
ARTICLE

ON THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND CONVENTION AGAINST CORRUPTION IN CHINA: DOMESTIC EFFORTS AND INTERNATIONAL COOPERATION

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Abstract

The aim of this article is to explore the challenges and approaches of acceptance and implementation of the UN Convention against Transnational Organized Crime (UNTOC) and the UN Convention against Corruption (UNCAC) in China and to examine the practice of international anticorruption cooperation. The challenges of acceptance of the UNTOC and the UNCAC mainly comprise political, national interest and anticorruption strategy considerations. Meanwhile, the challenges for the acceptance and implementation of these two international conventions involve not only good governance and the rule of law considerations but also the need to integrate them domestically into the national legal system. Criminal Law is an important part of the laws used in anticorruption efforts: As society has developed, the scope of corruption crime has correspondingly expanded. In recent years, because of these two important international conventions, China's international cooperation has resulted in some practicable achievements, especially in terms of individual asset recovery.

I. INTRODUCTION

In a high-risk international society, serious transnational crimes, such as money laundering, terrorism, corruption, human trafficking, migrant smuggling and illicit firearms manufacturing and trafficking have infiltrated our daily life and even overwhelmed the “national-states” authorities.¹ The international society thus needs to exert “stepped up efforts to cooperate on addressing these crimes.”² The United Nations Convention against Transnational Organized Crime (the “UNTOC”)³ was implemented as a

¹ See Andrae Marak, *Commentary: New Approaches to Transnational Crime and the Law*, 6 HOMELAND SECURITY REV. 171, 171 (2012).

² Jeremy Kuester, *Transnational Influences on Financial Crime*, 4 NAT'L SECURITY & ARMED CONFLICT L. REV. 71, 73 (2013).

³ G.A. Res. 55/25, annex I, United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000); G.A. Res. 55/25, annex II, Protocol to Prevent, Suppress and Punish Trafficking in Persons,

mechanism enabling international cooperation on combating these crimes by establishing international standards and directions for bilateral and multilateral cooperation. Therefore, in its Forward, the UNTOC states that “the international community demonstrated the political will to answer a global challenge with a global response. [...] If the rule of law is undermined not only in one country but in many, then those who defend it cannot limit themselves to purely national means.”⁴ Global cooperation and strategy need to be taken to cope with the crime that extends beyond the borders of a sovereign country. From a global perspective, the UNTOC has actually played a significant role in combating transnational crimes and thus it has been characterized by some scholars as “the most important substantive and procedural tool in the history of organized crime control.”⁵

Inevitably, the abovementioned serious transnational crimes have infiltrated and seriously impacted China, which has relied on this international cooperation to cope with them. Actually, China has been a member supporting the UNTOC since the treaty’s initial signing date and has taken on the international responsibility of combating these serious transnational crimes.⁶ Emblematic of serious transnational crimes, “corruption exists in almost all societies and no society is free from it”.⁷ It is described by the former Secretary-General Kofi A. Annan as an “evil phenomenon”,⁸ because “[corruption] allows organized crime, terrorism and other threats to human security to flourish” and “[c]orruption hurts the poor disproportionately by

Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000); G.A. Res. 55/25, annex III, Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000); G.A. Res. 55/255, Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organized Crime (June 8, 2001).

⁴ UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO iii (2004), https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.

⁵ Edward Wise, *RICO and its Analogues: A Comparative Perspective*, 27 SYRACUSE J. INT’L L. & COM. 303, 304 (2000).

⁶ China signed the UNTOC in December, 2000, and then on August 27, 2003, it was ratified by the 4th Session of the 10th National People’s Congress of China, which argued that Article 35(2) stipulating that disputes should be submitted to arbitration or to the International Court of Justice if they cannot be settled through negotiation within a reasonable time should be reserved. The Palermo Convention came into force on October 23, 2003 in the mainland of China and Macao, but for Hong Kong, it was delayed until October 27, 2006. *Lianheguo Daji Kuaguo Youzuzhi Fanzui Gongyue* (联合国打击跨国组织犯罪公约) [United Nations Convention Against Transnational Organized Crime], ZHONGHUA RENMIN GONGHEGUO WAIJIAOBU (中华人民共和国外交部) [P.R.C. MINISTRY OF FOREIGN AFFAIRS] (Apr. 8, 2008), https://www.fmprc.gov.cn/web/gjhdq_676201/gjhdqzz_681964/lhg_681966/zywj_681978/t422567.shtml.

⁷ Naveed Ahmed, *A Paradigm Shift in Global Anti-Corruption Strategies*, 10 J. ISLAMIC ST. PRAC. INT’L L. 43 (2014).

⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS CONVENTION AGAINST CORRUPTION iii (2004), https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

diverting funds intended for development, undermining a Government's ability to provide basic services, [and] feeding inequality and injustice."⁹ Correspondingly, actions against corruption have already taken place globally.¹⁰ Moreover, corruption in China is a serious crime, and the government has taken corresponding actions to fight against corruption since the People's Republic of China was established in 1949.¹¹

In different eras, China's government has emphasized policies of "seriously cracking down on corruption", but the policies tended to be in fact ones characterized as having "much cry and little wool"; the corruption was like a cancer, as more fighting against it led to more corruption, and the previous anticorruption measure designed to "treat the symptoms (in Chinese 治标, Zhi Biao) was just a temporary solution."¹² The corruption situation was not effectively and sustainably changed until the 18th National Session of the Communist Party of China (the "CPC").¹³ On the one hand, after 2012, China has demonstrated a strong and powerful state-will on fighting corruption and developing an effective anticorruption system; on the other hand, the international conventions against corruption and the corresponding cooperation system were not effectively applied in practice, even though China had signed and ratified the UNTOC and the United Nations Convention against Corruption (the "UNCAC") more than 10 years ago.¹⁴ Since 2014, China took an effective and significant step toward international cooperation against corruption.¹⁵ A meeting was called by the CPC Central Commission

⁹ *Id.*

¹⁰ See UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL ACTION AGAINST CORRUPTION (THE MERIDA PAPERS) (2004), https://www.unodc.org/documents/corruption/publications_merida_e.pdf.

¹¹ See generally Jon S.T. Quah, *Hunting the Corruption "Tigers" and "Flies" in China: An Evaluation of Xi Jinping's Anti-Corruption Campaign (November 2012 to March 2015)*, MD. SER. CONTEMP. ASIAN STUD., no.1, 2015; Jon S.T. Quah, *Minimizing Corruption in China: Is This An Impossible Dream?*, MD. SER. CONTEMP. ASIAN STUD., no.4, 2013; Zhou Sheng (周盛), *Woguo Gaige Kaifang Yilai Zhidu Fanfu de Lishi Bianqian: Jiyu Zhongjiwei Gongzuo Baogao ji Xiangguan Zhidu de Wenben Fenxi* (我国改革开放以来制度反腐的历史变迁：基于中纪委工作报告及相关制度的文本分析) [*The Historical Changes of the Anti-corruption System in China Since the Reform and Opening up — A Text Analysis Based on the Work Report of the Central Commission for Discipline Inspection and Related Systems*], 3 GUANCHU YU SIKAO (观察与思考) [OBSERVATION AND PONDERATION] 58 (2019); Zhao Nan (赵楠), *Zhongguo Gongchandang Fanfubai Douzheng de Lishi Kaocha* (中国共产党反腐败斗争的历史考察) [*Historical Review on the Anti-Corruption Campaign of the Communist Party of China*], 5 LILUN YANJIU (理论研究) [THEORETICAL RESEARCH] 26 (2016).

¹² See He Jiahong (何家弘), *Zhongguo Fanfu Zhibiaolun* (中国反腐治标论) [*On the Stopgap Tactics of Anti — Corruption in China*], 10 FAXUE ZAZHI (法学杂志) [LAW SCIENCE MAGAZINE] 11, 11 (2005).

¹³ According to a news report, the number of corrupt provincial and ministerial officials arrested within two years after the 18th National Congress of CPC had almost equaled 70% of that of the last 10 years (from 2003 to 2011). Wang Shu (王姝), *Shibada hou Budao 2 Nian Fanfu Chengji Da Guoqu Shintian 70%* (十八大后不到2年反腐成绩达过去10年70%) [*The Achievements of Anti-Corruption with 2 years after the 18th National Congress of CPC Has Already Equaled 70% of the Number of the Last 10 Years*], SOHU CAIJING (搜狐财经) [SOHU FINANCE] (Oct. 21, 2014, 7:02 AM), <http://business.sohu.com/20141021/n405313114.shtml>.

¹⁴ China signed the UNCAC in December, 2003.

¹⁵ See Dayang Wang (大洋网), *Susu Weiguan Fanfubai Dashuju Zhongguo Changdao Yinling Fanfu Guoji Hezuo* (速速围观反腐败大数据 中国倡导引领反腐国际合作) [*Looking at the Data of Anti-*

for Discipline Inspection (the “CCDI”) to organize and prepare to receive the findings of the second period’s examination of the UNCAC enforcement in China on July 26, 2019.¹⁶ This article would like to examine the enforcement of the UNTOC and the UNCAC.

However, there are some important issues we have to point out and explain before we start to explore this paper’s main topic. The first one is the definition of “corruption”, as corruption is the basic element of theoretical discussion.¹⁷ Actually, the legal meanings of corruption in China, in other countries, and even in some relevant international conventions and treaties are quite different. In suggested terminology, the Paragraph 1 of Article 8 of the UNTOC clearly describes some behavioral manifestations of criminal activities.¹⁸ Based on this terminology, a corrupt behavior could be defined as the intentional offering of or the granting directly or indirectly of an undue advantage, or the solicitation or acceptance directly or indirectly of an undue advantage, with the aim to influence the public official’s exercise of their duties. However, the meaning of corruption in China is broader than the definition provided in the UNTOC, even though there is no legal clause that clearly defines corruption nor any specific anticorruption law.¹⁹ Generally, in

Corruption and China Advocates Leading International Cooperation on Anti-Corruption, SOHU WANG (搜狐网) [SOHU NET] (Dec. 10, 2016, 2:26 PM), http://www.sohu.com/a/121192960_115401.

¹⁶ See Yanjiu Shishi “Lianheguo Fanfubai Gongyue” Gongzuo Xietiao Xiaozu Zhaokai Dibaci Quantu Huiyi (研究实施《联合国反腐败公约》工作协调小组召开第八次全体会议) [The Coordinating Group of Researching and Enforcing the “United Nations Convention Against Corruption” Calling for the 8th Plenary Meeting], ZHONGGONG ZHONGYANG JILU JIANCHA WEIYUANHUI HE ZHONGHUA RENMIN GONGHEGUO GUOJIA JIANCHA WEIYUANHUI (中共中央纪律检查委员会和中华人民共和国国家监察委员会) [CPC CENTRAL COMMISSION FOR DISCIPLINE INSPECTION AND P.R.C. NATIONAL SUPERVISORY COMMISSION] (July 26, 2019, 6:00 PM), http://www.ccdi.gov.cn/toutiao/201907/t20190726_197832.html. The work of researching and enforcing the UNCAC is divided into two periods: The aim of the first period is to research, demonstrate and offer some proposals on approving and enforcing the UNCAC, and then to submit to the Central Government for review and to complete the legal process of joining the UNCAC; the aim of the second period is to make the Chinese legal system compliant and then to enforce the UNCAC. The first period’s work has already been done, and the second period’s work has achieved some results. See generally Woguo Yanjiu Shishi “Lianheguo Fanfubai Gongyue” Gongzuo Qingkuang (我国研究实施《联合国反腐败公约》工作情况) [The Information About Researching and Enforcing the “United Nations Convention Against Corruption” in China], ZHONGGONG ZHONGYANG JILU JIANCHA WEIYUANHUI HE ZHONGHUA RENMIN GONGHEGUO GUOJIA JIANCHA WEIYUANHUI (中共中央纪律检查委员会和中华人民共和国国家监察委员会) [CPC CENTRAL COMMISSION FOR DISCIPLINE INSPECTION AND P.R.C. NATIONAL SUPERVISORY COMMISSION] (Oct. 8, 2013, 2:22 PM), http://www.ccdi.gov.cn/special/lygz/gzqk/201310/t20131008_11266.html.

¹⁷ See Jeff Everetm, Dean Neu & Abu Shiraz Rahaman, *The Global Fight against Corruption: A Foucaultian, Virtues-Ethics Framing*, 65 J. OF BUS. ETHICS 1, 3 (2006).

¹⁸ The behaviors include those committed intentionally with the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties; the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties. See UNTOC, art. 8.

¹⁹ See Li Xiaoming (李晓明) & Zhang Changmei (张长梅), *Fubai Gainian de Fanhua yu Jieding* (腐败概念的泛化与界定) [Generalization and Definition of the Concept of Corruption], 22 DANGDAI FAXUE (当代法学) [CONTEMP. L. REV.] 52, 52–57 (2008).

the law, corrupt behavior includes embezzlement and bribery (including bribe-giving and bribe-accepting), against which the laws are provided in the Chapter VIII of the Criminal Law of the People's Republic of China (the "Criminal Law"). According to Article 382 of the Criminal Law, embezzlement is the behavior occurring when state personnel take advantage of their office to appropriate, steal, swindle, or otherwise illegally take possession of public property;²⁰ as defined in Article 385 of the Criminal Law, bribery behavior occurs when state personnel take advantage of their office to ask for another persons' property, or illegally accept another persons' property and secure advantages for them.²¹ Considering the different meanings of corruption in the UNTOC and the UNCAC and the Criminal Law of China, this paper would like to use the meaning provided in the Criminal Law which includes embezzlement behavior. Additionally, this article would like to focus on the period since 2012 when President Xi Jinping took office, as he "kick-started the beginning of a new era which has brought a new focus on and appreciation of the strength and breadth of the Chinese anticorruption laws."²²

After having clarified the definition of corruption in Part I, Part II will explore the challenges of acceptance and implementation of the UNTOC and the UNCAC in China. These challenges in acceptance mainly comprise the following: political reasons, national interest, anticorruption strategy, good governance and rule of law considerations. However, there have also been some positive and effective ways to internalize these two international conventions in China. Part III will explore the issues of the criminalization of corruption in the Criminal Law in China. As society develops, the scope of corruption-related crimes has constantly expanded. To promise and to propose a bribe were criminalized, and the corruption involving foreign and international officials was deemed a criminal offense. Part IV will examine the practice of international anticorruption cooperation. First, it will explore the domestic legal basis of international anticorruption cooperation, including some provisions stipulated in the statutes of noncriminal law, such as in the Extradition Law, the Anti-Money Laundering Law and the Anti-Drug Law; second, it will examine the international anticorruption framework based on bilateral and mutual treaties and conventions. Finally, Part V will conclude the article.

²⁰ Xingfa (刑法) [Criminal Law] (promulgated by the Nat'l People's Cong., July 6, 1979, rev'd Nov. 4, 2017, effective Nov. 4, 2017), art. 382 (Chinalawinfo).

²¹ *Id.* art. 385.

²² Xu Hui et al., *Bribery & Corruption 2019/China*, GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/china> (last visited Nov. 28, 2020).

II. THE UNTOC AND THE UNCAC IN CHINA: FROM ACCEPTANCE TO IMPLEMENTATION

As previously mentioned, China signed and ratified the UNTOC and the UNCAC when they were initially opened for signature. Thus, the two conventions constitute a significant legal basis for China's efforts to combat corruption at the international and domestic levels. However, there are some challenges involved in the application of international conventions in China. First, similar to other conventions concluded by China with other states or international organizations, these two international conventions faced some challenges in the process of being integrated into domestic law in China; second, the process by which these two conventions became domestic law is also an issue. These two issues will be discussed in the following part.

A. Challenges in Bolstering Anticorruption Cooperation

The UNTOC and the UNCAC are the most significant international conventions directed against criminal corruption at the international level. Similar to many other countries, China joined these two conventions with the aim of using them effectively to curb corruption in the international context. To a great extent, however, in China, before 2012, these two important international anticorruption conventions were not effectively and fully used in fostering international anticorruption collaboration.²³ Some causes for this are the following.

