



WAGING EXTERNAL

STRUGGLE THROUGH LAW:

CHINA'S EVOLVING LEGAL STRATEGIES AND PELOSI'S TAIWAN VISIT

OCT. 12, 2022 | BY KEITH J. HAND

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U.S. House Speaker Nancy Pelosi's recent Taiwan visit gave China a pretext to launch large-scale military exercises and rehearse new capabilities for striking Taiwan. To complement this military response, China deployed its growing toolkit of domestic legislation on national security and foreign affairs.

This mobilization of domestic law should come as no surprise. China's "Three Warfares" doctrine has embraced the concept of "legal warfare" to support military operations and seize the political initiative.¹ China has also used domestic law as a tool to pressure adversaries in the gray zone between peacetime competition and military conflict.² In recent years, senior Party leaders have called for stronger "foreign-related" legislation to match U.S. legal capabilities and safeguard the country's sovereignty and development interests.

China's response to the Pelosi visit demonstrates that it will use domestic law and legal institutions to impose concrete costs on rivals, deter provocations, signal strength to domestic and foreign audiences, and legitimize conflict narratives. As U.S.-China tensions deepen, these tools of legal struggle will become increasingly prominent components of China's comprehensive approach to external conflict and competition.³

EXPANDING CHINA'S DOMESTIC LEGAL TOOLKIT FOR NATIONAL SECURITY AND FOREIGN AFFAIRS

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

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

The 2005 Anti-Secession Law signaled a shift in Chinese thinking about the role of domestic law in the national security and foreign affairs arena. Adopted in March 2005 as a "legal weapon" to fight Taiwan secessionism, the short, nine-article statute set out core elements of the mainland's Taiwan policy and provided that the state "shall employ non-peaceful means and other necessary measures" should major incidents to advance Taiwan's secession occur or

the possibility for peaceful unification be “completely exhausted.”⁸ In so doing, China declared that it was legally bound to respond to secessionist activity and sought to legitimize future military action.⁹ The law also established a domestic legal counterweight both to efforts on Taiwan to invoke the Republic of China constitution and law as authority for a referendum on the island’s status¹⁰ and to the U.S. Taiwan Relations Act, which incorporates U.S. policy on providing “defensive” military assistance to Taiwan.¹¹ The Anti-Secession Law represented a turning point in China’s use of domestic law, as the Party-state codified cross-straits policy to deter specific threats to Chinese sovereignty.

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

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

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

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

State entities have taken four related steps to strengthen domestic law and legal institutions as tools of international struggle. First, lawmakers have enacted a basket of reciprocal legislation that parallels U.S. legal capacity and authorizes Chinese countermeasures. For example, the 2020 Measures for the Security Review of Foreign Investment expanded the scope of foreign investments subject to national security review. The 2020 Provisions on the

Unreliable Entity List (UEL Provisions) direct agencies to impose a range of economic and travel restrictions on foreign parties that endanger China’s sovereignty, security, or development. The following year, China adopted Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, which empower agencies to prohibit the enforcement of foreign legislation with “unjustifiable” extraterritorial effects and give Chinese parties a legal right to recover compensation from counterparts that fail to comply.²⁵

To bolster this framework, the National People’s Congress Standing Committee enacted the 2020 Export Control Law, which establishes a concrete framework for restricting the export of items with military or dual uses or that otherwise relate to “national security,” and the 2021 Anti-Foreign Sanctions Law (AFSL), which empowers administrative agencies to impose countermeasures against foreign parties when a foreign country adopts sanctions or interferes in China’s internal affairs.²⁶ *Xinhua* captured the thrust of this new body of legislation when it warned that “if anyone holds the sanctions stick in their hands, attempts to slander or smear China, or interfere in China’s internal affairs, China... will resolutely counteract it in accordance with laws and regulations.”²⁷ One Western commentator suggested the dueling legislation may herald a “regulatory arms race.”²⁸

Second, lawmakers have strengthened the extraterritorial reach of domestic legislation. China has embraced the exercise of jurisdiction over acts outside of Chinese territory that are perpetrated by its own nationals, cause harm to its nationals, or

“China has embraced the exercise of jurisdiction over acts outside of Chinese territory that are perpetrated by its own nationals, cause harm to its nationals, or threaten state sovereignty and territorial integrity.”

