestically. The CCP seeks to create and control legal mechanisms that impact behavior abroad, while the CCP itself remains unaccountable to legal restraints. Linking domestic and international law is an attempt to extend the CCP's authoritarian rule outward into the international system in order to better manage and influence global affairs.

The symbiosis between domestic party rule by law and the CCP's desire to expand the impact of PRC laws abroad—and thereby influence international legal norms—has become more explicit in recent years. For instance, the Central Committee's Plan on Building the Rule by Law in China (2020–2025), released in 2021, calls for promoting party rule by law internationally.²²

EXPANDING EXTRATERRITORIAL JURISDICTION

Xi and the party are actively seeking to extend the extraterritorial application of domestic PRC law abroad. According to official state media, Xi Jinping himself has ordered accelerating “the construction of a legal system applicable outside the jurisdiction of China.”²³

To accomplish this goal, the PRC government has created or amended significant legislation with extraterritorial application over the last several years, including the Anti-Monopoly Law (introduced in 2007 and amended in 2021), the Cybersecurity Law (2017), the Hong Kong National Security Law (2020), the Data Security Law (2021), and the Personal Information Protection Law (2021). These laws create various avenues for the government to assert its preferences and authority abroad. For example, the Anti-Monopoly Law allows the government to place conditions on mergers and acquisitions of any company with a significant market presence in China.²⁴ The Cybersecurity Law gives the government the right to monitor, prevent, and handle “cybersecurity risks and threats arising both within and without the mainland territory of the People's Republic of China.”²⁵ Article 38 of the Hong Kong National Security Law states, “This Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region.”²⁶

CRAFTING NEW LEGAL WEAPONS

In addition to creating laws with extraterritorial applications, the PRC government is crafting and implementing laws to block or retaliate directly against foreign laws affecting China. Perhaps the most notable of these is the aforementioned Anti-Foreign Sanctions Law, whose passage was somewhat unusual, in that it bypassed the usual public review and arrived fully passed and in effect on June 10, 2021. The atypical manner in which this law was enacted suggests that Beijing's political ambitions and domestic pressure to retaliate against sanctions may have temporarily outpaced the typically sluggish PRC legislative process.²⁷ It also suggests that Beijing's broader efforts to assert legal authority abroad may not be well coordinated yet and that the party is taking steps to rectify the problem.

The AFSL is just one of a number of tools recently created to retaliate against foreign laws that interfere with PRC government and CCP interests. In 2020, the Ministry of Commerce (MOFCOM) released regulations establishing an Unreliable Entities List, which is ostensibly modeled on the US Department of Commerce's Entity List, a tool that enables the US government to restrict exports of sensitive technologies and components to organizations involved in activities that threaten US national security or foreign policy interests.²⁸ In January 2021, MOFCOM also

As Beijing continues to expand its foreign-related rule of law campaign, US industry will find itself facing increasing challenges to mitigate legal risk in China.

created its own blocking statutes, which allow the PRC government to penalize third-country companies for adhering to US sanctions in China.²⁹

These new tools legalize the authority of the PRC government to impose costs on companies that adhere to foreign sanctions in China, potentially limiting the reach of

what the CCP often refers to as the United States' "long-arm jurisdiction." These laws were likely fashioned in response to the Trump administration's efforts to "decouple" from, or reduce US reliance on, the Chinese economy. However, the first mentions of a Chinese Unreliable Entity List date back to 2019, when the PRC government imposed visa bans on numerous US officials. The government could conceivably apply these tools against a range of more traditional US sanctions programs in the future. For example, Chinese officials have long complained about the Global Magnitsky Act (2016), the Countering America's Adversaries Through Sanctions Act (2017), and the Iran, North Korea, and Syria Nonproliferation Act (2020)—all of which allow the US government to sanction foreign individuals for violations.³⁰

Implications for US Industry

As Beijing continues to expand its foreign-related rule of law campaign, US industry will find itself facing increasing challenges to mitigate legal risk in China. Party control of China's judiciary means that the government can easily punish any domestic and foreign companies that it views as noncompliant with PRC law. Furthermore, recent PRC government actions to reform the \$120 billion private education industry suggests that previous calculations about the government's low tolerance for job losses and instability may be incorrect.³¹ PRC government tolerance for domestic economic instability and worsening relations with the US government may mean that the deployment of laws to counter foreign sanctions and export controls is only a matter of time. So far, the PRC government has remained solicitous of foreign business, but that attitude could change if Beijing assesses that punishing foreign business might be the only way to change foreign government behavior on core interests.