²³ Actually, since People's Republic of China was established in 1949, China's government has launched campaigns to combat corruption at different levels. However, corruption has been characterized as a "devil" that can never be controlled or limited. Particularly, corruption became more serious, *i.e.*, on the one hand, the economic interests involved in corruption became increasing larger, and on the other hand, an increasing number of corrupt officials and their families fled abroad with large amount of corruption-related money. According to a report in the People's Net, there were approximately 180 thousand corrupt officials fleeing abroad with about 800 billion RMB. Even though the Chinese government has already taken action through the International Criminal Police Organization to chase these corrupt officials and repatriate them to China in accordance with some bilateral agreements on the criminal-matter cooperation, it has achieved remarkably little in the last ten years. The Chinese government even signed and ratified these two significant international conventions on anti-corruption initially when they were opened for signature, but they were not effectively and fully used by the government in terms of international cooperation on anti-corruption because of some reasons that are discussed in the text. Jon Bertram Lang said that "since 2014, China has shown interest in participating more actively in international cooperation against corruption". Bertram Lang, *China's Anti-Graft Campaign and International Anti-Corruption Norm: Towards a "New International Anti-Corruption Order"?*, 70 CRIME, L. AND SOC. CHANGE 331, 332 (2018). See also Quah, *Hunting the Corruption "Tigers" and "Flies" in China: An Evaluation of Xi Jinping's Anti-Corruption Campaign (November 2012 to March 2015)*, *supra* note 11, at 1-124; Yue Feifei (岳菲菲), *Zhongguo Waitao Tanguan Shuliang Zhijin wei Mi 3 Nian Qian Baogao Cheng 1.8 Wan Ren* (中国外逃贪官数量至今为谜 3年前报告称1.8万人) [*The Amount of the Chinese Corrupt Officials Fleeing Abroad Is Still a Riddle by Far, It Was Reported that There Were 18 Thousand 3 Years Ago*], RENMIN WANG (人民网) [THE PEOPLE NET] (Nov. 24, 2014, 7:39 AM), <http://pic.people.com.cn/n/2014/1124/c1016-26078513.html>; Wang Ruiheng (王瑞恒) & Liu Gengchang (刘庚常), *Woguo Waitao Tanguan Renkou de Tedian ji Falü Duice* (我国外逃贪官人口的特点及外逃法律对策) [*The Feature and the Legal Countermeasure to the Abscondence out Our Country of Corrupt Official*], 2 XIBEI RENKOU (西北人口) NW. POPULATION 61, 61-63 (2005); Li Chunlei (李春雷) & Cui Fupeng (崔富鹏), *Woguo Tanguan Waitao Xianzhuang ji Fangkong Duice Tanxi* (我国贪官外逃现

In terms of bilateral or multilateral cooperation, the national interest is always put first when considering the conclusion of a bilateral or multilateral treaty or convention. As national interest is derived from national sovereignty, it represents a starting point and destination for state actions, which should protect and even improve the nation's interest. In anticorruption cooperation, national interest undoubtedly has a great influence on bilateral or multilateral collaboration. All states in the world realize the harmful consequences of corruption and the necessity of making anticorruption efforts; countries have taken actions to crack down on domestic corruption but may be hesitant and even negatively disposed toward obtaining benefits from international collaboration, as this type of collaboration concerns juridical sovereignty. In fact, the issue of juridical sovereignty plays a key role in the international criminal juridical cooperation as it represents, in certain terms, state sovereignty, and many precedent cases and juridical experience could be used as a reference. Thus, there are no special issues of juridical sovereignty that should be a concern in terms of international anticorruption cooperation. However, the issue of the obtainable benefits is a concern that has been discussed during the negotiation of cooperation. Usually, the corruption-related properties have been illegally transferred to the other states and sometimes even illegally invested in the other states involved through actions, such as the illegal purchase of real estate or other fixed assets. For example, it was reported that there were 180,000 corrupt officials fleeing abroad with 800 billion RMB.²⁴ In this type of situation, the countries involved have to discuss economic benefits and benefit distribution during bilateral or multilateral collaboration. Undeniably, in the past two decades, China has faced great challenges in developing bilateral or multilateral cooperation with other countries or regions.²⁵

The second issue impacting international collaboration is the political factor. In terms of bilateral or multilateral collaboration, similar to national interest considerations, political considerations are also key factors impacting

状及防控对策探析) [Analysis of the Current Situation of the Chinese Corrupt Officials Fleeing Abroad and the Prevention Countermeasures], in FANZUI FANGKONG YU PINGAN ZHONGGUO JIANSHE — ZHONGGUO FANZUIXUE XUEHUI NIANHUI LUNWENJI (2013 NIAN) (犯罪防控与平安中国建设——中国犯罪学学会年会论文集(2013年)) [PREVENTING CRIMES AND BUILDING SAFE CHINA — COLLECTED PAPERS OF THE 2013 ANNUAL CONFERENCE ON CHINA CRIMINOLOGY], 145–54 (2013).

²⁴ See Yue, *supra* note 23.

²⁵ In November, 2014, Huang Feng, a Chinese professor in international criminal law, was interviewed by a newspaper. In this interview, he said that sharing the confiscated assets in the international criminal juridical cooperation is an international common practice. However, China never had this kind of mechanism of sharing the confiscated assets, but this would gradually be changed in the near future. For example, the Anti-Drug Law of the People's Republic China allows China's relevant authorities to share the confiscated assets related to the drugs. See Gao Mei (高美), *Woguo Jiaqiang Haiwai Zhuitao Zhuizang Waiguo Bangmang Ke Fenxiang "Zangkuan"* (我国加强海外追逃追赃 外国帮忙可分享“赃款”) [China is Reinforcing Fugitive Repatriation and Asset Recovery and It Could Share the Confiscated Assets with Foreign Countries Offering to Help], RENMIN WANG (人民网) [THE PEOPLE NET] (Nov. 2, 2014, 6:41 AM), <http://politics.people.com.cn/n/2014/1102/c1001-25953884.html>.

decision-makers considering the issues of international criminal juridical collaboration. The political factors are in fact very complex but mainly include issues related to the national political system, the system of democracy, the economic system, as well as the culture and history of a country.

For China, undeniably, due to some political considerations, in the past few decades, joining in international organizations and entering into bilateral or multilateral collaboration, as well as collaborating in international efforts against corruption, have always been a difficult process and a great challenge. First, some countries, in particular some western countries, still have deep prejudices against and misunderstand China's national system because of history and/or some other political reasons and are usually doubtful about China's sincerity in participating in anticorruption collaboration; they improperly consider that China's anticorruption campaign has a particular political purpose.²⁶ Second, in practice, almost all the fugitive corrupt officials were previously public servants, and some of them were senior officials who thus tried to use this background to preclude the application of bilateral or multilateral treaties and law. For example, to foreign authorities, these officials may groundlessly argue and falsely claim that they are suffering political persecution and are applying for political asylum.²⁷ Third, the legal system is another key challenge for China in bilateral and/or multilateral anticorruption cooperation. In international anticorruption collaboration, the countries involved acknowledge, respect, and accept the corruption laws and regulations on the corruption of both and/or all parties. In China, the legal factors that can be obstacles to international collaboration generally include the definition of corruption and the punishment system.

As mentioned above, the definition of corruption in China is quite different than that of other countries, and thus the basic standard of corruption varies significantly among the potential cooperative countries.²⁸ Bertram Lang points out that "the western policymakers use legalized definitions of

²⁶ In fact, this opinion is shared not only by some politicians but also by some scholars. For example, the current anti-corruption campaign in China has been called an ideological and struggle campaign because it is directed at changing the corrupt behavior of senior and junior officials as well as eroding the power base and/or class position of enemy classes or groups and anti-corruption is a kind of weapon. See Quah, *Hunting the Corrupt "Tigers" and "Flies" in China: An Evaluation of Xi Jinping's Anti-Corruption Campaign (November 2012 to March 2015)*, *supra* note 11, at 41–43; Some scholars point out that China enters into international anti-corruption cooperation with such countries as Australia, the U.S. and Canada because of their human rights records. See Michael Laha, *Taking the Anti-Corruption Campaign Abroad: China's Quest for Extradition Treaties*, <https://www.ccpwatch.org/single-post/2019/03/13/Taking-the-Anti-Corruption-Campaign-Abroad-Chinas-Quest-for-Extradition-Treaties> (last visited Dec. 28, 2020).

²⁷ For example, in a famous case in 2015, Yang Xiuzhu, a former Deputy-Mayor of Wenzhou City, Zhejiang Province, applied for political asylum in a court in New York, but the court denied her application. See, e.g., *Zhongguo Nü Jutan Yang Xiuzhu Niuyue Zai Chuting Xun Zhengzhi Bihu Weiguo* (中国女巨贪杨秀珠纽约再出庭 寻政治庇护未果) [A Female Corrupt Official, YANG Xiuzhu, Appears in Court Again in New York, Unsuccessfully Seeking Political Asylum], CENTER FOR ADVANCED CHINA RESEARCH, http://news.cnr.cn/native/gd/20151006/t20151006_520057796.shtml (last visited Dec. 28, 2020).

²⁸ See Everett et al., *supra* note 17, at 3; Lang, *supra* note 23, at 333.

corruption which basically refers to illegal behavior and mostly economic crimes”,²⁹ but in China, he said that “[it] describes corruption in ‘moral terms’ and as every act of malfeasance.”³⁰ However, at the formal legal level, such as in the definition of corruption in the Criminal Law of China, the general standards of corruption are close to that set out by the international anticorruption conventions. Even so, because of the differences in the legal systems of potential collaborative countries, China is generally asked to provide more evidence to prove the corrupt activities; therefore, the behavior has to be proven to constitute “double criminality”. Criminal punishment is another key obstacle for China in bilateral or multilateral collaboration with other countries. According to Article 383 of the Criminal Law of China, as it includes the death penalty and life imprisonment without release, the punishment for corruption-related crimes are severe.³¹ These two punishment measures are deemed to be torture and seriously infringing on human rights; these measures are thus the biggest challenge for China in receiving assistance in mutual criminal matters from other countries, such as those specified in a bilateral extradition treaty.³²

Finally, the anticorruption strategy is also another factor impacting China’s acceptance of these two international anticorruption conventions. Since the Jiang Zemin era, China in fact has always emphasized the significance and necessity of anticorruption:

“Anticorruption is a kind of serious political campaign involving the life and death of the Party and country; the Party will forfeit the confidence and support of the entire people if the corruption is not effectively controlled and punished; anticorruption should be implemented throughout the process of

²⁹ See Laha, *supra* note 26.

³⁰ *Id.*

³¹ Criminal Law, art. 383. According to the Paragraph 4 of Article 383, if the offender is sentenced to death with a reprieve, the sentence of death could be commuted to life imprisonment without release under some special circumstances. This provision was recently provided by the Ninth Amendment to Criminal Law in 2015. See Xingfa Xiuzheng’an (Jiu) (刑法修正案(九)) [The Ninth Amendment to Criminal Law] (promulgated by the Standing Comm. Nat’l People’s Cong, Aug. 29, 2015, effective Nov. 11, 2015), art. 44 (Chinalawinfo).

³² Some countries’ extradition laws definitely provide that the offender who is requested for extradition shall/may not be extradited if the requesting party sentences him/her to death according to the requesting party’s law; for example, according to the Canadian Extradition Act, the Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner. See Extradition Act, S.C. 1999, c 18, § 44(2) (Can.). According to the New Zealand Extradition Act, the Ministry may determine that the person is not to be surrendered if it appears to the Minister that the person may be or has been sentenced to death by the appropriate authority in the extradition country. See Extradition Act 1999, s 30(3)(a) (N.Z.). In addition, the U.K. Extradition Act, the Australian Extradition Act and so on have a similar provision. See Extradition Act 2003, c. 41, § 9(1) (U.K.); Extradition Act 1988 (Cth) s 22(3)(c)(ii) (Austl.). Even though these extradition laws have exceptional provisions that the extradition may be implemented if the requesting country offers assurance that the latter would not impose the death penalty on the offender or would not carry out the penalty if the offender is sentenced to death, the requesting country still has to overcome many political, juridical and diplomatic obstacles.

reform and opening-up, and the alarm bell of anticorruption should always keep ringing.”³³

Additionally, the Chinese government has always adopted a “strike-hard” policy on corruption, but as indicated in the Working Report at the National Congress of the Communist Party of China, only Xi Jinping emphasized “fugitive repatriation and asset recovery” and further international collaboration on anticorruption.³⁴

In summary, the acceptance of these two international conventions on anticorruption has been a slow process due to the impact of the abovementioned factors. When Xi Jinping took office as the President of China, these two international anticorruption tools began to be fully considered and used.

³³ Jiang Zemin zai Zhongguo Gongchandang Di Shiwu Ci Quanguo Daibiao Dahui Shang de Baogao (江泽民在中国共产党第十五次全国代表大会上的报告) [Jiang Zemin's Working Report at the 15th National Congress of the Communist Party of China], YANGSHI WANG (央视网) CHINA NETWORK TELEVISION (Sept. 2, 2012, 2:15 PM), <http://news.cntv.cn/china/20120902/102883.shtml>. The former President of China, Hu Jintao, also made a similar argument. He said that, Resolutely opposing and preventing corruption, is a major political task of the Party. Without resolutely punishing corruption, the flesh and blood ties between the Party and the people will be seriously damaged, the Party's ruling position will be in danger of losing, and the Party may go to self-destruction. See Hu Jintao zai Zhongguo Gongchandang Di Shiliu Ci Quanguo Daibiao Dahui Shang de Baogao (胡锦涛在中国共产党第十六次全国代表大会上的报告) [Hu Jintao's Working Report at the 16th National Congress of the Communist Party of China], YANGSHI WANG (央视网) CHINA NETWORK TELEVISION (Sept. 7, 2012, 3:20 PM), <http://news.cntv.cn/china/20120907/105290.shtml>. In Xi Jinping's era, He also made a similar argument. He said that, the masses hate most the corruption, which has become the biggest threat to the Party. The current situation of the anti-corruption campaign is still grim and complex. See Xi Jinping zai Zhongguo Gongchandang Di Shijiu Ci Quanguo Daibiao Dahui Shang de Baogao (习近平在中国共产党第十九次全国代表大会上的报告) [Xi Jinping's Working Report at the 19th National Congress of the Communist Party of China], RENMIN WANG (人民网) [THE PEOPLE NET] (Oct. 28, 2017, 8:49 AM), <http://cpc.people.com.cn/n1/2017/1028/c64094-29613660-15.html>.

³⁴ In the Working Report, Xi Jinping pointed out that the corrupt officials have to be brought back to justice no matter where he or she is. See Xi Jinping's Working Report at the 19th National Congress of the Communist Party of China, *supra* note 33. The 4th Plenary Session of the 18th CPC Central Committee also emphasizes strengthening the international anti-corruption collaboration and reinforcing asset recovery and fugitive repatriation. See Zhonggong Zhongyang Guanyu Quanmian Tuijin Yifa Zhiguo Ruogan Zhongda Wenti de Jueding (中共中央关于全面推进依法治国若干重大问题的决定) [Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law], ZHONGYANG ZHENGFU MENHU WANGZHAN (中央政府门户网站) CENTRAL GOVERNMENT WEBSITE (Oct. 28, 2014, 6:08 PM), http://www.gov.cn/zhengce/2014-10/28/content_2771946.htm. Additionally, in October, 2014, Office of the Central Anti-Corruption Coordination Group for International Fugitive Repatriation and Asset Recovery was founded, and it is an important organization in China for the promotion of international anti-corruption cooperation. Based on the G20 meeting, China and other countries concluded the G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery. In November, 2014, China and other APEC members adopted the Beijing Declaration on Fighting Corruption and set up a cross-border law enforcement network to strengthen transnational anti-corruption cooperation. See Annex H-Beijing Declaration on Fighting Corruption, ASIA-PAC. ECO. COOPERATION, https://apec.org/Meeting-Papers/Annual-Ministerial-Meetings/2014/2014_amm/annexh (last visited Dec. 28, 2020).

B. Overriding Principles of Combating Corruption

These two international anticorruption conventions are very significant instruments that the Contracting Party can use to jointly combat and control transnational corruption, but they also require the Contracting Party to accept relevant international responsibilities. Regarding the obligation and principles provided in these two conventions, as a direct approach to exercising their international responsibilities, most of the State Parties would, to a great extent like to observe and implement the principles based on the States' practical situations and their legal systems. Meanwhile, beyond the compliance with the international conventions, the Contracting Party has to implement the ultimate objectives of the conventions, at other higher levels, namely, through good governance and the rule of law, the most important aspects for implementation.³⁵ David P. Fidler argued that three factors are becoming the new standards of global civilization in the international law:³⁶ anticorruption efforts, good governance and the rule of law, which are always emphasized in the process of combating and preventing corruption. They constitute not only the center of international activities and goals but also the areas that China is focusing on for combating corruption, especially in recent years.