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

Third, China has continued to promulgate domestic legislation to support its maritime and territorial claims. For example, the 2020 Coast Guard Law and 2021 revisions to the Maritime Traffic Safety Law reinforced ambiguity about the scope of the "jurisdictional waters" subject to maritime law and safety enforcement, giving China legal flexibility to promote its claims in disputed waters.³¹ The 2021 National Land Boundary Law set out detailed provisions on the delineation, defense, and management of national land boundaries and imposed legal obligations on the state to safeguard territorial sovereignty and land boundary security.³² China cites such statutes to argue that it exercises authority to regulate foreign activity in contested areas and is legally obligated to act on such issues.³³

Finally, Chinese law enforcement and judicial organs have adopted a more assertive posture in foreign-related matters. For example, in a series of prominent cross-border intellectual property disputes in 2020 and 2021, Chinese courts issued injunctions that prohibited foreign companies from pursuing intellectual property claims overseas and threatened them with massive fines to enforce compliance.³⁴ Law enforcement authorities are imposing exit

bans on foreign citizens to compel cooperation with investigations and increasingly targeting individuals and activities outside of China's borders.³⁵ Nuances in China's rules and practices regarding dual nationality can generate foreign tensions in such cases.³⁶ And, China's arrest of Michael Kovrig and Michael Spavor immediately after Canadian authorities detained Huawei CFO Meng Wanzhou, along with its release of the "two Michaels" mere hours after Meng was allowed to leave Canada three years later, raised concerns about hostage diplomacy. The sequence of events in these cases sent a clear message that China will deploy its criminal justice system in a tit for tat manner to impose concrete costs for provocations and defend its national interests.

DEPLOYING LEGAL STRATEGIES IN RESPONSE TO PELOSI'S TAIWAN VISIT

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

One key element of China's legal response was signaling an intention to pursue criminal liability for secessionist activity. On Aug. 3, mainland officials declared that China has a "clear legal basis" for punishing "Taiwan independence diehards" and would criminally prosecute them.³⁷ The detailed statement cited specific legal authorities, including provisions of the 2005 Anti-Secession Law and the 2015 National Security Law stipulating that China's sovereignty and territorial integrity are inviolable; that all Chinese people are obligated to safeguard national sovereignty, unity, and territorial integrity; and that those endangering national security will be investigated. The statement then referenced Criminal Law provisions on engaging in or inciting secession or undermining national unity (Article 103) and heavier criminal penalties that apply when such crimes involve collusion with foreign actors (Article 106). Contemporaneous *People's Daily* commentaries explained that Article 6 of the Criminal Law extends criminal jurisdiction to acts that have consequences within Chinese territory. They also cited provisions of the Criminal Law (Articles 88 and 89) and Criminal Procedure Law (Article 291) that authorize the suspension of time limits for prosecution and the trial of national security crimes in absentia.³⁸

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

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

In addition to criminal investigations, China announced non-criminal "punitive measures" (懲戒措施) against ten "Taiwan independence diehards," two Taiwanese foundations, and four Taiwanese business entities, as well as "sanctions" (制裁措施) on Nancy Pelosi and her immediate family members. Specifically, China prohibited the listed Taiwanese individuals and their families from entering mainland China or the Hong Kong and Macao Special Administrative Regions, banned their affiliated organizations from collaborating with mainland parties, and prohibited their affiliated enterprises and owners from profiting in China.⁴⁴ The Taiwanese foundations and enterprises were banned from cooperating or engaging in transactions with mainland parties, and their administrators were prohibited from entering the country. To punish Pelosi for her Taiwan visit, the Ministry of Foreign Affairs (MFA) announced that China would impose unspecified "sanctions... in accordance with relevant laws of the People's Republic of China."⁴⁵ In so doing, it added Pelosi to a growing list of senior U.S. officials that China has sanctioned in recent years.⁴⁶

The MFA's Aug. 5 statement did not cite specific laws or regulations for sanctions against Pelosi. However, an extensive *People's Daily* response to the Pelosi

visit confirmed that China sanctioned Pelosi under the Anti-Foreign Sanctions Law.⁴⁷ Although framed as a legal measure to counteract foreign sanctions, the text of the AFSL sweeps more broadly, stipulating in Article 3 that China may take “corresponding countermeasures” when a “foreign country... uses various excuses or relies on domestic law to contain or suppress China, adopt discriminatory restrictive measures against Chinese citizens or organizations, or interfere in China’s internal affairs.” Article 15 further provides that the statute may be “referenced” when “it is necessary to adopt countermeasures against foreign countries, organizations, or individuals for... acts that endanger China’s sovereignty, security, and development interests.” This provision gives Chinese authorities discretion to apply the AFSL by analogy to counter a wide range of foreign provocations. The law authorizes several concrete countermeasures, including travel restrictions; assets freezes; and prohibitions on transactions or cooperation with targeted parties and their immediate family members, management personnel, or affiliates (Article 6).