Chinese partners and employees of multinational companies in China may have no choice but to comply with PRC government countersanctions. The already delicate balancing act between complying with PRC regulations and appeasing CCP officials while adhering to international standards in the Chinese offices of US businesses and joint ventures of multinational companies is likely to become acutely precarious as companies attempt to prepare for a potential standoff between PRC and US sanctions laws. Normally benign activities such as compliance briefings and contingency planning may well become politicized.

Even if a US company avoids being targeted by the Unreliable Entities List or the AFSL, the company may still face unmitigable compliance issues if it has a commercial relationship with another entity sanctioned by the PRC government. US companies that attempt to comply with a PRC government sanction or boycott of another foreign company may find themselves in violation of US antiboycott authorities. The United States' Export Administration Regulations (EAR)

have contained antiboycott authorities since at least 1977, when Congress amended the EAR to prohibit US persons from supporting an unsanctioned foreign boycott.³² Simply put, CCP efforts to extend its legal regime abroad could create a situation in which companies are caught in the crossfire of two retaliatory sanctions regimes.

US industry should also prepare for the increased expansion of the extraterritorial application of PRC laws and PRC judicial interpretations of jurisdiction. Multinational companies, such as Qualcomm and InterDigital, have already grappled with the disruptive and politicized impact of PRC government anti-monopoly reviews.³³ Laws such as the Cybersecurity Law and the Hong Kong National Security Law, which are intended to apply extraterritorially, create significant legal exposure in China because they could be used to target activities abroad such as free speech. China's courts are also becoming increasingly expansive in their interpretation of PRC legal jurisdiction, as seen, for example, in the court injunctions in cases such as the Xiaomi-InterDigital intellectual property dispute. Xiaomi, a Chinese tech company, sought a ruling in a PRC court over a licensing fee dispute with US technology-patent firm InterDigital in 2021. The court issued an injunction that forbade InterDigital from litigating the case outside of China; if the injunction was ignored, InterDigital faced the possibility of being fined around \$150,000 daily. InterDigital ignored the injunction and threat of fines, filing suits in both India and Germany.³⁴ In August 2021, the companies signed a licensing agreement that settled the dispute.

Implications for US-China Relations

The CCP's efforts to assert party rule by law abroad have the potential to exacerbate tensions between the United States and China. President Biden has been clear that his administration's approach to foreign policy "must start with diplomacy rooted in America's most cherished democratic values: defending freedom, championing opportunity, upholding universal rights, respecting the rule of law, and treating every person with dignity."³⁵ There is a disparity between the CCP's evident intent to extend its legal arm abroad and US efforts to promote an international legal system predicated on respect for human rights and other democratic ideals. Efforts by the PRC government to retaliate against foreign actions that interfere with its agenda will almost certainly deepen the political divide between the United States and China and further fuel the drive to reduce US dependencies on the Chinese economy across a wide spectrum of industries and economic sectors.

Beijing's ambitions to extend party rule by law into the international arena present challenges to a range of US national interests. First and foremost, if the PRC government decides to invade Taiwan, it is likely to use its legal weapons to insulate the Chinese economy from any retaliatory economic measures imposed by the United States and its allies and partners, drawing lessons from Russia's invasion of Ukraine. According to FBI director Christopher Wray, CCP leaders are already working to identify ways to protect the Chinese economy from international sanctions in the event of a PRC invasion of Taiwan. "Just as in Russia, Western investments built over years could become hostages, capital stranded, supply chains and relationships disrupted," said Wray in July 2022. "Companies [could be] caught between sanctions and Chinese law forbidding compliance with those sanctions. That is not just geopolitics, it's business forecasting."³⁶ As the PRC

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continues to take preparatory measures, including devising ways to use the legal tools at its disposal, ahead of a potential Taiwan contingency, policymakers in Washington and other capitals are likely to become warier of the CCP's military ambitions vis-à-vis Taiwan, contributing to worsening tensions between Washington and Beijing.