1. Good Governance. Actually, good governance, which is defined by the World Bank as "the manner in which power is exercised in the management of a country's economic and social resources for development,"³⁷ is a kind of indirect consequence of various aspects of governance,³⁸ "improving governance and controlling corruption matter enormously for development."³⁹ Joel M. Ngugi points out that "anticorruption efforts zeroed in on 'good governance' as the strategy for the combating corruption,"⁴⁰ and building a good governance system is deemed as "a qualitative measure of how much a governance system is effective, transparent, efficient, and accountable toward its goals, stakeholders, and recipients."⁴¹ Moreover, it is also a significant approach to effectively preventing corruption. Alessandro and his colleagues further point out that mutually promoting anticorruption and building good governance could take place at three levels, *i.e.*, macro-, meso- and micro-levels.⁴² Specifically,

³⁵ UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 8, at 5. This requests that "each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability."

³⁶ Even though this only reflects some scholars' arguments on the new standards of civilization in the international law, the new standards of civilization have unconsciously changed and these aspects are always emphasized in some international conventions and have become the centers of international activity. David P. Fidler argues that the new standards of civilization include human rights, market liberalization strategies, structural adjustment policies, the emphasis on the "rule of law" and "good governance", and the democratic legitimacy of governments. See David P. Fidler, *The Return of the Standard of Civilization*, 2 CHL. J. INT'L L. 137, 149 (2001).

macro-level actions involve “pairing anticorruption policies with good governance reforms”;⁴³ “meso- and micro-level promotion of ethical behavior through the adoption of codes of conduct, performance monitoring and audit committees, is one of the most effective managerial tools to simultaneously reduce corruption and improve organizational governance.”⁴⁴ After they were introduced into China by Chinese scholars from the political science field in around 1999, the theories of good governance have had a great influence on China.⁴⁵ The terminology of “good governance”, however, was first introduced into the CPC Working Report in October 2014, in the 4th Plenary Session of the 18th CPC National Congress.⁴⁶

Undeniably, even though the good governance theories have had a great influence on China and have been emphasized by the Party Working Reports, one of the most significant political documents, their philosophy and the reform approach in China are different from those in the West and have been endowed with Chinese local flavor and characters.⁴⁷ Since the concept of

³⁷ GOOD GOVERNANCE AND WORLD BANK (Vivien Collingwood ed.) 6, https://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_economy/pdf_glob_SAP/BWP_Governance_World%20Bank.pdf (last visited Dec. 28, 2020).

³⁸ See Daniel Kaufmann, Aart Kraay & Pablo Zoido-Lobaton, *Aggregating Governance Indicators*, POLICY RESEARCH WORKING PAPER No. 2195, 93 (1999), http://info.worldbank.org/governance/wgi/pdf/go_vind.pdf (last visited Dec. 28, 2020).

³⁹ Daniel Kaufmann, *Myths and Realities of Governance and Corruption*, MPRA PAPER No. 8089, 93 (2005), https://mpra.ub.uni-muenchen.de/8089/1/MPRA_paper_8089.pdf (last visited Dec. 28, 2020).

⁴⁰ Joel M. Ngugi, *Making the Link between Corruption and Human Rights: Promises and Perils*, 104 AM. SOC’Y INT’L L. PROC. 246, 247 (2010).

⁴¹ Alessandro Hinna, Fabian Homberg & Federico Ceschel, *Anticorruption Reforms and Governance*, in GLOBAL ENCYCLOPEDIA OF PUB. ADMIN., PUB. POL’Y, AND GOVERNANCE 158 (Farazmand A ed., 2018).

⁴² See *id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See Wang Qinghua (汪庆华), *Zhongguo de Shanzhi Yanjiu: Zhuti, Guandian he Zhengce Zhuzhang* (中国的“善治”研究:主题、观点和政策主张) [*Researches on “Good Governance” in China: Topics, Views, and Policy Proposals*], 4 SHANGHAI DAXUE XUEBAO (SHEHUI KEXUE BAN) (上海大学学报(社会科学版)) [J. OF SHANGHAI UNIV. (SOC. SCI. EDITION)] 128, 131 (2017).

⁴⁶ See *Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law*. It is said that “benevolent laws are the precondition for good governance.” Meanwhile, the Working Report of the 19th CPC National Congress emphasized it again, stating, “We will carry out lawmaking in a well-conceived and democratic way and in accordance with law, so that benevolent laws are made to promote development and ensure good governance.” See *Full Text of Xi Jinping’s Report at 19th CPC National Congress, Secure A Decisive Victory in Building A Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for A New Era*, CHINA DAILY (Nov. 4, 2017, 6:07 PM), http://www.chinadaily.com.cn/china/19thcpnationalcongress/2017-11/04/content_34115212.htm.

⁴⁷ This is due to the fact that China is a One-Party system and democratic centralism state and that the Communist Party of China is the only ruling party, exercising overall leadership over all areas of endeavor in every part of the country. Therefore, the basic governance system and structure differ from those of other countries. Meanwhile, since the reform and opening-up policy in 1979, the governing philosophy has always emphasized that “maintaining stability is of top priority”, even though it has been emphasized in various ways at different times. Meanwhile, Chinese scholars assert that the social organization in China is not mature enough, and thus the government is involved in only social governing affairs, which is quite different from other countries. Therefore, the good governance in China will be very different from other countries.

good governance appeared in a political document, it has always been emphasized together with benevolent laws, which are deemed as the precondition for carrying out the former. Currently, China is endeavoring to achieve the goal of good governance through institutional reform. Even though there is no political document mentioning the relationship between good governance and anticorruption and only a limited theoretical focus on the relationship,⁴⁸ the Chinese government in fact has already taken steps to implement good governance in the field of anticorruption by reforming the anticorruption mechanisms and launching relevant anticorruption laws and regulations.

First, China launched the strictest ever anticorruption campaign in its history and carried out anticorruption institutional reforms. In China, there is a kind of anticorruption mechanism in which “the anticorruption campaign is led by the ruling Party”,⁴⁹ and because of the political system, the anticorruption policy generally appears in the national leader’s speeches or in some important political documents. Therefore, the present anticorruption policy was first introduced in Xi Jinping’s speech at the Second Plenary Session of the 18th Central Commission for Discipline Inspection in January 2013, at which Xi Jinping emphasized that the Party had to insist on a “hunting tigers and swatting flies” policy,⁵⁰ under which China would smoke

See Chen Gang (陈刚), *Zhili Lilun de Zhongguo Shiyongxing ji Zhongguoshi Shanzhi de Shijian Fanglue* (治理理论的中国适用性及中国式善治的实践方略) [*The Applicability of Governing Theories in China and the Practical Strategies of the Good Governance in Chinese Approaches*], 2 HUBEI SHEHUI KEXUE (湖北社会科学) [HUBEI SOCIAL SCIENCE] 43, 48 (2015).

⁴⁸ There are only limited Chinese theoretical papers focusing on the topic of the good governance and anti-corruption. These papers include the following: Fan Minzhi (范敏之), *Mianxiang Shanzhi de Zhidu Fanfu Xinshiye* (面向善治的制度反腐新视野) [*New Horizontal Orientation of the Well Governed Institutional Anti-Corruption*], 31 HENAN CAIJING ZHENGFA DAXUE XUEBAO (河南财经政法大学学报) [J. OF HENAN UNIV. OF ECON. & L.] 53 (2016); Fan Fengchun (范逢春), *Cong Shanzheng dao Shanzhi: Lianjie Zhengzhi Fazhan de Luoji Jinlu* (从善政到善治: 廉洁政治发展的逻辑进路) [*From the Good Policy to the Good Governance: The Logical Approaches to the Development of Integrity Politics*], 5 GANSU SHEHUI KEXUE (甘肃社会科学) [GANSU SOC. SCI.] 202 (2017); Bai Guiyi (白贵一), *Fan Fubai de Shehui Canyu: Lilun Yiju, Teshuxing, jiqi yu Zhili, Shanzhi de Qihe* (反腐败的社会参与: 理论依据、特殊性及其与治理、善治的契合) [*Social Participation in the Fight Against Corruption: Rationale, Particularity, and the Conformity with Effective Administration*], 4 GUANGZHOU DAXUE XUEBAO (SHEHUI KEXUE BAN) (广州大学学报 (社会科学版)) [J. OF GUANGZHOU UNIV. (SOC. SCI. EDITION)] 12 (2010); Cai Baogang (蔡宝刚), *Lun Mianxiang Shanzhi de Woguo Fazhi Fanfu Zhuolidian* (论面向善治的我国法治反腐着力点) [*On the Key Points of Fighting Against Corruption by the Rule of Law in China from the Perspective of the Good Governance*], 00 FAZHI XIANDAIHUA YANJIU (法制现代化研究) [LAW AND MODERNIZATION] 148 (2016); Chen Xijiu (陈锡久), “Wangluo Fanfu” yu Zhengfu “Shanzhi” (“网络反腐”与政府“善治”) [*Anti-Corruption by the Internet” and the “Good Governance” of the Government*], 2 XUE LILUN (学理论) [THEORY RESEARCH] 17 (2014).

⁴⁹ Zhu Liheng (朱立恒), *Fan Fubai Tizhi de Sanzhong Jiben Leixing* (反腐败体制的三种基本类型) [*Three Basic Types of Anti-Corruption Mechanism*], 6 LILUN SHIYE (理论视野) [THEORETICAL HORIZON] 49, 51-52 (2015).

⁵⁰ Xi Jinping zai Shiba Jie Zhongyang Jiwei Erci Quanhui Shang Fabiao Zhongyao Jianghua (习近平在十八届中央纪委二次全会上发表重要讲话) [*Xi Jinping’s Important Speech at the Second Plenary Session of the 18th Central Commission for Discipline Inspection*], RENMIN WANG (人民网) [THE PEOPLE NET] (Jan. 22, 2013, 4:56 PM), <http://cpc.people.com.cn/n/2013/0122/c64094-20289660-2.html>.

out corrupt officials, regardless of the officials' positions. In December 2013, the Chinese government issued the 2013–2017 Work Plan for Establishing and Completing Systems for the Punishment and Prevention of Corruption, in which the anticorruption policy of “hunting tigers and swatting flies” was emphasized and embodied in every part of the work plan.⁵¹ Therefore, the then anticorruption policy could be deemed as “hunting tigers and swatting flies”. In January 2014, Xi Jinping first proposed the “zero-tolerance” anticorruption policy at the Third Plenary Session of the 18th Central Commission for Discipline Inspection.⁵² In 2015, Xi Jinping emphasized the “zero-tolerance” anticorruption policy again, *i.e.*, “the attitude of zero tolerance toward corruption would not be changed”.⁵³ In October 2017, “the attitude of zero tolerance toward corruption was mentioned three times by Xi Jinping at the CPC Working Report at the 19th CPC National Congress.”⁵⁴ Accordingly, the anticorruption policy of zero tolerance has been established by the CPC, and it will continue to be an important anticorruption activity.⁵⁵ Therefore, the political expression of the anticorruption policy has moved from the “hunting tiger and swatting flies” to a “zero-tolerance” policy. Actually, some scholars held that the core meaning of the two slogans is essentially the same.⁵⁶ Since the reform and opening-up policy launched in

⁵¹ Zhonggong Zhongyang Yinfā “Jiānlì Jiānquán Chéngzhì hé Yufāng Fubai Tíxì 2013–2017 Nián Gongzuò Guihuà” (中共中央印发《建立健全惩治和预防腐败体系2013–2017年工作规划》) [The CPC Central Committee Issues “2013–2017 Work Plan for Establishing and Completing Systems for the Punishment and Prevention of Corruption”], RENMIN WANG (人民网) [THE PEOPLE NET] (Dec. 25, 2013, 6:31 PM), <http://fanfu.people.com.cn/n/2013/1225/c64371-23946476-3.html>.

⁵² Xi Jinping zài Shìbā Jiē Zhōngyāng Jíwèi Sāncǐ Quánhui Shang Fābiào Zhōngyāo Jiānghuà (习近平在十八届中央纪委三次全会上发表重要讲话) [Xi Jinping’s Important Speech at the Third Plenary Session of the 18th Central Commission for Discipline Inspection], ZHONGYANG ZHENGFU MENHU WANGZHAN (中央政府门户网站) CENTRAL GOVERNMENT WEBSITE (Jan. 14, 2014, 8:24 PM), http://www.gov.cn/jdhd/2014-01/14/content_2566862.htm. At this conference, Xi Jinping said that we must continually maintain tough stance on the corruption and we must continue to demonstrate an attitude of zero-tolerance toward corruption.

⁵³ Xi Jinping zài Shìbā Jiē Zhōngyāng Jíwèi Wuci Quánhui Shang Fābiào Zhōngyāo Jiānghuà (习近平在十八届中央纪委五次全会上发表重要讲话) [Xi Jinping’s Important Speech at the Fifth Plenary Session of the 18th Central Commission for Discipline Inspection], RENMIN WANG (人民网) [THE PEOPLE NET] (Jan. 14, 2015, 6:55 AM), <http://cpc.people.com.cn/n/2015/0114/c64094-26380006.html>.

⁵⁴ Liu Zhiwei (刘志伟) & Zheng Yang (郑洋), *Lun Lingrongren Zhengce dui Chengzhi Fubai Fanzui de Yingxiang* (论零容忍政策对惩治腐败犯罪的影响) [A Study on the Effect of None-Tolerance Policy towards Corruption Crimes], 6 HENAN SHEHUI KEXUE (河南社会科学) [HENAN SOC. SCI.] 47, 47 (2018).

⁵⁵ *Id.*

⁵⁶ See Wei Dong (魏东), *Dui Fubai Fanzui “Laohu Cangying Yiqi Da” de Xingshi Zhengce Kaoliang — Jianyi “Tebie Zhongda Huilu Fanzui Anjian de Zhengcexing Xiansuo Jieshi”* (对腐败犯罪“老虎苍蝇一起打”的刑事政策考量——兼议“特别重大贿赂犯罪案件”的政策性限缩解释) [Criminal Policy Considerations for “Hunting Tigers and Swatting Flies” for Corruption Crimes — A Concurrent Discussion on the Policy Limiting Interpretation of “Specially Significant Bribery Crimes”], 2 GANSU ZHENGFA XUEYUAN XUEBAO (甘肃政法学院学报) [J. OF GANSU POL. SCI. & L. INST.] 1, 2 (2014). In this paper, the author argues that the “hunting tigers and swatting flies” is a kind of strategy thought of as a criminal policy emphasized by the CPC Central Committee, of which the core component requires a tolerant attitude toward corruption; that is, it does not severely punish the serious corrupt crimes but punishes the petty corrupt crimes.

1979, the Chinese government has always emphasized severely combating corruption, but before 2012, most of the anticorruption policy focused on junior corrupt officials, and only a few senior corrupt officials were punished. The anticorruption campaign was generally launched from bottom to up, which is quite different from the present one, which is launched simultaneously from top to down and from bottom to up.⁵⁷ Therefore, in practice, the zero-tolerance policy has completely changed the previous anticorruption model.

Second, since Xi Jinping assumed power, a series of anticorruption reforms have been initiated and carried out to ensure the achievements of national and political governance. In China, some scholars have opined that “the anticorruption institutional reform has its own adaptability characteristics, *i.e.*, anticorruption institutional reform is brought into correspondence with the logic of political governance, and the reform process is promoted under the requirement of managing and governing the Party”.⁵⁸ Because the anticorruption institutional reform is essentially a kind of process of power structure adjustment and a redistribution of power at the national leaders’ levels and other relevant levels,⁵⁹ it also “provides institutional support to the ruling Party for strengthening the political leadership and maintaining its ruling position.”⁶⁰ In the series of anticorruption reforms, setting up the National Supervisory Commission (the “NSC”) has been the most significant reform. In fact, consistent with the reform principles and experience in China, before the NSC was officially established at the national level and carried out throughout the country, it had been piloted at the provincial levels in Beijing, Zhejiang and Shanxi in 2016.⁶¹ In the Third Plenary Session of the 19th CPC Central Committee in February 2018, the nationwide establishment of the National Supervisory Commission was officially launched by the Plan on Deepening Reform of Party and State Institutions, which was passed in this Session and released in March. This plan was officially unveiled on March 23, 2018, and all regions and

⁵⁷ See Fanfu Zhuanjia: Fanfu Yao Shangxia Tong Jinxing Yao “Laohu Cangying” Yiqi Da (反腐专家：反腐要上下同进行 要“老虎苍蝇”一起打) [Experts on Anti-Corruption: the Anti-Corruption Campaign Should Be Launched Up and Down Simultaneously and the “Tigers and Flies” Should Be Hunted Together], ZHONGGUO WANG (中国网) CHINA NET (Jan. 23, 2013), http://news.china.com.cn/txt/2013-01/23/content_27776276.htm.