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

China also shaped the narrative about its legal actions by arguing that the U.S. has long abused such mechanisms. After citing a lengthy list of U.S.

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

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

In discussing the legal basis for pursuing *criminal* responsibility against “Taiwan independence diehards,” Chinese officials cited general provisions of the 2005 Anti-Secession Law and the 2015 National Security Law. Arguably, the same provisions would provide a basis for fashioning non-criminal punitive measures that might be modeled after, but not explicitly

grounded in, the AFSL or UEL Provisions. The awkwardness of referencing AFSL or UEL Provisions that apply to “foreign” parties in this context, and the general nature of the other statutes, may explain why Chinese officials refrained from citing specific legislation for these measures. The *Global Times* implicitly recognized this gap when it characterized the Anti-Secession Law as a “framework and principle law” and observed that China may need to adopt more specific legislation “targeting Taiwan secessionists.”⁵³

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

CONCLUSION

China’s response to the Pelosi Taiwan visit demonstrates that it views domestic law as a core instrument of external struggle and will deploy it to shape conflict narratives and pressure adversaries.

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As one Chinese legal commentator observed in reflecting on recent cross-straits tensions, “global law has become the main method for countries to deal with domestic and international affairs, and legal struggle has become an important method and basic tool for the anti-secession struggle.”⁵⁷ By invoking domestic law, China seeks to legitimize its responses to external provocations and impose concrete costs to deter escalation. Wielding “legal weapons” gives Chinese leaders a way to project strength and resolve short of military action and manage domestic pressure to stand up to foreign bullying.⁵⁸ U.S. policymakers should recognize that China is developing and deploying these domestic legal tools in a systematic manner.

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

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

ENDNOTES

- 1 Peter Mattis, [China's Three Warfares Doctrine in Perspective](#), War on the Rocks, Jan. 18, 2018.
- 2 Bonnie Lin, Christina L. Garafola, Bruce McClintock, et. al, [Competition in the Gray Zone: Countering China's Coercion Against U.S. Allies and Partners in the Indo-Pacific](#), RAND Corporation Research Report, 2022.
- 3 I refer to "legal struggle" rather than "lawfare" in an effort to capture the full range of Chinese legal action and strategies discussed, particularly in the realm of sanctions, export controls, and economic competition. Traditional definitions of "lawfare" emphasize law as an alternative instrument to achieve military outcomes. Broader definitions incorporate the concept of law as a legitimizing instrument, but still focus on its function in reinforcing the legitimacy of "strategic, operational, or tactical objectives." Jill I. Goldenziel, [Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare](#), 106 Cornell L. Rev. 1086, 1094-98 (2021). As one legal scholar has observed, the term "lawfare" may "overdramatize" legal tactics that reflect competition rather than warfare. Jonathan G. Odom, [Understanding China's Legal Gamesmanship in the Rules Based International Order](#), in *China's Global Influence: Perspectives and Recommendations* (Scott D. McDonald and Michael C. Burgoyne eds., 2019). In a similar vein, Mattis argues that China's Three Warfares doctrine should be understood as a part of a comprehensive Party-state political influence strategy that finds expression in a broad range of laws, policies, and bureaucracies outside of the military sphere. Mattis, *supra* note 1. Certainly, China's effort to develop foreign-related legal capacity incorporates "lawfare" elements and objectives, and some scholars may view China's legal response to Pelosi's visit as a form of lawfare. The point here is not to argue that such perspectives are incorrect, but instead to suggest that some conceptualizations of lawfare may fail to fully capture the dynamics and tools analyzed here.
- 4 [Jiaqiang Shewai Lingyu Lifa, Jiakuai Goujian Xitong Wanbei, Xianjie Peitao de Shewai Falü Guifan Tixi](#) [Strengthen Legislation in the Foreign-related Domain, Accelerate Construction of a System of Complete and Linked Foreign-related Legal Norms], National People's Congress of China, May 30, 2022.
- 5 Issac B. Kardon, [China's Maritime Interests and the Law of the Sea: Domesticating Public International Law](#), in [China's Socialist Rule of Law Reforms under Xi Jinping](#) (John Garrick and Yan Chang Bennet eds., 2016).
- 6 For a discussion that places one statute in the context of this broader effort, see Murray Scot Tanner, [The Impact of the 2009 People's Armed Police Law on the People's Armed Police Force](#), in [The Politics of Law and Stability in China](#) (Susan Trevaskes et. al. eds., 2014).
- 7 Sangkuk Lee, [China's Three Warfares: Origins, Applications, and Organizations](#), 37 J. Strategic Stud. 198 (2014).
- 8 [Zhonghua Renmin Gongheguo Fanfenlie Fa](#) [PRC Anti-Secession Law], adopted Mar. 14, 2005, art. 8
- 9 Dean Cheng, [Winning without Fighting: Chinese Lawfare](#), Heritage Foundation Report, May 18, 2012.
- 10 [Draft Anti-Secession Law Explained](#), China Daily, March 8, 2005.
- 11 [Taiwan Relations Act](#), Sec. 2, 22 U.S.C. 3301 et. seq. (1979).
- 12 [Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti de Jueding](#) [CPC Central Committee Decision on Several Major Problems in Comprehensively Advancing Ruling the Country in Accordance with Law], Xinhua, Oct. 23, 2014.
- 13 [Xi Jinping: Jianchi Zongti Guojia Anquanguan, Zou Zhongguo Tese Guojia Anquan Daolu](#) [Xi Jinping: Persist in the Comprehensive National Security Outlook, Follow the Path of National Security with Chinese Characteristics], CPC News, Apr. 15, 2014.
- 14 [Xi Jinping to Lead National Security Commission](#), Global Times, Jan. 25, 2014.
- 15 Sheena Chestnut Greitens, [Xi Jinping's Quest for Order](#), Foreign Affairs, Oct. 3, 2022.