A second challenge to US interests is posed by the PRC government incorporating legal weapons into its economically coercive practices against governments and private companies that are seen in Beijing as threatening CCP interests. For example, recent PRC economic coercion targeting Lithuania demonstrates that Beijing is inching closer to deploying its legal weapons during disputes. When, in November 2021, Lithuania opened in Vilnius what it called a "Taiwan Representative Office" (rather than a "Taipei Representative Office"), Beijing accused Lithuania of violating its "One China Principle," which asserts that Taiwan is part of an indivisible China. After implementing an export embargo on Lithuania, Beijing employed a novel tactic of informal secondary sanctions, warning businesses that use Lithuanian products that they could also be subject to economic retaliation.³⁷ Given this tactical evolution, it seems likely that Beijing will eventually deploy legal weapons when it perceives threats to its core interests, such as calls for changes to Taiwan's international status or for the imposition of international sanctions for human rights violations in Xinjiang. A deployment of legal weapons in a dispute involving a US ally or partner seems certain to heighten tensions between the United States and the PRC.

A Work in Progress

The Chinese government's efforts to exert its legal preferences and domestic laws internationally are a work in progress. Current government documents, academic and legal articles, and political theory journals published by the CCP outline at least six broad areas where China might build on the steps it has taken to date.

Shaping international laws in emerging technologies and other key areas. Shen Deyong, the former director of the Social and Legal Committee of the National Committee of the Chinese People's Political Consultative Conference, and Liu Jingkun, a professor from the Research Institute for the Rule of Law at China University of Political Science and Law, have identified key fields where Beijing should shape international rules in order to enhance the PRC's influence over international law. For example, they name outer space, cyberspace, big data, and artificial intelligence as priority areas for legal development.³⁸ They also call for "constructive plans that are consistent with the international rule of law and China's reality, and are generally accepted by the international community, so as to enhance [China's] right to speak and influence in the development of international law."³⁹ The secretary of the party committee and dean of the law school at Renmin University, Wang Yi, has called for the PRC to play a greater role "in the formulation of international rules" in fields such as oceans, polar regions, cyberspace, outer space, nuclear security, anticorruption, and climate change.⁴⁰ Beijing's efforts to exert more influence in shaping new laws and standards in many

of these areas further Beijing's long-standing interests. For example, increased legal influence over anticorruption efforts will likely enhance the government's ability to suppress critics abroad.

Training and placing legal professionals in international institutions. Shen and Liu also advise the PRC government to “increase international law education and research, increase the training of foreign-related legal personnel, focus on the delivery of foreign-related legal personnel to international organizations, and provide human resources for actively participating in the policy formulation, rule design, and daily management of international organizations.”⁴¹ Due to the potentially coercive nature of the PRC's domestic political system, these legal professionals may be obligated to advance CCP interests rather than impartially conduct their duties in the best interests of the institutions that employ them. During a speech at the 13th China Jurist Forum, Lin Jia, a high-ranking official at the Renmin University of China Law School, noted, “Among the employees of the United Nations system, Chinese employees currently account for only 1.12 percent, ranking 11th. . . . From this perspective, on the international stage, there is a serious shortage of professionals who safeguard China's interests, represent China's position, and participate in international legal affairs.”⁴² Here, it is clear that officials see increasing numbers of Chinese nationals working on legal issues and within multilateral institutions as a way to increase PRC government influence abroad.

Further expanding the extraterritorial reach of the CCP legal regime. The CCP legal community has begun conducting significant analysis of US sanctions and laws with extraterritorial applications, both to understand the threats they pose to PRC policy and to use them as a model for the international expansion of CCP rule by law.⁴³ In June 2020, Xiao Jinquan, global vice chair of the Dacheng (Dentons) Law Offices, identified key US legislation with extraterritorial authorities, focusing on the Foreign Corrupt Practices Act, the Patriot Act, the Cloud Act, the Dodd-Frank Act, and the Trade Act of 1974 (Section 301).⁴⁴ Chinese legal and academic attention to these American laws could presage the creation of similar legal weapons in China.