⁵⁸ Zhuang Deshui (庄德水), *Gaige Kaifang Yilai Fan Fubai Jigou Gaige de Shijian Luoji* (改革开放以来反腐败机构改革的实践逻辑) [Practice Logic of Anti-Corruption Organization Reform Since Reform and Opening up], 5 TANSUO (探索) [PROBE] 112, 118 (2018).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See Zhonggong Zhongyang Bangongting Yinfa “Guanyu zai Beijingshi, Shanxisheng, Zhejiangsheng Kaizhan Guojia Jiancha Tizhi Gaige Shidian Fangan” (中共中央办公厅印发《关于在北京市、山西省、浙江省开展国家监察体制改革试点方案》) [General Office of the CPC Central Committee Issues “On Carrying out the Pilot Program of Reforming the National Supervision Mechanism in Beijing Municipality, Shanxi Province, and Zhejiang Province”], ZHONGGUO ZHENGFU WANG (中国政府网) GOVERNMENT OF CHINA NET (Nov. 7, 2016, 8:52 PM), http://www.gov.cn/xinwen/2016-11/07/content_5129781.htm.

departments were required to implement it.⁶² According to this plan, the former Ministry of Supervision, the National Bureau of Corruption Prevention, and relevant agencies of the Supreme People's Procuratorate of China (the "SPP") that executed the duties to investigate the cases of bribery, graft and dereliction of duty and to prevent corruption crimes, were terminated and replaced by the new NSC. The NSC operations were merged with the CCDI: the merged organization's function is to execute the duties of discipline inspection and supervision, under the guidance and supervision of the PRC National People's Congress and its Standing Committee.⁶³ There were great expectations for the role and functions of the NSC. The speech of Xi Jinping revealed that, first, the NSC is centrally and uniformly beneficial to the Party leaders' anticorruption campaign, as it deals with the previous problems: the narrow supervisory scope of the former Ministry of Supervision, the decentralized anticorruption force, as well as a Party discipline poorly connected with relevant laws and regulations.⁶⁴ Second, the NSC is also beneficial to promoting supervision, as it completely supervises the public authority and solves the previous problem that inner-Party supervision was not synchronized with national supervisory guidelines. Some civil servants were not supervised.⁶⁵ Third, the NSC can address both the symptoms and root causes of corruption and can consolidate and expand the victories achieved in the fight against corruption, providing an additional benefit.⁶⁶ Following the establishment of the NSC at the national level, supervisory commissions were also established at the provincial level, city level, county level, and even at the township level (乡镇级, Xiang Zhen Ji); most towns have already established a Supervisory Office and send supervisors to almost all the villages.⁶⁷ Meanwhile, the establishment of relevant supervisory departments and the sending of corresponding supervisors into almost all the government sectors or agencies and state-

⁶² See Zhonggong Zhongyang Yinfa "Shenhua Dang he Guojia Jigou Gaige Fang'an" (中共中央印发《深化党和国家机构改革方案》) [The CPC Central Committee Issues "Plan on Deepening Reform of Party and State Institutions"], ZHONGGUO ZHENGFU WANG (中国政府网) GOVERNMENT OF CHINA NET (Mar. 21, 2018, 4:13 PM), http://www.gov.cn/zhengce/2018-03/21/content_5276191.htm#1.

⁶³ See *id.* This Plan describes the main duties of the National Supervisory Commission as the following: upholding the Party's Charter and regulations; examining the implementation of the Party's principles and policies and decisions; supervising the exercise of power by leading party members and cadres; upholding the Constitution and laws; supervising and checking the performance of duties by public officials in accordance with the law, the impartial use of power, clean governance and moral integrity; investigating and making decisions on administrative sanctions for suspected job violations and job crimes; holding leaders accountable for their ineffective performance of duties and dereliction of duty; and responsible for organizing and coordinating the Party style construction and anti-corruption propaganda.

⁶⁴ See Xi Jinping (习近平), *Zai Xinde Qidian Shang Shenhua Guojia Jiancha Tizhi Gaige* (在新的起点上深化国家监察体制改革) [Strengthening the National Supervisory Mechanism Reform from A New Starting Point], 6 DANGDAI DANGYUAN (当代党员) [MOD. PARTY MEMBERS] 4, 4 (2019).

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See JIANCHA TIZHI GAIGE (监察体制改革) [SUPERVISION SYSTEM REFORM], <http://www.ccdi.gov.cn/gzdt/jctzg/> (last visited Dec. 20, 2020).

owned enterprises and institutions were also required. By 2018, the NSC had already uniformly established 46 discipline inspection and supervisory groups that were sent into 129 central CPC and government agencies.⁶⁸ In this situation, all the agencies were apparently under supervision. In addition to the NSC system, on May 17, 2013, the CPC Central Committee officially established efficient inspection work systems,⁶⁹ and since then, the CPC Central Committee has already sent out approximately 15 rounds of inspection groups into the following organizations: CPC organizations in all provincial-level regions, the Xinjiang Production and Construction Corps, central CPC and government organs, major state-owned enterprises, central financial institutions and centrally administered universities.⁷⁰ According to Article 3 of the CPC Regulation on Inspection, the inspection work is required to focus on the burnishing of the Party's image, the fight against corruption, the identification of problems, the forming of a deterrent and then the promotion of the Party's advancements, strict Party governance and the rule of law.⁷¹ It also requires the Party Committees at both the central and provincial levels to conduct inspections of the Party organizations at all localities, departments, public institutions and enterprises under their jurisdiction.⁷² By 2018, the inspections at these levels had already been conducted in 200 cities, 1040 counties and 1416 enterprises and public-sector institutions.⁷³ In practice, the inspections have already been carried out at all levels from city to village.⁷⁴ In 2018, the inspections held at the latter level were quite effective, *i.e.*, 143,000 villages in the country were inspected, and

⁶⁸ See *Shijiu Jie Zhongyang Jiwei Sanci Quanhui Gongzuo Baogao* (十九届中央纪委三次全会工作报告) [Working Report of the Third Plenary Session of the 19th CPC Central Commission for Discipline Inspection], Weimin Wang (为民网) WEIMIN NET (Feb. 21, 2019, 9:31 AM), <http://www.wmtv.cn/article/201902/201902210931592488.html>.

⁶⁹ See *Duixian Zhuangyan Zhengzhi Chengnuo — Dang de Lishi Shang Shouci Yijie Renqi nei Zhongyang Xunshi Quan Fugai* (兑现庄严政治承诺 党的历史上首次一届任期内中央巡视全覆盖) [Fulfillment of the Solemn Political Commitment — the CPC Central Inspection Realizes Full Coverage Within a Single Term for the First Time in the Party's History], ZHONGGONG ZHONGYANG JILU JIANCHA WEIYUANHUI HE ZHONGHUA RENMIN GONGHEGUO GUOJIA JIANCHA WEIYUANHUI (中共中央纪律检查委员会和中华人民共和国国家监察委员会) [CPC CENTRAL COMMISSION FOR DISCIPLINE INSPECTION AND P.R.C. NATIONAL SUPERVISORY COMMISSION] (June 10, 2017, 11:30 AM), http://www.ccdi.gov.cn/special/zyxsz/bjzl_zyxs/201706/t20170622_101537.html.

⁷⁰ See *id.*; see also Wangfang, *CPC Issues Revised Regulation on Inspection to Strengthen Party Supervision*, ECNS.CN (July 15, 2017, 8:11 AM), <http://www.ecns.cn/2017/07-15/265483.shtml>.

⁷¹ See *Zhongguo Gongchandang Xunshi Gongzuo Tiaoli* (中国共产党巡视工作条例) [Regulation of on Inspection of Communist Party of China] (promulgated by the Central Comm. of Communist Party of China, July 1, 2017, effective July 10, 2017), art. 3 (Chinalawinfo).

⁷² See *id.* art. 14.

⁷³ See *supra* note 68.

⁷⁴ See *Zhongyang Xunshiban Fuze Tongzhi jiu Xuexi Guanche* “Zhongyang Xunshi Gongzuo Guihua (2018–2022 Nian)” *Da Jizhe Wen* (中央巡视办负责同志就学习贯彻《中央巡视工作规划(2018–2022年)》答记者问) [Heads of the Central Inspection Office Answered Reporters' Questions on Studying and Implementing the “Central Inspection Work Plan: From 2018 to 2022”], ZHONGGUO GONGCHANDANG XINWEN WANG (中国共产党新闻网) [CPC NEWS] (Feb. 28, 2018, 1:28 PM), <http://fanfu.people.com.cn/n1/2018/0228/c64371-29839763.html>.

390,000 prominent problems were found at the village level.⁷⁵ A total of 126,000 Party organizations at the city and county level were inspected, 975,000 problems were found, and 36,000 persons were investigated and punished.⁷⁶ In 2018, the CCDI and the NSC investigated 68 corrupt officials who were under the supervision of the CPC Organization Department, and 15 of them were suspected of criminal activity;⁷⁷ moreover, a total of 526,000 Party members were investigated by the NSC and the CCDI and received Party disciplinary punishment, and 135,000 civil servants received administrative punishment.⁷⁸ In practice, even though there are still many issues that need to be dealt with and given more theoretical attention, particularly the issue of supervisory authority, than the previous anticorruption system, the NSC is deemed a successful system as it “integrates anticorruption forces and resources and forms a unified, high effective and powerful system.”⁷⁹

2. Rule of Law. In China, the rule of law (法治, Fa Zhi), a phrase with a very short history domestically, is a foreign terminology used in law and was even deemed a forbidden term in China’s history.⁸⁰ The rule of law first appeared in a political document, the Working Report of the 15th CPC National Congress, which was delivered by the former President of China, Jiang Zemin. Then, in 1999, the PRC Constitution stipulated that “China practices ruling the country in accordance with the law and building a country of the socialist rule of law.”⁸¹ However, the essential concept and meaning of

⁷⁵ Zhongyang Xunshi Gongzuo Lingdao Xiaozu Bangongshi: *Guanyu Shixian Xuncha Xiang Cunji Dangzuzhi Yanshen de Diaoyan* (中央巡视工作领导小组办公室: 关于市县巡察向村级党组织延伸的调研) [Office of the Central Inspection Leading Group: Surveys on the Inspection Work of the Cities and Counties Extended into the Party Organizations at the Village Level], DANGYUAN SHENGHUO WANG (党员生活网) [THE LIFE OF PARTY MEMBER] (Feb. 14, 2019), <http://www.hbdysh.cn/2019/0214/46701.shtml>.

⁷⁶ See *supra* note 68.

⁷⁷ See *supra* note 68.

⁷⁸ See *supra* note 68.

⁷⁹ Guo Yong (过勇), Pan Chunling (潘春玲) & Song Wei (宋伟), “Shibada” Yilai Woguo Jijian Jiancha Jiguan de Gaige Lujing ji Chengxiao Fenxi (“十八大”以来我国纪检监察机关的改革路径及成效分析) [Focusing on Core Responsibilities and Fighting Corruption According to Law: Path and Effectiveness of Institutional Reform of the Discipline Inspection Commission and Supervision Agency in China Since the 18th CPC National Congress], 5 GUOJIA XINGZHENG XUEYUAN XUEBAO (国家行政学院学报) [J. OF CHINESE ACAD. OF GOVERNANCE] 87, 92 (2018).

⁸⁰ See Guan Shixin (关仕新), *Falü Fanyi Cuijin Falü Yizhi yu Bentuhua* (法律翻译促进法律移植与本土化) [Legal Translation Promotes Legal Transplantation and Localization], JIANCHA RIBAO (检察日报) [THE PROCURATORATE DAILY], June 26, 2014, at A3, http://newspaper.jcrb.com/html/2014-06/26/content_162269.htm. In this paper, the author held that the rule of law was translated and introduced into China by Shen Jianben, who was a senior official in the Qing Dynasty. From 1949 to 1952, the rule of law was considered as a legal concept of the bourgeois and/or an “old legal concept” and was ignored. Then, in 1954, the Constitution of China accepted it. However, from 1957 to 1982, the rule of law was deemed a forbidden term. Since 1982, the new Constitution stipulated that “the State protects the unity and dignity of the socialism legal system”, and then the rule of law came indirectly back to the theoretical consideration.

⁸¹ Xianfa Xiuzheng’an (宪法修正案) [The Amendment to Constitution] (promulgated by the Nat’l People’s Cong., Mar. 15, 1999, effective Mar. 15, 1999) (China). Because China is a One-Party system country, the Party’s Work Report is a very significant political document, serving as a programmatic

rule of law are still contested and open for debate;⁸² the meaning of the rule of law in China cannot be considered from the Western jurisprudential perspective,⁸³ and to some extent, it still refers to the first-generation rule of law reforms that “were primarily top-down and designed to change laws and institutions without changing the relationship between the state and society.”⁸⁴ This view was confirmed in the CPC Central Committee’s Decisions on Several Major Issues Concerning Comprehensively Advancing Rule of Law (the “Decisions on Advancing Rule of Law”), a report based on deliberations at the 4th Plenary Session of the 18th CPC Central Committee during October 20–23, 2014.⁸⁵ In accordance with the Decisions on Advancing Rule of Law, China will promote further the comprehensive reforms aimed at building the socialist rule of law. To achieving this goal, the following steps will be included: First, China will deepen the political reform and uphold the leadership of the Party. On February 28, 2018, the CPC Central Committee released the Plan on Deepening the Reform of the Party’s and Country’s Institutions.⁸⁶ In March 2018, the Central Committee for Comprehensive Law-Based Governance was formed and given the responsibility for the top-level design of comprehensive law-based governance and its overall arrangement. Its purpose is also to serve as a central coordination and decision organ under the leadership of the President.⁸⁷ Second, the Decisions on

document for the entire country over the years. Meanwhile, regarding this report’s use as a political mechanism, some scholars point out that “since the beginning of the post-Mao legal reform program, China’s leadership has made use of political pressure to enhance its legal system. Politico-legal campaigns are organized to overcome problems in the legal system.” Benjamin van Rooij, *China’s War on Graft: Political-Legal Campaigns against Corruption in China and Their Similarities to the Legal Reactions to Crisis in the U.S.*, 14 PAC. RIM L. & POL’Y J. 289, 313 (2005).

⁸² See Eric W. Orts, *The Rule of Law in China*, 34 VANDERBILT J. OF TRANSNAT’L L. 43, 50 (2001). See also Wang Yonghua (万勇华), *Shehui Zhuyi Hexin Jiazhiguan Zhong de “Fazhi” Yanjiu Shuming* (社会主义核心价值观中的“法治”研究述评) [Review on Research About the Rule of Law in Socialist’s Core Values], 38 Nanchang Shifan Xueyuan Xuebao (南昌师范学院学报) [J. OF NANCHANG NORMAL UNIV.] 1, 1–6 (2017).

⁸³ Some scholars even denied China could be qualified as a rule of law country according to the definition and standards of the rule of law established in the West. See Benedict Sheehy, *Fundamentally Conflicting Views of the Rule of Law in China and the West & Implications for Commercial Disputes*, 26 NORTHWESTERN J. OF INT’L L. & BUS. 245 (2006). However, these scholars could not deny the development of rule of law with Chinese characteristics in accordance with China’s reality and culture.

⁸⁴ Rachel Kleinfeld, *ADVANCING THE RULE OF LAW ABROAD: NEXT GENERATION REFORM* 19–20 (Carnegie Endowment for Int’l Peace, 2012). See Adam J. Bushey, *Second Generation Rule of Law and Anti-Corruption Programming Abroad: Comparing Existing U.S. Government and International Best Practices to Rachel Kleinfeld’s Advancing the Rule of Law Abroad: Next Generation Reform*, 37 HOUSTON J. OF INT’L L. 139, 150 (2015).

⁸⁵ See generally *Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law*.

⁸⁶ *The CPC Central Committee Issues “Plan on Deepening Reform of Party and State Institutions”*, *supra* note 62.