- 16 Murray Scot Tanner, *Beijing's New Intelligence Law: From Defense to Offense*, Lawfare, July 20, 2017.
- 17 Jiang Shigong, *Meng Wanzhou Won't be the Last: The Hidden Logic of the American 'Hand-over'*, Beijing Cultural Review, September 26, 2021 (translated by David Owensby and [reposted](#) at Reading the China Dream).
- 18 Jin Kai, *Deconstructing the U.S. Trade War against China*, The Diplomat, Aug. 20, 2018.
- 19 See, e.g., Qiao Xinsheng, *Time is Ripe to Counter US 'Long-Arm Jurisdiction,'* China Daily, Jan. 11, 2021; Zheng Mingda, *Yi Falü Lijian Jianjue Hanwei Guojia Zhuquan Liyi* [Use the Sharp Sword of Law to Resolutely Defend State Sovereignty and Interests], Xinhua Net, June 10, 2021; *Xinhua Guoji Shiping: Meiguo Lanshi "Changbi Guanxia" Yongxin Xian'e* [Xinhua Global Commentary: The United States Abuses "Long-arm Jurisdiction" with Sinister Intentions], Xinhua Net, Dec. 12, 2021.
- 20 *Xi Jinping Zai Zhongyang Quanmian Yifa Zhiguo Gongzuo Huiyi Shang Qiangdiao: Jiandingbuyi Zou Zhongguo Tese Shehuizhuyi Fazhi Daolu, Wei Quanmian Jianshe Shehuizhuyi Xiandaihua Guojia Tigong Youli Fazhi Baozhang* [Xi Jinping Emphasizes at the Central Work Conference on Comprehensively Ruling the Country in Accordance with Law: Resolutely Follow the Path of Socialist Rule of Law with Chinese Characteristics, Provide a Powerful Rule of Law Guarantee for Comprehensively Building a Modern Socialist Country], Xinhua Net, Nov. 17, 2020.
- 21 *Xi Jinping, Jianchi Zou Zhongguo Tese Shehuizhuyi Fazhi Daolu, Genghao Tuijin Zhongguo Tese Shehuizhuyi Fazhi Tixi Jianshe* [Persist in Following the Path of Socialist Rule of Law with Chinese Characteristics, Better Promote the Construction of a Rule of Law System with Chinese Characteristics], Seeking Truth, Feb. 15, 2022.
- 22 See, e.g., Chen Yixin, *Xuexi Guanche Xi Jinping Fazhi Sixiang Xuyao Bawohao Shida Guanxi* [To Study and Implement Xi Jinping Thought on the Rule of Law, It Is Necessary to Grasp Ten Major Relationships], Legal Daily, Dec. 7, 2021; *Strengthen Legislation in the Foreign-related Domain*, *supra* note 4.
- 23 *Zhonggong Zhongyang Yinfa Fazhi Zhongguo Jianshe Guihua 2020-2025* [CPC Central Committee Publishes the 2020-2025 Plan for Building a Rule of Law China], People's Daily, Jan. 11, 2021.
- 24 For one recent discussion of the Party's effort to leverage law as a legitimating tool, see Taisu Zhang and Tom Ginsburg, *China's Turn Toward Law*, 59 Va. J. Int'l L. 307 (2019).
- 25 *Waishang Touzi Anquan Shencha Banfa* [Measures for the Security Review of Foreign Investment], issued Dec. 19, 2020; *Provisions on the Unreliable Entity List*, issued Sept. 19, 2020; *Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures*, issued Jan. 9, 2021.
- 26 *Zhonghua Renmin Gongheguo Chukou Guanzhi Fa* [PRC Export Control Law], adopted Oct. 17, 2020; *Zhonghua Renmin Gongheguo Fan Waiguo Zhicai Fa* [PRC Anti-Foreign Sanctions Law], adopted June 10, 2021, arts. 3, 15.
- 27 Use the Sharp Sword of Law, *supra* note 19.
- 28 Jeanette Chu, *The New Arms Race: Sanctions, Export Controls Policy, and China*, Center for Strategic and International Studies, Mar. 25, 2022.
- 29 Zhengxin Huo and Man Yip, *Extraterritoriality of Chinese Law: Myths, Realities, and the Future*, 9 Chinese J. Comp. L. 328 (December 2021).
- 30 *Zhonghua Renmin Gongheguo Xianggang Tebie Xingzhengqu Weihu Guojia Anquan Fa* [PRC Law on Upholding National Security in the Hong Kong Special Administrative Region], adopted June 30, 2020. Other examples of recent laws that extend jurisdiction to acts outside of China include the 2015 National Security Law (Article 15), the 2016 Cybersecurity Law (Article 75), the 2019 amendments to the Securities Law (Article 75), the 2021 Anti Organized Crime Law (Article 2), the 2021 Data Security Law (Article 2), and the 2021 Personal Information Protection Law (Articles 3, 41, 58).
- 31 Lan Ahn Nguyen Dang, *Implications of 2020 and 2021 Chinese Domestic Legislative Moves in the South China*