Interpreting the extraterritorial application of PRC laws more expansively. Some Chinese scholars have advocated for increasingly expansive judicial interpretations of the extraterritorial application of current laws and anti-suit injunctions to limit the reach of foreign laws against Chinese entities.⁴⁵ In March 2021, Chinese Academy of Social Sciences researcher Sun Nanxiang flagged 12 PRC laws, including laws covering intellectual property, environmental management, and foreign exchange, asserting that judicial organs can explore how to interpret these laws so that they apply extraterritorially.⁴⁶ Renmin University law professor Shi Jichun similarly advised expanding the judicial interpretations of extraterritoriality of existing PRC laws such as the Anti-Monopoly Law and the Securities Law.⁴⁷

Building new international legal dispute mechanisms in which the PRC has more influence. In 2018, the PRC government established two international commercial courts to support arbitration for projects that are part of China's Belt and Road Initiative (BRI). The courts have accepted 18 commercial cases to date.⁴⁸ Although it is too early to judge the legal and political effectiveness of these courts, the PRC government clearly wants to create its own regularized arbitration courts to maintain greater influence over major Chinese projects abroad. Should legal disputes surrounding BRI projects emerge, Beijing has preemptively created a playing field tilted in its favor. Shen and Liu have referred to this development as “contribut[ing] more Chinese wisdom and Chinese solutions to international legal disputes.”⁴⁹

Strengthening embassy and consulate legal work. The PRC government may become much more active in defending the rights and interests of its citizens and businesses abroad through embassies and consulates. According to Mo Jihong of the China Academy of Social Sciences, a think tank affiliated with the State Council, the PRC “urgently needs to establish” a system that enables embassies and consulates to better protect PRC institutions, enterprises, and citizens abroad.⁵⁰ While consular work is not generally ideologically driven, the state’s close relationship with Chinese enterprise, as well as its historically expansive view of who qualifies as a Chinese citizen (such as residents of Taiwan), make this a potentially significant issue for other to countries monitor.

Testing new legal weapons. The PRC government has unveiled three new offensive legal tools over the last year: the AFSL, the Unreliable Entities List, and Blocking Measures. The PRC government currently implements similar punitive policies unofficially—such as tacitly encouraging the boycott of several clothing brands, including Nike and H&M, after the companies raised concerns about the use of forced labor in Xinjiang in spring 2021.⁵¹ Looking forward, the PRC government is likely to experiment with the use of its new legal tools as it seeks to expand party rule by law abroad.⁵² If it follows precedent, the PRC government will likely first use these tools against a democratic country that it perceives as less powerful than itself and that therefore cannot retaliate in a manner that causes significant harm to China’s strategic or economic interests. The incident that prompts this experiment is likely to be a perceived violation of one of China’s self-identified core interests—for example, “interference in the internal affairs” in Taiwan, Xinjiang, or Hong Kong.

Conclusion: Options for US Policymakers

Despite China having developed a range of new legal weapons in recent years, and notwithstanding the array of further similar measures it may take in the near future, some analysts argue that these new laws and regulations are more useful to Beijing as threats than as tools to be employed in practice.⁵³ This calculation may hold in the short term, but Beijing’s broader strategy of arming itself with potentially coercive legal tools while expanding the reach of China’s legal regime strongly suggests that these laws were crafted to be used. US policymakers should, therefore, consider the following four options to blunt the PRC government’s strategy of expanding party rule by law abroad.

Publicly identify the CCP’s ongoing efforts to assert its laws abroad. The Biden administration has spotlighted the PRC government’s growing ambitions in international institutions as a major area of US-China competition.⁵⁴ However, US policymakers have overlooked—or at least have failed so far to express concern about—the PRC’s broader efforts to assert its laws internationally and reshape the legal international order. Given that, as Moritz Rudolf at the German Institute for International and Security Affairs noted in 2021, “one can assume that PRC negotiators, diplomats and entrepreneurs will soon be making arguments that include the phrase ‘Chinese rule of law,’” prompt action by Washington is called for.⁵⁵ The United States should consider laying the groundwork for government-to-government outreach with allies and partners



Chinese Premier Li Keqiang and World Intellectual Property Organization Director General Francis Gurry shake hands at an intellectual property conference for countries involved in China's Belt and Road Initiative in Beijing on August 28, 2018. (Photo by Roman Pilipey/Pool via AP)

to form a base of knowledge on PRC government efforts to assert its domestic laws and shape international legal norms. This groundwork could include informing domestic and international audiences about the CCP's efforts by publishing declassified intelligence community assessments, holding congressional hearings, and conducting con-

gressionally mandated studies by the Departments of Justice and State.