⁸⁷ *Id.* On October 31st, 2019, the 4th Plenary Session of the 19th CPC Central Committee released its Communique and it emphasizes the significance of the rule of law, namely, “ensuring law-based governance in all fields, building a country of socialist rule of law, and guaranteeing social fairness and justice and the people’s rights.” See generally *Key CPC Session Highlights Strength of China’s System, Governance*, CHINA

Advancing Rule of Law includes guidelines that emphasize the significant central role of the Constitution, improve the legal system and strengthen the implementation of the Constitution.⁸⁸ Third, it promotes measures to improve the Party's regulations and rules and strengthen the construction of intra-Party regulatory structures with the aim to improve the Party members' integrity and self-regulation. Fourth, it promotes and strengthens the construction of a supervision system with the following goals: (1) to promote and improve the anticorruption legislation and enhance the prevention of corruption; (2) to establish a system of accountability for major decisions; (3) to improve the connection between administrative sanctions and criminal punishment; (4) to improve the error-correction system and its accountability mechanism; (5) to establish a system to prevent and crack down on judicial intervention; and (6) to foster a system in which all Party members respect and observe the laws and regulations.⁸⁹ In summary, building a country based on the rule of law has become a significant political assignment.

Indeed, in the context of anticorruption, there are high expectations for the rule of law in China. Xi Jinping emphasized the following:

"We must be good at using the logic and measures of the rule of law to fight against corruption, strengthen the national legislation on anticorruption, strengthen the construction of intra-Party's regulations and systems on anticorruption and propose integrity, and we must have a legal system that is rigidly run. We must strengthen the supervision and restriction and the power should be restricted by a set of regulations; a punishment system discouraging officials from being corrupt should be formed, a system preventing officials from engaging in corruption should be formed, and a guarantee system making it difficult to engage in corruption should be formed."⁹⁰

Because of Xi's speech on anti-corruption, anticorruption by the rule of law has become a topic of interest for scholars. However, these theoretical discussions appear much more one-sided: almost all scholars highly praise the role the rule of law plays in anticorruption.⁹¹ Admittedly, the promotion of

PLUS (Oct. 31, 2019, 6:09 PM), <http://chinaplus.cri.cn/news/politics/11/20191031/374770.html>; see also *Zhongbang! Shijiu Jie Sizhongquanhui Gongbao Gongbu* (重磅! 十九届四中全会公报公布) [*Releasing the Communique of the 4th Plenary Session of the 19th CPC Central Committee*], PENGPAI (澎湃) THE PAPER (Oct. 31, 2019, 10:15 PM), https://www.thepaper.cn/newsDetail_forward_4830852.

⁸⁸ See *Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law*.

⁸⁹ See generally *id.*

⁹⁰ SHIBADA YILAI ZHONGYAO WENXIAN XUANBIAN (十八大以来重要文献选编) [CLASSIC WORKS SELECTED SINCE THE 18TH NATIONAL CONGRESS OF THE CPC] 135–36 (2014).

⁹¹ As for the topics of rule of law and anti-corruption, we conducted a survey from a Chinese literature database, CNKI, by typing “法治反腐” (anti-corruption by rule of law). On September 2, 2019, we found approximately 331 articles, including journal papers, master theses and doctoral dissertations, articles on newspaper and other types of literature. We downloaded and examined 57 journal papers and found that all these articles affirm the role of the rule of law and give it high praise. Most of them introduce the concepts and meaning of anti-corruption by rule of law and then introduce the approach of “using the logic and measures of rule of law to fight against corruption”. However, most of them continue and even extend the

the rule of law in terms of anticorruption could, to a certain extent, change the “rule by man” approach in which anticorruption campaigns were arbitrarily and selectively implemented. However, it should be noted that the present rule of law reform in China, to a great extent, is a kind of reform that is “top-down and designed to change laws and institutions without changing the relationship between the state and society.”⁹² Therefore, there are two challenges facing China: (1) The rule by man approach still, to a certain extent, influences the application of the rule of law in anticorruption. The implementation of this “top-down” reform is in fact driven substantially by the political pressure from national leadership and promoted formally by all kinds of policies. These policies generally reflect political interests and purposes and deal with the corruption related to social problems. The approach applying the rule of law in fighting corruption is “thus likely to reflect efforts to accommodate competing political interests”,⁹³ and even “in many contexts, officials properly take into account considerations of public policy in determining what the law is”.⁹⁴ Obviously, it cannot be ruled out that this approach is inevitably infiltrated by the rule by man factors. Some Chinese scholars therefore pointed out that “in fact, the approaches of anticorruption in China do have both factors of systematic anticorruption and of rule by man anticorruption. Given the present purposes of governing corruption and their effectiveness, the rule by man anticorruption has its own practical legitimacy.”⁹⁵ (2) The traditional cultures and customs could be, to a great extent, a challenge for the implementation of the rule of law for anticorruption efforts. Historically, unlike a contractual society such as found in countries in the West, China has in fact been a “relationship (人情关系, Renqing Guanxi)” society. In this relationship society, that “the relationship is far more important than the law” is a primary principle of social etiquette;⁹⁶ to maintain and strengthen the relationship, individuals normally follow the principle of “courtesy demands reciprocity (礼尚往来, Li Shang Wang Lai)”, which means “people who are well-mannered to others will receive kindness

logic and meaning to the relevant political documents. A few of them discuss the present potential problems of anti-corruption by rule of law and give some suggestions.

⁹² Bushey, *supra* note 84, at 150.

⁹³ Jeffrey J. Rachlinski, *Bottom-Up versus Top-Down Lawmaking*, 73 UNIV. OF CHI. L. REV. 933, 934 (2006).

⁹⁴ Mark Tushnet, *Ruled by Law or Rule of Law*, 22 ASIA PAC. L. REV. 79, 89 (2014).

⁹⁵ Li Zhiqiang (李志强) & He Zhongguo (何忠国), *Fazhi Fanfu de Zhidu Tixi jiqi Jiangou* (法治反腐的制度体系及其建构) [*The Construction of Anti-Corruption System with the Rule of Law*], 19 ZHONGGONG ZHONGYANG DANGXIAO XUEBAO (中共中央党校学报) [J. OF THE PARTY SCHOOL OF THE CENTRAL COMMITTEE OF THE C.P.C] 101, 101 (2015).

⁹⁶ Xiao Fang (萧放), *Renqing Yu Zhongguo Richang Lisu Wenhua* (“人情”与中国日常礼俗文化) [*“Human Relationship” and Daily Chinese Etiquette and Custom Culture*], 4 BEIJING SHIFAN DAXUE XUEBAO (SHEHUI KEXUE BAN) (北京师范大学学报(社会科学版)) [J. OF BEIJING NORMAL U. (SOC. SCI. EDITION)] 43, 43–44 (2016).

and favors”.⁹⁷ Therefore, people in this type of relationship normally reach a tacit agreement of reciprocity, which is called an “invisible contract”.⁹⁸ These tacit agreements become a natural cover and lead people to conduct corrupt activities.⁹⁹ Considering these customs, the Political Bureau of the CPC Central Committee in December 2012 issued the Eight-Point Rules (the “EPR”) with the aim to curb corruption. However, violations of the EPR guidelines occur every year. For example, according to the Working Report of the CCDI in October 2017, there were 189,000 cases, and 256,000 Party members across the country were sanctioned from 2013 to 2017.¹⁰⁰ In practice, accordingly, the rule of law anticorruption approach is challenged by these traditional culture and customs. Meanwhile, “more generally, local customs and morals may also fail to condemn some acts of corruption because an obviously harmed individual victim is not present. Thus, even when local law makes the criminality of conduct clear, local morals may all but excuse it.”¹⁰¹ Therefore, there are high expectations for the rule of law anticorruption approach, but in practice, it faces many challenges.

III. DOMESTIC ANTI-CORRUPTION LEGAL FRAMEWORK

In fact, corrupt behavior has always been stipulated as a criminal behavior and has been cracked down on since the first Criminal Law of China was passed in 1979 (the “Criminal Law 1979”),¹⁰² but the forms of behaviors are constantly changing and developing as the society and the economy develop, and thus the Criminal Law has to be revised because its interpretation cannot always effectively respond to the new form of corrupt behaviors. This section will therefore explore the development of the Criminal Law in the context of the anticorruption environment since 1997, when the Criminal Law of 1979 was first amended.

⁹⁷ *Chinese Etiquette: Gift-Giving*, TOP CHINA TRAVEL, <https://www.topchinatravel.com/china-guide/chinese-etiquette-gift-giving.htm> (last visited Dec. 28, 2020).

⁹⁸ Wang Bo (汪波), *Dangdai Zhongguo Fubai Celiang yu Shuangchong Qianru Pouxi: jiyu Weifan Zhongyang Baxiang Guiding Jingshen Wenti Chachu de Shizheng Fenxi* (当代中国腐败测量与双重嵌入剖析——基于违反中央八项规定精神问题查处的实证分析) [*Surveying the Corruption in Contemporary China and Analyzing its Dual Embeddedness: An Empirical Analysis on the Cases of Violating the Spirits of the Eight-Points Rules Issued by the Central Committee*], 5 *Shehui Kexue Zhanxian* (社会科学战线) [SOC. SCI. FRONT] 164, 169 (2017).

⁹⁹ *See id.*

¹⁰⁰ *See Shiba Jie Zhongyang Jili Jiancha Weiyuanhui Xiang Zhongguo Gongchandang Di Shijiu Ci Quanguo Daibiao Dahui de Gongzuo Baogao* (十八届中央纪律检查委员会向中国共产党第十九次全国代表大会的工作报告) [*The Working Report of the 18th Central Commission for Discipline Inspection to the 19th CPC National Congress*], RENMIN WANG (人民网) [THE PEOPLE NET] (Oct. 29, 2017, 5:40 PM), <http://cpc.people.com.cn/19th/n1/2017/1029/c414305-29615051.html>.

¹⁰¹ Adam K. Ghazi-Tehrani & Henry N. Pontell, *Corruption in the United States and China: Codes of Conduct vs. Crackdowns*, 73 *CRIME L. & SOC. CHANGE* 73, 88 (2019).

¹⁰² *See Xingfa* (1979) (刑法(1979)) [Criminal Law (1979)] (promulgated by the Nat'l People's Cong., July 6, 1979, effective Jan. 1, 1980) (Chinalawinfo). In this Criminal Law, the corruption was stipulated in the Article 185 in the Chapter VIII Crimes of Dereliction of Duty.

A. Overview of Updates in Chinese Anticorruption Legal Framework

The Criminal Law of China was first amended in 1997 (the “Criminal Law 1997”),¹⁰³ and a two-point system was adopted for the criminalization of corruption (that is, distinguishing between civil servants and non-civil servants). It mainly established three types of corruption crimes according to different behaviors: encroachment of corruption offenses (including corruption, job embezzlement, unidentified crimes of large amounts of property, crimes related to dividing up state-owned assets, crimes related to dividing up in secret the fines or confiscated money or property), bribery crimes (including bribery, unit bribery, bribery by units, bribery of units, bribery of companies and enterprises, and the introduction of bribery), and the misappropriation corruption (including the misappropriation of public funds, the misappropriation of funds and the misappropriation of specific money). Since joining the UNTOC and the UNCAC in 2003 and 2005, respectively, China has implemented the requirements of the UNTOC and the UNCAC and improved the criminal conviction legal system from the following five aspects.

First, influence trading crimes was addressed. The Criminal Law Amendment (VII) passed in 2009 added the use of influence bribery (one of the elements of Article 388 of the Criminal Law 2009) as a criminal offense. In the amendment, the following was stipulated: Where any close relative of a state functionary or any other person who has a close relationship with the said state functionary seeks any improper benefit for a requester for such a benefit through the official act of the said state functionary or through the official act of any other state functionary by using the advantages generated from the authority or position of the said state functionary, and asks or accepts property from the requester for such a benefit, and the amount is relatively large or there is any other relatively serious circumstance, this activity constitutes a crime.¹⁰⁴

Second, the bribery of foreign public officials and officials of international public organizations was stipulated as a criminal activity (the Article 164 of the Criminal Law 2011). The Criminal Law Amendment (VIII) passed in 2011 added a crime of bribery of foreign public officials and officials of international public organizations, stipulating that for the purpose of seeking improper commercial interests, giving foreign public officials or officials of international public organizations property constitutes a crime.¹⁰⁵

¹⁰³ See Xingfa (1997) (刑法(1997)) [Criminal Law (1997)] (promulgated by the Nat'l People's Cong., July 6, 1979, rev'd Mar. 14, 1997, effective Oct. 1, 1997) (Chinalawinfo).

¹⁰⁴ See Xingfa Xiuzheng'an (Qi) (刑法修正案(七)) [The Seventh Amendment to Criminal Law] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, effective Feb. 28, 2009), art. 13 (Chinalawinfo).

¹⁰⁵ See Xingfa Xiuzheng'an (Ba) (刑法修正案(八)) [The Eighth Amendment to Criminal Law] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 25, 2011, effective Feb. 25, 2011), art. 29 (Chinalawinfo).

Third, the scope of cracking down on bribery crimes in the private sector was expanded. The Criminal Law Amendment (VI) passed in 2006 expanded the perpetrator scope of the “Corporate and Enterprise Persons Accepting Bribes” stipulation in Article 163 of the Criminal Law 2006 and amended it to include “non-civil servants accepting bribes”. It stipulated that when companies, enterprises or staff of other units use the advantages of their positions to obtain the property of others or illegally accept the property of others and seek benefits for others, if the amount obtained is large, this activity constitutes a crime.¹⁰⁶

Fourth, the crackdown on the crime of possession of huge amounts of property from unclear sources was emphasized. The Criminal Law Amendment (VII) passed in 2009 doubled the statutory penalty for the crime of possession of property from unclear sources compared to the first Paragraph of Article 395 of the Criminal Law 1997. After the revision, the statutory maximum sentence for the crime of the possession of a huge amount of property from unclear sources was raised from five years in prison to ten years in prison.¹⁰⁷

Fifth, the criminal legislation on money laundering was modified. The Criminal Law Amendment (VI) passed in 2006 extended the definition of the crime of money laundering to “drug crime, organized crime related to mob activities, terrorist crime, smuggling crime”¹⁰⁸ and added unit crime. On the basis of this, the activities covered under the crime of money laundering were expanded to include “corruption and bribery crime, destruction of financial management order crime, financial fraud crime”.¹⁰⁹

In the anticorruption criminal conviction system, in China’s Criminal Law Amendment (IX),¹¹⁰ in 2015, the following four aspects were revised in accordance with the requirements of the UNTOC and the UNCAC and the need to punish corruption crimes.

First, the conviction and sentencing standards for corruption and bribery crimes were modified. The wording for the conviction and sentencing standards for corruption and bribery crimes was revised from the original “specific amount + plot” to “abstract amount + plot”, and three statutory penalties were added to differentiate “relatively large amount or other relatively serious circumstances”, “large amount or other serious circumstances” and “extraordinary amount or other particularly serious circumstances”.¹¹¹ According to the specific circumstances of the case, the specific conviction and sentencing standards were to be handed over to the

¹⁰⁶ See Xingfa Xiuzheng’an (Liu) (刑法修正案(六)) [The Sixth Amendment to Criminal Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 29, 2006, effective June 29, 2006), art. 7 (Chinalawinfo).

¹⁰⁷ The Seventh Amendment to Criminal Law, art. 14.

¹⁰⁸ The Sixth Amendment to Criminal Law, art. 16.

¹⁰⁹ *Id.*

¹¹⁰ The Ninth Amendment to Criminal Law.

¹¹¹ See *id.* art. 44.

judicial organ or were to be determined by the Supreme People's Court of China (the "SPC") and the SPP through judicial interpretation.

Second, the penalties for bribery crimes were increased. The provisions for the crime of bribery were improved, and the penalty for the bribery, the bribery of the unit and the introduction of bribery were separately imposed; meanwhile, the conditions for strict punishment of bribery were strictly imposed. The Criminal Law Amendment (IX) amended the prior provisions that stated "if a briber voluntarily confesses a bribe before being prosecuted, it may mitigate the briber's punishment or exempt the briber from punishment" to a provision stating that "a briber who voluntarily confesses bribes before being prosecuted may receive a lighter punishment or the punishment may be mitigated". The punishment for a person whose crime is lighter and who plays a key role in solving major cases or has a significant meritorious service may be mitigated or the person may be exempted from punishment.¹¹²

Third, the Criminal Law Amendment (IX) improved relevant provisions of the Criminal Law 1997 to strictly punish bribery crimes, and to increase the crime of using the influence of civil servants to seek illegitimate interests.¹¹³

Fourth, the Criminal Law Amendment (IX) increased the precautionary measures for corruption offenses. It stipulated that for imposing a penalty on crimes committed by using occupational advantages or through implementing specific obligations that violate professional requirements, the people's court can prohibit engaging in relevant occupations from the date of completion of the execution of the penalty or the date of the crime committed for a period of three to five years according to specific obligations that violate professional requirements.¹¹⁴

B. To Promise and Propose Giving a Bribe Was First Stipulated in the Criminal Law

With regard to bribery, the UNTOC and the UNCAC provide three ways of granting, proposing and actually giving a bribe, while the Criminal Law 1997 provided only "giving" as a way to commit bribery. However, in both China's judicial practice and legal theory, there is a broad understanding of the term "giving", including not only "actual giving" but also promising and offering. This is because of the following: (1) Article 22 of the Criminal Law 1997 stipulated that crime preparation comprises the preparation of tools and the manufacturing conditions for crimes. Granting and proposing to give can be the preparative act to actual giving, and thus be subject to criminal prosecution in accordance with the provisions of Article 22 of the Criminal Law 1997. (2) The Minutes of the National Symposium on the Trial of Economic Crime Cases issued by the SPC in 2003 stipulated that the term

¹¹² See the Ninth Amendment to Criminal Law, art. 44.