See, China Brief, vol. 21, no. 14, July 16, 2021.

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

33 Odom, *supra* note 3.

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

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

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

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

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

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

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

41 [Guotaiban: Minjindang Dangju Suowei "Kangyi" Wanjiubuliao "Taidu" Fenzi Bei Yifa Chengchu Mingyun](#) [Taiwan Affairs Office: The So-called "Protest" of DPP Authorities Cannot Save "Taiwan Independence" Elements from the Fate of Punishment in Accordance with Law], Xinhua Net, Aug. 4, 2022. Although Chinese officials noted the precedent-setting nature of the charge, China has criminally prosecuted and imprisoned other Republic of China citizens for their political advocacy. For example, China prosecuted Taiwanese human rights activist Lee Ming-che for subversion. Jin Gu, [A Conversation with Lee Ming-chu: 'I Was a Human Rights Field Worker Doing Field Research in a Chinese Prison](#), VOA News, Aug. 13, 2022.

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

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

44 *Id.*

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

46 Such officials include Senators Tom Cotton, Ted Cruz, Josh Hawley, Marco Rubio, and Pat Toomey, Representative Chis Smith, Secretary of State Michael Pompeo, Health and Human Services Secretary Alex Azar, U.S. Ambassador to the United Nations Kelly Craft, National Security Advisor Robert O'Brien, Deputy Assistant Secretary

of State for East Asian and Pacific Affairs David Stillwell, Deputy National Security Advisor Matthew Pottinger, and others. In these past cases, China has not specified the legal basis for the sanctions. Nathan Bush and Ray Yu, [China's Expanding Economic Sanctions Regime](#), DLA Piper Brief, Mar. 31, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

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

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