Against the background of rising tensions between the United States and the PRC, US policymakers must also carefully track Beijing's evolving international legal efforts to insulate the Chinese economy from sanctions during the lead-up to or following a potential invasion of Taiwan. One useful step in this regard would be to congressionally mandate a regular report on the development of Beijing's legal weapons. Building a knowledge base of how these legal tools are deployed in international disputes will also give the US business community a clearer understanding of the risks associated with conducting business in China.

Inform the legal and business communities about the CCP's global legal aims. The United States' business community is likely to be increasingly negatively affected by the extraterritorial application of PRC laws. When the PRC government uses legal weapons such as the Unreliable Entities List or the AFSL, the US legal and business communities will be better able to defend themselves if they already know their government's position and are confident of receiving its support to counter PRC legal actions. Early engagement by the US government with America's private sector leaders before a legal standoff occurs could also help the US government gain a better understanding of areas where businesses are already under pressure.

Form a coalition of nations to assess how Beijing's legal influence runs counter to local interests. US policymakers should begin tracking this issue and coordinating potential responses to new PRC extraterritorial authorities with allied countries. US allies and other liberal democracies may well be targeted by the new PRC legal weapons before the United States is, the PRC government having a long history of extralegal retaliatory action against less powerful countries.

US outreach to countries partnering with PRC state entities on infrastructure development could include legal training and assistance to provide those countries with a toolkit to help navigate potential challenges posed by the PRC's legal approach. US legal assistance in third

countries will likely be most effective in the context of a commercial and development strategy that offers better options than PRC state-backed offers. Third countries are likely to be more receptive to PRC legal influence if China remains the only major power proffering near-term development opportunities.

US messaging about PRC government legal influence will need to be carefully crafted. After all, the United States has played an oversized role in shaping modern international legal norms and has been one of the most aggressive practitioners of applying domestic laws extraterritorially. US messaging should seek to demonstrate why the CCP's conceptualization of rule by law undermines local democratic governance and economic development, and why extraterritorial enforcement of PRC laws harms local interests.

Engage at the United Nations. Xi Jinping has concluded that the United Nations is the “core” of the international system.⁵⁶ As such, CCP efforts to expand party rule by law abroad will likely take place at the United Nations, among other international forums. Beijing has already deployed this approach with respect to setting technical standards in mobile telecommunications through the UN International Telecommunication Union. Beijing is also active in the UN World Intellectual Property Organization (WIPO), and in October 2021, China's State Council published a national strategy for technical standards that identified intellectual property standards as a key interest.⁵⁷ The United States should monitor Beijing's efforts in WIPO and provide targeted policy support to increase US participation in these types of standardization bodies. Specifically, the United States should empower the State Department's Bureau of International Organization Affairs to continue its efforts in supporting and encouraging candidates for leadership in multilateral institutions.

Beyond standard setting, the PRC government is actively seeking to strengthen its influence in other UN agencies involved in legal capacity building.⁵⁸ In 2019, China's National Commission of Supervision signed an agreement with the UN Office on Drugs and Crime to strengthen cooperation on anticorruption initiatives. According to Yang Xiaodu, chairman of the National Commission of Supervision, the agreement will serve to build a “clean Silk Road.”⁵⁹ Historically, the CCP has used anticorruption drives to target its critics both within China and abroad. Any enhanced efforts from the PRC government in this area should be scrutinized to ensure that multilateral mechanisms and practical cooperation efforts adhere to the transparency and accountability principles of the UN Convention Against Corruption and are not manipulated for the CCP's own authoritarian ends.



Xi Jinping and the CCP have made no secret of their ambitions to assert PRC domestic laws abroad. New legal weapons such as the Anti-Foreign Sanctions Law and the Unreliable Entities List have been created to translate this goal into reality. The US government must recognize that its ability to enforce its laws extraterritorially is replicable and that the CCP seeks to replicate, deter, and then supplant US legal norms. An effective initial US response to these efforts must rely on drawing public attention to the CCP's global legal aims, informing the legal and business communities of the challenges that are likely to come, acting in concert with like-minded allies and partners, and engaging at the United Nations.

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