¹¹³ See the Ninth Amendment to Criminal Law, art. 45.

¹¹⁴ See the Ninth Amendment to Criminal Law, art. 1.

“for the benefit of others” in the crime of accepting bribes includes three stages: commitment, implementation and realization. If any stage is satisfied, it can be considered a bribe “sought for the benefit of others”. In the same way, for bribery, whether it is promised, proposed or actually given, it can be considered “giving”.¹¹⁵ (3) In 2000, the SPC issued the SPC Reply on How to Deal with the Issues of Using the Advantages of the Civil Servants to Make Profits for the Others and then issued the Illegally Accepting Property After Retirement Guidelines.¹¹⁶ These guidelines pointed out that if a civil servant has prearrangements with the trustee and then uses the advantages of his positions to seek the interests of the trustee and accept the latter’s bribe after discussions in advance with the requesting person, the activity constitutes a crime and the civil servant can be convicted and punished for accepting bribes. The term “prearrangement here is a kind of “promising to give” and “proposing to give” behavior. (4) On April 18, 2016, the SPC and SPP together issued a judicial interpretation of the SPC and SPP on Several Issues Concerning the Legal Application in Dealing with the Criminal Cases of Corruption and Bribery (the “Interpretation”).¹¹⁷ In the Interpretation, Article 13 interprets the requirements of “for the benefit of accepting bribes” based on the guidelines in the previous judicial practice. Article 13(1) of the Interpretation provides that in any of the following circumstances, if the activity is deemed as “creating a benefit for others” and if it constitutes a crime, the person committing the act shall be convicted and punished in accordance with the provisions of the Criminal Law on the crime of accepting bribes:¹¹⁸ (1) having actually accepted or promised to seek benefits for others;¹¹⁹ (2) knowing that others have specific entrusted matters;¹²⁰ and (3) not being asked when performing their duties but accepting the bribery of

¹¹⁵ Zuigao Renmin Fayuan Guanyu Yinfa “Quanguo Fayuan Shenli Jingji Fanzui Anjian Gongzuo Zuotanhui Jiyao de Tongzhi” (最高人民法院关于印发《全国法院审理经济犯罪案件工作座谈会纪要》的通知) [Notification of the Supreme People’s Court on Issuing “Minutes of the Symposium on the National Courts’ Trial of Economic Crime Cases”] (promulgated by Sup. People’s Ct., Nov. 13, 2003, effective Nov. 13, 2003) (Chinalawinfo).

¹¹⁶ See Zuigao Renmin Fayuan Guanyu Guojia Gongzuo Renyuan Liyong Zhiwu Shang de Bianli wei Taren Mouqu Liyi Litixiu hou Shoushou Caiwu Xingwei Ruhe Chuli Wenti de Pifu (最高人民法院关于国家工作人员利用职务上的便利为他人谋取利益离退休后收受财物行为如何处理问题的批复) [Reply of the Supreme People’s Court on How to Deal with the Act of Receiving Property After Retirement by A Civil Servant Using the Convenience of His Position for the Benefit of Others] (promulgated by Sup. People’s Ct., July 13, 2000, effective July 21, 2000) (Chinalawinfo).

¹¹⁷ See Zuigao Renmin Fayuan, Zuigao Renmin Jianchayuan Guanyu Banli Tanwu Huilu Xingshi Anjian Shiyong Falü Ruogan Wenti de Jieshi (最高人民法院、最高人民检察院关于办理贪污贿赂刑事案件适用法律若干问题的解释) [Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Embezzlement and Bribery] (promulgated by Sup. People’s Ct. & Sup. People’s Proc. Apr. 18, 2016, effective Apr. 18, 2016) (Chinalawinfo) [hereinafter *Embezzlement and Bribery Interpretation*].

¹¹⁸ *Id.* art. 13, para. 1.

¹¹⁹ See *Embezzlement and Bribery Interpretation*, art. 13.

¹²⁰ See *Embezzlement and Bribery Interpretation*, art. 13.

others based on the performance of the duties afterwards.¹²¹ In addition, Article 13(2) provides that it shall be deemed as “creating a benefit for others”, if a civil servant solicits and accepts a bribe whose value is more than 30,000 RMB from a subordinate or from a managed person who has an administrative relationship with him and if this relationship may impact the civil servant’s performance of his duty.¹²² This shows that the Chinese judicial authorities have actually criminalized the behaviors of “promised giving” and “proposed giving”.

In addition, the UNTOC and the UNCAC provide guidelines on taking undue advantage of other persons or entities in order to require a civil servant to act or not to perform their official duties. In this regard, the Criminal Law 1997 did not clearly provide any stipulations. However, the term “acceptance” in the crime of accepting bribes in China and the term “giving” in the crime of bribery are broad concepts. Among them, “acceptance” includes not only the acceptance by the person but also the consent or acquiescence to accept. The same is true with “giving” in the crime of bribery. It includes not only giving bribes to the public officials themselves but also to other people who receive consent and recognition from public officials. This practice is also stipulated in criminal justice laws in China related to taking bribes and bribery. Therefore, China’s bribery crimes include the indirect acceptance of bribes and indirect bribery as stipulated in the two conventions.

C. The Corruption Involving Foreign and International Officials Could Be Cracked down on by Criminal Law

The Paragraph 2 of Article 8 of the UNTOC stipulates that the bribery of foreign public officials or officials of public international organizations and the taking of bribes by foreign public officials or officials of public international organizations shall be criminalized. The Criminal Law Amendment (VIII) adopted in 2011 added a crime of bribery conducted to foreign public officials and officials of international public organizations, stipulating that for the purpose of seeking improper commercial interests, giving foreign public officials or officials of international public organizations property constitutes a crime. However, the Criminal Law 1997 did not specifically stipulate the crime of accepting bribes by foreign public officials or officials of international public organizations. The stipulations on non-civil servants accepting bribes and the bribery crimes in Article 387 of the Criminal Law 1997 are mainly focused on protecting the integrity of the positions of non-state-owned units and state-owned units in China.¹²³ However, in China’s judicial practice, there has been a tendency to expand the interpretation of the terminology for companies, enterprises, and institutions

¹²¹ See Embezzlement and Bribery Interpretation, art. 13.

¹²² See Embezzlement and Bribery Interpretation, art. 13, para. 2.

¹²³ Criminal Law 1997, art. 387.

to cover foreign companies, enterprises, and institutions. The Reply of the SPC Research Office on the Issues of How to Apply the Law for the Crimes Committed by Foreign Company, Enterprise and Institution in China¹²⁴ points out that persons working in “foreign companies, enterprises, and institutions that meet the qualifications relating to Chinese legal persons committing acts that endanger the society and constitute a crime in accordance with China’s Criminal Law shall be investigated for criminal responsibility in accordance with the provisions of the Criminal Law of China on unit crimes”. According to this, in the case of bribery of non-state workers, China can adopt a legislative interpretation to include the bribery of foreign public officials and the officials of international public organizations. Therefore, crimes by foreign public officials and officials of international public organizations in accepting bribes were added as criminal activities.

D. The Corruption Involving Legal Person and Its Liabilities

In Article 10 of the UNTOC,¹²⁵ the provisions relating to corporate crimes require the following: (1) Each State Party shall adopt such measures as may be necessary in accordance with its legal principles to confirm the legal persons’ participation in serious crimes sponsored by organized criminal groups and the responsibilities caused by the implementation of crimes in Articles 5, 6, 8 and 23 of the UNTOC. (2) Legal liability may include criminal, civil, or administrative liability, without violating the legal principles of the State Party. (3) Legal liability should not affect the criminal liability of natural persons who commit such crimes. (4) Each State Party shall ensure, in particular, that legal persons responsible under this article are subject to effective, modest, and dissuasive criminal or noncriminal sanctions, including monetary sanctions. In this regard, China mainly implements the relevant provisions of the UNTOC from the following aspects:

First, the Paragraph 2 of Article 10 of the UNTOC provides that legal liability may include criminal, civil, or administrative liability without violating the legal principles of the State Party.¹²⁶ The “unit” in Chinese criminal law is a broader concept than a “legal person”. China’s criminal responsibility for the participation of legal persons in corruption crimes is mainly reflected in two aspects: (1) Criminal responsibility guidelines are reflected in the general provisions of the Chinese Criminal Law on the criminal liability of legal persons involved in corruption offenses. Article 30 of the Criminal Law 1997 stipulated that if a company, enterprise, institution,

¹²⁴ See Zuigao Renmin Fayuan Yanjiushi Guanyu Waiguo Gongsi, Qiye, Shiye Danwei zai Woguo Lingyu nei Fanzui Ruhe Shiyong Falü Wenti de Dafu (最高人民法院研究室关于外国公司、企业、事业单位在我国领域内犯罪如何适用法律问题的答复) [Reply of the Research Office of the Supreme People’s Court on Issues Concerning the Application of Law to the Crimes Committed by Foreign Companies, Enterprises or Public Institutions within the Territory of China] (promulgated by Sup. People’s Ct. Oct. 15, 2003, effective Oct. 15, 2003) (Chinalawinfo).

¹²⁵ UNTOC, art. 10.

¹²⁶ *Id.* art. 10, para. 2.

organ, or organization commits a crime against society and the law stipulates that it commits a unit crime, it shall be criminally liable.¹²⁷ According to this provision, if legal persons participate in corruption crimes and the law stipulates that the crime is a unit crime, the legal person shall bear corresponding criminal responsibility. (2) The criminal liability of legal persons involved in corruption offenses is stipulated in the Criminal Law's specific provisions. These provisions mainly address the crime of money laundering in Article 191, the crime of accepting bribes in Article 387, the bribery of units in Article 393, and the offense of bribery in the use of influence in the Criminal Law Amendment (IX). In the case of corporate crimes, these crimes not only involve the criminal responsibility of the legal person but also require an investigation of the criminal responsibility of the relevant natural persons. (3) The legislative interpretation adopted by the Standing Committee of the National People's Congress of China in 2014 stipulated that if a company, enterprise, public institution, organ, organization or another unit commits crimes against the society as stipulated in the Criminal Law and the Criminal Law and other laws do not provide for criminal responsibilities, the person who organizes, plans, and implements the socially harmful behavior shall be investigated for criminal responsibility according to law.¹²⁸ According to these provisions, legal persons shall be criminally responsible for participating in relevant corruption-related offenses.

Second, China's civil liability for legal persons who participate in corruption crime is mainly reflected in Article 36 of the Criminal Law 1997. This article stipulated that if a victim suffers economic loss due to criminal acts, in addition to criminal penalties, the victim should be compensated for economic losses according to the circumstances. A criminal who bears civil liability shall be sentenced to a fine, and if his property is insufficient to pay in full, or if the criminal is convicted and there is a confiscation of his property, the civil liability for the victim shall be assumed first.¹²⁹ Here, the civil liability of the perpetrator is based on the economic loss of the victim. If the legal person participates in the corruption crime and causes a direct economic loss of the victim, the legal person must bear the corresponding civil liability. At the same time, according to Chinese legal principles, the main crime related to a legal person's involvement in corruption is bribery, and the bribery crime itself is usually considered to be a crime without a direct victim in Chinese law and involves a civil liability only when a legal person obtains an undue advantage through the act of accepting a bribe or by bribery or

¹²⁷ Criminal Law 1997, art. 30.

¹²⁸ See *Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu "Zhonghua Renmin Gongheguo Xingfa" Di Sanshi Tiao de Jieshi* (全国人民代表大会常务委员会关于《中华人民共和国刑法》第三十条的解释) [*Interpretation of the Standing Committee of the National People's Congress on Article 30 of the Criminal Law of the People's Republic of China*] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2014, effective Apr. 24, 2014) (Chinalawinfo).

¹²⁹ Criminal Law 1997, art. 36.

damages the interests of a third party by taking bribes for the benefit of others. Therefore, according to Chinese legal principles, it is relatively rare for legal persons to directly bear civil liability for participating in corruption offenses.

Third, the administrative responsibility of Chinese legal persons involved in corruption crimes is mainly reflected in the administrative responsibility that legal persons should bear for obtaining unfair competitive advantages due to participation in corruption crimes. Articles 7, 19, 31 and 22 of the Anti-Unfair Competition Law of People's Republic of China stipulates that if an operator uses a property or other means to make a bribe to sell or purchase goods and the action constitutes a crime, the operator shall be investigated for criminal responsibility according to law; if it does not constitute a crime, the supervision and inspection department may impose a fine of not less than 100,000 yuan but not more than 3 million yuan according to the circumstances, and the illegal income shall be confiscated.¹³⁰ Article 72 of the PRC Government Procurement Law stipulates that if the purchaser, the procurement agency and its staff accept bribes or obtain other illegitimate interests in the procurement process and if this action constitutes a crime, they shall be investigated for criminal responsibility according to law; if this action does not constitute a crime, they shall be fined and the illegal income shall be confiscated. If the person is a state functionary, he shall be given administrative sanctions according to the law.¹³¹

Fourth, the Paragraph 4 of Article 10 of the UNTOC states: "Each State Party shall in particular ensure that legal persons responsible under this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions."¹³² Article 31 of the Criminal Law 1997 stipulated that if a unit commits a crime, a fine shall be imposed on the unit, and a penalty shall be imposed on direct supervisors and other directly responsible people.¹³³ It can be seen that in China, the criminal liability of legal persons involved in corruption crimes is denoted by a fine (*i.e.*, money sanctions). With regard to the amount of fines, Article 52 of the Criminal Law 1997 stipulates that "the amount of fines should be determined according to the circumstances of the crime."¹³⁴ Article 2 of the SPC Provisions on Several Issues Concerning the Application of Property Punishment stipulates as follows: The people's court shall, according to the circumstances of the crime, such as the amount of illegal gains, the size of the losses, etc., comprehensively consider the ability of criminals to pay fines, and

¹³⁰ Fan Buzhengdang Jingzheng Fa (反不正当竞争法) [Anti-Unfair Competition Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sep. 2, 1993, amended Apr. 23, 2019, effective Apr. 23, 2019), art. 7, art. 19 and art. 31.

¹³¹ Zhengfu Caigou Fa (政府采购法) [Government Procurement Law] (promulgated by the Standing Comm. Nat'l People's Cong., Jun. 22, 2002, amended Aug. 31, 2014, effective Aug. 31, 2014), art. 72 (Chinalawinfo).

¹³² UNTOC, art. 10, para. 4.

¹³³ Criminal Law 1997, art. 31.

¹³⁴ *Id.* art. 52.

impose fines according to law. If the criminal law does not stipulate the standard of fines, the minimum amount of fines shall not be less than one thousand yuan.¹³⁵ According to this, China's criminal sanctions against legal persons can be considered effective, moderate, and alert. At the same time, China's non-criminal sanctions against legal persons involved in corruption crime are also comprehensively stipulated according to the nature of their actions and the harmful consequences. At present, China's non-criminal sanctions against legal persons involved in corruption mainly include compensation for economic losses, fines, and suspension of business licenses. This is consistent with China's anticorruption situation and the extent of the corrupt actions.

IV. INTERNATIONAL ANTICORRUPTION COOPERATION PRACTICE

On matters related to anticorruption international cooperation, such as extradition, mutual legal assistance, and law enforcement cooperation, Articles 16 to 30 of the UNTOC provide relatively specific provisions, which are important for combating corruption crimes worldwide. In this regard, China has actively improved the content of anticorruption criminal legislation and other relevant laws related to anticorruption international cooperation and has achieved remarkable results.

As President Xi Jinping pointed out, "China is a country under the rule of law. Whether it is punishing corruption at home or carrying out anticorruption international cooperation, it will act in accordance with the law and insist on taking facts as the basis and laws as the criterion."¹³⁶ This reinforces the fact that China must carry out anticorruption international cooperation in accordance with the law; the premise is that there is a sound legal system, which is also an urgent requirement for China to implement the guidelines of the UNTOC. In recent years, with the development of the rule of law in China, positive progress has been made in the legal system, and China's anticorruption international cooperation has improved.

A. *The Domestic Legal Basis of International Anticorruption Cooperation*

After the reform and opening up in 1979, the focus of China's legislation has mainly been on the improvement of the domestic basic legal system, and the focus of the legal system on fugitive repatriation for corruption and asset recovery has not been high; therefore, the relevant regulations focusing on

¹³⁵ *Zuigao Renmin Fayuan Guanyu Shiyong Caichanxing Ruogan Wenti de Guiding* (最高人民法院关于适用财产刑若干问题的规定) [Regulations of the Supreme People's Court on Several Questions Concerning the Application of Property-Oriented Penalty] (promulgated by Sup. People's Ct., Dec. 13, 2000, effective Dec. 19, 2000), art. 2 (Chinalawinfo).

¹³⁶ *Jianchi Dang de Lingdao* — Zongshuji zai Guoji Shang shi Zenme Jiang de (坚持党的领导 总书记在国际上是怎么讲的) [Adhere to the Party's Leadership — What the General Secretary Said at the International Level], XINHUA WANG (新华网) XINHUA NET (Feb. 16, 2016, 9:36 PM), http://www.xinhuanet.com/politics/2016-02/16/c_128724591.htm.

international anticorruption cooperation are mainly found in the existing domestic laws. For example, the Criminal Procedure Law of People's Republic of China (the "Criminal Procedure Law") was amended in 1996 to legally establish the general principle of international criminal judicial assistance in China.¹³⁷ Article 64 of the Criminal Law 1997 clarified that the State has the right and obligation to recover assets.¹³⁸ It was not until the Extradition Law of the People's Republic of China¹³⁹ was promulgated in 2000 that the first special law on criminal judicial assistance for international cooperation appeared in China, marking the gradual progress of China's international criminal judicial assistance toward standardization and legalization.¹⁴⁰ In addition, Articles 27 and 29 of the Anti-Money Laundering Law of the People's Republic of China¹⁴¹ and Articles 53 and 55 of the Anti-Drug Law of People's Republic of China¹⁴² provide for the principled provision of international criminal justice cooperation for the corresponding crimes through laws.¹⁴³ Article 57 of the Narcotics Control Law of People's Republic of China also includes international cooperation asset recovery provisions for the sharing of proceeds from crimes.¹⁴⁴ To further solve the problem of asset recovery caused by the flight of corrupt officials, the

¹³⁷ Article 18 of the Criminal Procedure Law stipulates the following: "According to international treaties concluded or acceded to by the People's Republic of China, or in accordance with the principle of reciprocity, Chinese judicial organs and foreign judicial organs can request criminal judicial assistance from each other." Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Nat'l People's Cong., July 7, 1979, amended Oct. 26, 2018, effective Oct. 26, 2018), art. 18 (Chinalawinfo).

¹³⁸ Article 64 of Criminal Law 1997 stipulates the following: "All property illegally obtained by criminals shall be recovered or ordered to be returned for compensation; the lawful property of the victim shall be returned in time; contraband and personal belongings used for committing crimes shall be confiscated. All confiscated property and fines shall be turned over to the state treasury and shall not be misappropriated or handled on their own."

¹³⁹ Yindu Fa (引渡法) [Extradition Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 2000, effective Dec. 28, 2000) (Chinalawinfo).

¹⁴⁰ See Yindu: Yi Xiang Zhongyao de Guoji Falü Zhidu (引渡: 一项重要的国际法律制度) [Extradition: An Important International Legal System], ZHONGLÜ WANG (中律网) [ZHONGLÜ NET] (Feb. 21, 2008), <http://www.148com.com/html/716/40791.html>.

¹⁴¹ Fan Xiqian Fa (反洗钱法) [Anti-Money Laundering Law] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 31, 2006, effective Jan. 1, 2007), art. 27 and art. 29 (Chinalawinfo).

¹⁴² Jindu Fa (禁毒法) [Narcotics Control Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2007, effective June 1, 2008), art. 53 and art. 55 (Chinalawinfo).

¹⁴³ Article 27 of the Anti-Money Laundering Law stipulates that "the People's Republic of China carries out international cooperation against money laundering in accordance with international treaties concluded or acceded to, or in accordance with the principle of equality and reciprocity." Article 29 stipulates the following: "Mutual legal assistance involving the investigation of money laundering crimes shall be handled by judicial organs in accordance with the provisions of relevant laws."

¹⁴⁴ Article 53 of the Narcotics Control Law stipulates that "the People's Republic of China carries out international cooperation in narcotics control in accordance with international treaties concluded or acceded to or in accordance with the principle of reciprocity." Article 55 stipulates that "judicial assistance concerning drug-related crimes shall be handled by judicial organs in accordance with relevant laws." Article 57 stipulates as follows: "If drug-related crimes are solved through international cooperation in narcotics control, the government of the People's Republic of China may share with the countries concerned the seized illegal gains, the proceeds obtained from the illegal gains, the property used for drug-related crimes or the money from the sale of such property."

Criminal Procedure Law was revised in 2012 (the “Criminal Procedure Law 2012”) and added a special chapter on the “confiscation procedures for illegal gains in cases where criminal suspects and defendants have escaped or died” in the fifth part titled “Special Procedures”; this procedure system is specifically regulated in Articles 280 to 283.¹⁴⁵ This procedure also forms the legal basis for China’s current overseas asset recovery policy. In addition, Chapter Six of the Supervision Law of the People’s Republic of China¹⁴⁶ passed by the 1st Session of the Thirteenth National People’s Congress in March 2018, clearly stipulates that the NSC will strengthen the organization and coordination of international anticorruption efforts in fugitive repatriation, asset recovery and the prevention of flight and will strengthen the cooperation with relevant countries, regions and international organizations in the fields of anticorruption law enforcement, extradition, mutual legal assistance, transfer of sentenced persons, asset recovery, and information exchange. This means that China’s coordination mechanism for fugitive repatriation and asset recovery has been officially established in law. Significantly, the 6th Session of the Standing Committee of the 13th National People’s Congress of China in October 2018 passed the International Criminal Judicial Assistance Law of the People’s Republic of China (the “International Criminal Judicial Assistance Law”),¹⁴⁷ which provides for the following: the submission, receipt, and handling of requests for criminal judicial assistance; the delivery of documents; the investigation and collection of evidence; the arrangement of witnesses to testify or assist in investigations; the sealing, seizure, and freezing of property involved; the confiscation, return and sharing of illegal gains; and the notification of the results of criminal proceedings. At the same time, the International Criminal Judicial Assistance Law also stipulates the principles, bases, external liaison authorities, competent authorities, and case handling authorities for the implementation of assistance, as well as issues such as financial security and cost bearing.¹⁴⁸ In fact, the International Criminal Judicial Assistance Law has already made the international criminal

¹⁴⁵ Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Nat’l People’s Cong., July 7, 1979, amended Mar. 14, 2012, effective Jan. 1, 2013), art. 280, art. 281, art. 282 and art. 283 (Chinalawinfo). Article 298 of the Criminal Procedure Law 2012 stipulates as follows: “For major crimes such as corruption, bribery, and terrorist activities, if a criminal suspect or defendant escapes from the scene after being wanted for a year, or if the criminal suspect or defendant dies, his illegal income and other property involved shall be recovered in accordance with the provisions of the Criminal Law, and the People’s Procuratorate may apply to the People’s Court for a confiscation of the illegal income.”

¹⁴⁶ Jiancha Fa (监察法) [Supervision Law] (promulgated by the Nat’l People’s Cong., Mar. 20, 2018, effective Mar. 20, 2018) (Chinalawinfo).

¹⁴⁷ Guoji Xingshi Sifa Xiezhufa (国际刑事司法协助法) [Law on International Criminal Judicial Assistance] (promulgated by the Nat’l People’s Cong., Oct. 26, 2018, effective Oct. 26, 2018) (Chinalawinfo).

¹⁴⁸ See Wang Qian (王茜), *Woguo Ni Lifa dui Guoji Xingshi Sifa Xiezhufa Diaocha Quzheng Zuochu Guiding* (我国拟立法对国际刑事司法协助调查取证做出规定) [China Intends to Legislate to Provide for International Criminal Judicial Assistance Regarding Investigation and Evidence Collection], XINHUA WANG (新华网) [XINHUA NET] (Dec. 22, 2017, 7:19 PM), http://www.xinhuanet.com/2017-12/22/c_1122154677.htm.

judicial cooperation of the relevant domestic departments rule-based, thereby helping to standardize and improve China's criminal judicial assistance system, fill the legal gap in international cooperation on criminal judicial assistance, improve the relevant legal system for fugitive repatriation and asset recovery, and make the relevant norms for fugitive repatriation and asset recovery outside China more systematic.¹⁴⁹

B. The Bilateral and Multilateral Cooperation Framework in terms of Anticorruption

From 1984 when China joined the Interpol to December 2017, the Chinese government has ratified and acceded to more than 20 multilateral international conventions with criminal judicial assistance content, such as the UNTOC and the UNCAC.¹⁵⁰ Under the framework of these multilateral conventions, China can carry out various forms of judicial cooperation with more than 160 countries and international organizations in activities, such as extradition, seals, seizure and freezing, confiscation, and return and sharing of criminal assets and proceeds.¹⁵¹

According to data released by the Chinese Ministry of Foreign Affairs, as of February 2018, China had concluded 138 (116 in force) mutual legal assistance treaties, asset return and sharing agreements, extradition treaties, and agreements to fight against the "Three Evil Forces (三股势力)"¹⁵² with 71 countries, such as France, Poland, Italy, and the United States. The details are in Table 1 and show the following: 19 civil and criminal judicial assistance treaties (all in force); 41 criminal judicial assistance treaties (35 in force); 1 asset return and sharing agreement (not yet in force); 20 civil and commercial judicial assistance treaties (18 in force); 50 extradition treaties (37 in force); and 7 agreements (all in force) on fighting against the "Three Evil Forces".¹⁵³ Since the signing of the first bilateral extradition treaty between China and Thailand in 1983, China has signed 50 extradition treaties with Thailand, Russia, South Korea, France, Italy and other countries, 37 of which have entered into force and established stable extradition cooperation relations

¹⁴⁹ Zhang Baoshan (张宝山), *Lifa Cujin Fanfubai Guoji Zhuitao Zhuizang Hezuo* (立法促进反腐败国际追逃追赃合作) [Legislation to Promote International Cooperation in Fugitive Repatriation and Asset Recovery for Anti-Corruption], 2 ZHONGGUO RENDA [THE PEOPLE'S CONGRESS OF CHINA] 52, 52 (2018).

¹⁵⁰ See *Tiaoyue Qingkuang* (条约情况) [Treaties], ZHONGHUA RENMIN GONGHEGUO WAIJIAOBU (中华人民共和国外交部) [P.R.C. MINISTRY OF FOREIGN AFFAIRS], http://www.fmprc.gov.cn/web/ziliao_674904/tytj_674911/tyfg_674913/ (last visited Nov. 25th, 2020).

¹⁵¹ See Huang Feng (黄凤), *Guoji Xingshi Sifa Xiezhu Zhidu de Ruogan Xin Fazhan* (国际刑事司法协助制度的若干新发展) [New Developments in Mutual Legal Assistance in Criminal Matters], 6 当代法学 [CONTEMPORARY L.] 10 (2007).

¹⁵² The "Three Evil Forces" refer to terrorism, separatism, and extremism, which were officially mentioned in Shanghai Convention on Combating Terrorism, Separatism and Extremism. See *Full text of Chinese President Xi's Speech at 17th SCO summit*, CHINA PLUS (June 9, 2017, 9:47 PM), <http://chinaplus.cri.cn/news/politics/11/20170609/6104.html>.

¹⁵³ See TIAOYUE SHUJUKU (条约数据库) [TREATIES DATABASE], <http://treaty.mfa.gov.cn/Treaty/web/index.jsp> (last visited Nov. 25, 2020).

between China and European countries, such as Spain, Portugal, France and Italy. In addition, as of 2015, China had negotiated and concluded treaties on the transfer of sentenced persons with 12 countries, including the Ukraine, Russia and Spain, and nine of the treaties have entered into force.¹⁵⁴ Moreover, with asset recovery becoming the focus of international cooperation in recent years, in 2016, China concluded an agreement with Canada on sharing and returning recovered assets.¹⁵⁵ Although the agreement has not yet entered into force, it reflects China's determination to cooperate with other countries on matters related to extradition and asset recovery as well as the increasing trend of international cooperation on asset recovery.

¹⁵⁴ See Jiang Hao (蒋皓), (中国首次向澳大利亚移管被判刑人) [*China Transferred Sentenced Persons to Australia for the First Time*], DONGFANG WANG (东方网) [EASTDAY.COM] (Nov. 28, 2014, 4:55 PM), http://news.eastday.com/eastday/13news/auto/news/china/u7ai3060439_K4.html.

¹⁵⁵ See *Zhong Jia Qinding Guanyu Fenxiang he Fanhuan bei Zhuijiao Zichan de Xieding* (中加签订关于分享和返还被追缴资产的协定) [*China and Canada Signed an Agreement on Sharing and Returning Recovered Assets*], XINHUA WANG (新华网) XINHUA NET (Sept. 24, 2016, 11:05 AM), http://www.xinhuanet.com/world/2016-09/24/c_1119617435.htm.

Year	Number of civil and criminal judicial assistance treaties	Number of criminal judicial assistance treaties	Number of civil and commercial judicial assistance treaties	Number of extradition treaties	Total number of treaties signed
1979–1988	1	0	1	0	2
1989–1998	15	3	7	9	34
1999–2008	3	22	5	21	58 ¹⁵⁶
2009–2019 (As of February 2019)	0	17	7	20	44 ¹⁵⁷
Total	19	41	20	50	138

TABLE 1. THE PHASED NUMBER OF BILATERAL TREATIES SIGNED BY CHINA¹⁵⁸

At the international level, in addition to actively joining international conventions such as the UNTOC and the UNCAC and concluding bilateral agreements on criminal justice cooperation, similar to other countries, China has also changed its thinking toward the importance of international anticorruption cooperation, strengthened strategic planning, actively set up a platform for international communication and cooperation on fugitive repatriation and asset recovery. President Xi Jinping pointed out that “we should set up a platform for international cooperation on fugitive repatriation and asset recovery” and “continue to promote international cooperation on fugitive repatriation and asset recovery under multilateral frameworks such as the G20, APEC and the UNCAC”.¹⁵⁹

In fact, as early as October 2006, the International Association of Anticorruption Authorities, initiated by the SPP, became the world’s first international organization with various anticorruption agencies as members. This organization built a new platform for international cooperation against

¹⁵⁶ The bilateral treaties signed at this stage also include seven agreements to combat the “Three Evil Forces”.

¹⁵⁷ The bilateral treaties signed at this stage also include the agreement signed by China and Canada on the sharing and return of recovered assets.

¹⁵⁸ TREATIES DATABASE, *supra* note 154.

¹⁵⁹ XI JINPING GUANYU DANGFENG LIANZHENG JIANSHE HE FAN FUBAI DOUZHENG LUNSHU ZHAIBIAN (习近平关于党风廉政建设和反腐败斗争论述摘编) [EXCERPTS FROM XI JINPING’S DISCUSSION ON THE PARTY STYLE AND CLEAN GOVERNMENT CONSTRUCTION AND THE FIGHT AGAINST CORRUPTION] 132 (CPC Central Commission for Discipline Inspection & Central Documentary Research Office of CPC eds., 2015).

corruption and established a direct cooperation mechanism.¹⁶⁰ Since the 18th National Congress of the CPC, China has paid great efforts to anticorruption, fugitive repatriation, and asset recovery. International criminal justice cooperation is an important part of the country's anticorruption efforts, and international cooperation on fugitive repatriation and asset recovery has continued to advance. On November 8, 2014, under the impetus of China, Asia-Pacific Economic Cooperation (the "APEC") stepped up its anticorruption cooperation by adopting the Beijing Anticorruption Declaration (the "Declaration"),¹⁶¹ which established the APEC anticorruption law enforcement cooperation network and reached an important consensus on law enforcement cooperation on fugitive repatriation and asset recovery. The Declaration is the first international anticorruption document drafted under the leadership of China and "has set up the largest international anticorruption platform for fugitive repatriation and asset recovery", fully demonstrating China's determination to strengthen anticorruption and fugitive repatriation and asset recovery since the 18th National Congress of the CPC.¹⁶² In the G20 Hangzhou Summit during September 4–5, 2016, China took the initiative in emphasizing the importance of anticorruption international cooperation. Statements emphasizing the importance of this cooperation were included in the Communiqué of the G20 Hangzhou Summit.¹⁶³ In addition, another influential international anticorruption document led by China was also passed. New concepts, such as "zero tolerance" for the flight of corrupt officials and the outflow of assets, "zero loopholes" in the international system and mechanisms related to fugitive repatriation for corruption and asset recovery, and "zero barriers" in the cooperation of countries in fugitive repatriation for corruption and asset recovery, were put forward in the G20 High-Level Principles on Cooperation on Fugitive Repatriation for Corruption and Asset Recovery¹⁶⁴ and in the G20 Anticorruption Action Plan 2017–2018.¹⁶⁵ The use of these concepts was unanimously approved.¹⁶⁶ At the

¹⁶⁰ Zhao Yang, *Guoji Fantanju Lianhehui Zouguo Shinian* (国际反贪局联合会走过十年) [*The International Association of Anti-Corruption Authorities Has Gone Through Ten Years*], FENGHUANG WANG (凤凰网) PHOENIX NET (May 13, 2016, 6:29 AM), <http://news.ifeng.com/c/7fcvSCkx3bb>.

¹⁶¹ *Beijing Declaration on Fighting Corruption*, *supra* note 34.

¹⁶² Zhang Wei (张维) & Yu Yingbo (余瀛波), *Beijing Fanfu Xuanyan Jian Zuida Zhuizang Pingtai, Xiaochu Fubai Bifenggang* (北京反腐宣言建最大追赃平台 消除腐败避风港) [*Beijing's Anti-Corruption Manifesto Has Set up the Largest Platform for Asset Recovery to Eliminate Corruption Havens*], Xinlang Caijing (新浪财经) [Sina Finance] (Nov. 12, 2014, 1:40 PM), <http://finance.sina.com.cn/china/20141112/134020797468.shtml>.

¹⁶³ *G20 Leaders' Communiqué: Hangzhou Summit*, G20 INFORMATION CENTRE (Sept. 5, 2016), <http://www.g20.utoronto.ca/2016/160905-communicue.html>.

¹⁶⁴ *G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery*, G20 INFORMATION CENTRE (Sept. 27, 2016), <http://www.g20.utoronto.ca/2016/asset-recovery.html>.

¹⁶⁵ *G20 Anti-Corruption Action Plan 2017-2018*, G20 INFORMATION CENTRE (Sept. 5, 2016), <http://www.g20.utoronto.ca/2016/160905-anticorruption.html>.

¹⁶⁶ Jiang Jie (姜洁), *Fan Fubai Guoji Hezuo he Zhuitao Zhuizang: "Tianwang" Jinnian Yi Buhui 908 Ren* (反腐败国际合作和追逃追赃: "天网"今年已捕回908人) [*Anti-Corruption International Cooperation and Fugitive Repatriation and Asset Recovery: "Skynet" Has Caught 908 Fleeing People*], RENMIN WANG

same time, the leaders of all countries unanimously approved the establishment of the Research Center on Cooperation Regarding Fugitive Repatriation for Corruption and Asset Recovery in the G20 Member States,¹⁶⁷ which is the first research organization in China to carry out activities related to international cooperation for fugitive repatriation for corruption and asset recovery for G20 members. The center will not only serve as a cooperation platform for G20 members but also provide intellectual support for the formulation of rules for international cooperation against corruption.

C. *The International Cooperation Practice in terms of Anticorruption*

In addition to constantly improving the legal basis of the legislation related to fugitive repatriation and asset recovery, China has actively carried out law enforcement and judicial activities in various forms; in intensifying its efforts to combat fleeing corrupt officials, China has made great achievements. The flight of Chinese corrupt officials and suspects of abuse-of-power crimes in state-owned enterprises started in the late 1980s, and China's engagement with the Interpol to arrest the fleeing corrupt officials started in the early 1990s, but the overall results during this period were not satisfactory.¹⁶⁸ However, according to the SPP, in October 2013, China announced that it had arrested 6,694 suspects of corruption and bribery between 2008 and 2013.¹⁶⁹

Especially since 2014, China has embarked on an unprecedented campaign to pursue efforts related to fugitive repatriation and asset recovery overseas. On January 15, 2014, the 3rd Plenary Session of the Central Commission for Discipline Inspection made arrangements for "anticorruption international cooperation" and proposed to intensify efforts related to fugitive repatriation and asset recovery and to never let corrupt officials go unpunished. On March 28 of the same year, the SPP issued the Notice on Further Strengthening the Work of Fugitive Repatriation and Asset Recovery

(人民网) [THE PEOPLE NET] (Dec. 9, 2016, 5:05 PM), <http://world.people.com.cn/n1/2016/1209/c1002-28938830.html>.

¹⁶⁷ Peng Xinlin (彭新林), *G20 Fan Fubai Zhuizang Zhuizang Yanjiu Zhongxin* (G20反腐败追逃追赃研究中心) [*G20 Anti-Corruption Research Center on Fugitive Repatriation and Asset Recovery*], JIANCHA RIBAO (检察日报) [THE PROCURATORATE DAILY], Oct. 25, 2016, at A5, http://newspaper.jcrb.com/2016/20161025/20161025_005/20161025_005_2.htm.

¹⁶⁸ Pan Hongqi (潘洪其), *Zhongguo Zhuitao Shunying Quanguo Zhili Dedao Duo zhu* (中国追逃顺应全球治理得道多助) [*China's Fugitive Repatriation Responds to Global Governance and Gains Recognition*], XINHUA WANG (新华网) XINHUA NET (April 23, 2017, 9:21 AM), http://www.xinhuanet.com/comments/2017-04/23/c_1120857593.htm.

¹⁶⁹ Li Jinrui (李静睿) & Xiong Rumeng (熊入梦), *Shiwu Nian Zhuizang Yibai Duo Yi, Naxie "Paolu" Guanyuan Bei Zhuizang* (十五年追赃100多亿, 哪些"跑路"官员被追回) [*More than 10 Billion Illicit Money Have Been Recovered During 15 Years. Which "Fleeing" Officials Have Been Caught?*], RENMIN WANG (人民网) [THE PEOPLE NET] (Nov. 3, 2014, 0:14 AM), <http://world.people.com.cn/n/2014/1103/c1002-25959397.html>.

(the “Notice”).¹⁷⁰ On July 22, 2014, the Ministry of Public Security deployed the action codenamed “Fox Hunting” to focus on the special operation of arresting economic crime suspects who had fled abroad.¹⁷¹ In April 2015, the “Skynet”, an operation deployed by the Central Anticorruption Coordination Group against fleeing corrupt people, was officially launched, focusing time and efforts on catching a group of corrupt people, cleaning up a group of illegal licenses, cracking down on a group of underground banks, recovering a group of assets, and persuading a group of fleeing people to return through the comprehensive use of policing, diplomatic and financial means.¹⁷² The “Skynet” has achieved remarkable results through closely focusing on the three links of “people”, “money” and “certificates” and by adopting the three-pronged approach of fugitive repatriation, asset recovery, and flight prevention. In April 2015, Interpol’s China National Central Bureau issued the Red Wanted (红通) (for 100 fleeing state functionaries suspected of crimes and those involved in important corruption cases) list to intensify the global hunt. As of January 2018, 52 of the “100 people on the list of the Red Wanted” had been brought to justice.¹⁷³ After more than three years of efforts directed at the pursuit of fugitive repatriation and asset recovery, the number of the fugitives has been greatly reduced. In 2014, 511 people were caught, and 3.19 billion yuan was recovered. In 2015, 1,023 people were caught, and 3.04 billion yuan was recovered. In 2016, 1,032 people were caught, and 2.41 billion yuan was recovered. In 2017, a total of 1,300 individuals who had fled the country were caught from more than 70 countries and regions, hitting a record high, and 980 million yuan was recovered.¹⁷⁴ From 2014 to 2018,

¹⁷⁰ Li Jialong (李嘉龙), *Zuigaojian Chutai “Guanyu Jinyibu Jiaqiang Zhuitao Zhuizang Gongzuo de Tongzhi”* (最高检出台《关于进一步加强追逃追赃工作的通知》) *The Supreme People’s Procuratorate Issues “Notice on Further Strengthening the Work of Fugitive Repatriation and Asset Recovery”*, FAZHI ZHONGGUO (法治中国) [RULE OF LAW IN CHINA] (Oct. 13, 2014, 9:36 AM), http://legal.china.com.cn/2014-10/13/content_33744913.htm.

¹⁷¹ *Haiwai Zhuitao Diyi An Yu Guoji Hezuo* (海外追逃第一案与国际合作) [*The First Case of Overseas Asset Recovery and International Cooperation*], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA.COM] (Sept. 9, 2014, 8:46 AM), <http://www.chinanews.com/df/2014/09-09/6571419.shtml>.

¹⁷² Wang Shichuan (王石川), *Renmin Shiping: “Tianwang Xingdong” Rang Waitao Tanguan Chandou* (人民时评: “天网行动”让外逃贪官颤抖) [People’s Commentary: “Skynet Action” Makes the Fleeing Corrupt Officials Tremble], RENMIN WANG (人民网) [THE PEOPLE NET] (Mar. 30, 2015, 8:24 AM), <http://cpc.people.com.cn/pinglun/n/2015/0330/c78779-26768768.html>.

¹⁷³ See “*Baiming Hongtong Renyuan*” Hu Yuxing *Huiguo Touan* (“百名红通人员”胡玉兴回国投案) [*One of the “100 People on the List of Red Notice” Returned to China to Surrender*], ZHONGGONG ZHONGYANG JILÜ JIANCHA WEIYUANHUI HE ZHONGHUA RENMIN GONGHEGUO GUOJIA JIANCHA WEIYUANHUI (中共中央纪律检查委员会和中华人民共和国国家监察委员会) [CPC CENTRAL COMMISSION FOR DISCIPLINE INSPECTION AND P.R.C. NATIONAL SUPERVISORY COMMISSION] (Jan. 24, 2018, 6:45 PM), http://www.ccdi.gov.cn/gzdt/gjhz/201801/t20180124_162488.html.

¹⁷⁴ See *Zhongyang Zhuitaoban Zhaokai Huiyi Yanjiu Bushu 2018 Nian Gongzuo: Chi er Buxi Tuidong Zhuitao Zhuitang Xiang Zongshen Fazhan* (中央追逃办召开会议研究部署2018年工作 驰而不息推动追逃追赃向纵深发展) [*The Central Fugitive Repatriation Office Studies and Deploys the Work in 2018: Continue to Promote the Further Development of Fugitive Repatriation and Asset Recovery*], ZHONGGONG ZHONGYANG JILÜ JIANCHA WEIYUANHUI HE ZHONGHUA RENMIN GONGHEGUO GUOJIA JIANCHA WEIYUANHUI (中共中央纪律检查委员会和中华人民共和国国家监察委员会) [CPC CENTRAL

5,201 individuals who had fled were caught, and nearly 13.141 billion yuan were recovered from overseas.¹⁷⁵ The great achievements have already been given high praise by the Chinese people at home and abroad and greatly enhanced the public's confidence in the following efforts aimed at fugitive repatriation and asset recovery.

While vigorously intensifying the fugitive repatriation and asset recovery work, China is also further strengthening measures to prevent the flight of individuals and the transfer of assets. For instance, to strengthen the management and supervision of officials, the newly revised Regulations on Officials Reporting Relevant Personal Information requires the officials to reporting on their overseas deposits and investments. China has severely cracked down on the use of underground banks and offshore companies to transfer illicit money, solved 803 cases of underground banks, and seized and frozen more than 5 billion yuan of the involved funds.¹⁷⁶ Efforts have been made to set up anti-flight procedures before cases are filed, and 230 officials who were suspected of violating disciplines and laws and attempting to flee were intercepted.¹⁷⁷ According to the figures published on the website of the CCDI, 101 people fled in 2014, 31 in 2015, 19 in 2016, and 4 more in the five months from January to May in 2017.¹⁷⁸ The number of people fleeing dropped sharply year by year, presenting a situation in which the number of fugitives caught exceeded the number of newly increased ones.

V. CONCLUSION

Anticorruption efforts have already become a constant task of the ruling party and government in China, as corruption impacts the prosperity as well

COMMISSION FOR DISCIPLINE INSPECTION AND P.R.C. NATIONAL SUPERVISORY COMMISSION] (Feb. 9, 2018, 11:40 PM), http://www.ccdi.gov.cn/toutiao/201802/t20180209_163746.html.

¹⁷⁵ See Jiang Jie (姜洁), "Tianwang" Jinnian Yi Buhui 908 Ren, Zhuihui Zangkuan 23.12 Yi Yuan ("天网"今年已捕回908人 追回账款23.12亿元) [This Year "Skynet" Has Arrested 908 Fugitives and Recovered 2.312 Billion Yuan of Stolen Money], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA.COM] (Dec. 9, 2016, 5:24 AM), <https://news.china.com/domesticgd/10000159/20161209/30071227.html>.

¹⁷⁶ Teng Shu (滕抒), *Shuju, Shengguo Qianyan Wanyu* (数据, 胜过千言万语) [Data, Worth a Thousand Words], ZHONGGUO JIJIAN JIANCHA (中国纪检监察) [J. OF CHINA DISCIPLINE INSPECTION AND SUPERVISION] (Aug. 17, 2017), http://zgjjjc.ccdi.gov.cn/bqml/bqxx/201708/t20170821_105024.html.

¹⁷⁷ See Teng Shu (滕抒): Cong Shuju Kan Zhuitao Zhuizang Chengxiao — Waitao Cunliang Dafu Xiaojian, Zengliang Youxiao Ezhi (从数据看追逃追赃成效——外逃存量大幅消减, 增量有效遏制) [Observe the Effect of Fugitive Repatriation and Asset Recovery from Data: The Number of Fugitives Has Been Sharply Reduced and the Increase Has Been Curbed Effectively], ZHONGGUO JIJIAN JIANCHA (中国纪检监察) [J. OF CHINA DISCIPLINE INSPECTION AND SUPERVISION] (Apr. 1, 2017), http://zgjjjc.ccdi.gov.cn/bqml/bqxx/201704/t20170407_96879.html.

¹⁷⁸ See Wang Shaowei (王少伟), Fang Tao "Liba" Yuezha Yuejin — Jinnian Yilai Xinzeng Waitao Renyuan Jin Siren (防逃篱笆越扎越紧, 今年以来新增外逃人员仅4人) [The "Fence" to Prevent Fleeing is Getting Tighter and Tighter — Only 4 New Fugitives So Far This Year], ZHONGGONG ZHONGYANG JILU JIANCHA WEIYUANHUI HE ZHONGHUA RENMIN GONGHEGUO GUOJIA JIANCHA WEIYUANHUI (中共中央纪律检查委员会和中华人民共和国国家监察委员会) [CPC CENTRAL COMMISSION FOR DISCIPLINE INSPECTION AND P.R.C. NATIONAL SUPERVISORY COMMISSION] (June 28, 2017, 11:23 AM), http://www.ccdi.gov.cn/yaowen/201706/t20170628_148070.html.

as the stability of the country. As evidenced by China's cooperation with the UNTOC and the UNCAC, in China, great progress has been made in improving the criminal rule of law on corruption and bribery, but it is still necessary to further improve certain aspects, such as incoherent provisions related to bribery, unscientific and subjective regulations, and the imperfect setting of penalties. However, governing corruption is a comprehensive project. Under the background of the modernization of China's national governance system, it is necessary to establish a system for fighting corruption crimes, the simultaneous punishment and prevention of corruption, and the promotion of good, comprehensive corruption governance in the context of the rule of law. In fact, as the politics, the economy, and the culture have developed and especially as communication with various countries and regions has become progressively more frequent, transnational organized crimes have been increasing in recent years. China's fight against corruption is also an important part of the world's fight against corruption. Under such circumstances, it is an inevitable choice for China and even the international community to further develop and improve criminal laws on anticorruption, strengthen international cooperation against transnational organized crime, and establish a sound and regular working mechanism and legal system to combat organized crimes in consistency with the spirits of the UNTOC and the UNCAC.