



Tsinghua China Law Review

BOARD OF EDITORS

CO-EDITORS-IN-CHIEF

CAO WENJIAO

WU PEIYAO

EXECUTIVE EDITORS

CHI YU'ANG
LI XIANG
SUN MINGYU
ZHANG XINYU

HUANG JINGLEI
LIN JIAYI
WANG JIAQI

LI WENTING
NIU ZHIHENG
XU JIAYING
ZHOU MENGDI

SENIOR EDITORS

CAI JIAWEI
LI YUXIN
TAN YANFEI

GU XIANG
QIU QUNRAN
XU ZIXIN

KELSON TEO
SUN QINGYANG
ZHANG YAQING

EDITORS

CAO XU
ERIN, CHEUK KA LAM
HOU BINGQIAO
LI JIONGSHEN
LIU MINGXIN
NIU JINGJING
RUAN JIAHE
WANG YUNING
YANG JINGE
YUAN SIJIA

CHEN ZHIXIN
FU XUEYANG
HU JIANYUN
LI ZIHAO
LU ZHENHAO
PU ZHUO'ER
SAMUEL LIAO
WANG ZIQI
YANG PEIMING
ZHENG HENGYUAN

CHEN ZIHAN
GAO JINYI
IGOR SHENDERSKIY
LIANG YONGYI
LUO YARU
ROSLYN, LAI KA FU
TAN RUI
XU CHANGLE
YIN SHANGHONG

ADVISORY BOARD

PROF. CHANG WEJEN
PROF. WANG ZHENMIN
PROF. FENG XIANG
PROF. TU KAI

PROF. SHEN WEIXING
PROF. CHEN WEIZUO
PROF. CUI GUOBIN

PROF. JEROME A. COHEN
PROF. WANG TZE-CHIEN
PROF. GAO SIMIN
PROF. LIU HAN

SPECIAL ADVISORS

HADAS PELED
YANG WEIRAN
ZHANG ZHAOHAN
LIN ZIYU
LIN MENG

CHEN WANG
MENG LU
TANG PING FAN
SONG JINYANG
JOEL EVANS

ROBERT SHERMAN
FU SHUNING
LIU ZIHE
CUI JIALE



清华中国法律评论

编辑委员会

主编

曹文蛟

武佩瑶

执行编辑

池宇昂
李想
孙铭瑜
张鑫渝

黄京磊
林家怡
王佳琦

李雯婷
牛志恒
徐嘉莹
周梦迪

高级编辑

蔡嘉炜
李雨欣
谈妍霏

顾芴
邱群然
徐子馨

KELSON TEO
孙清扬
张雅清

编辑

曹絮
卓家琳
侯冰俏
李炯燊
刘明新
牛菁菁
阮嘉禾
王雨宁
阳金格
袁思佳

陈至信
傅雪莺
胡剑云
李梓豪
卢震豪
蒲卓尔
SAMUEL LIAO
王子奇
杨佩明
郑恒源

陈子晗
高锦壹
IGOR SHENDERSKIY
梁咏仪
罗雅如
黎嘉芙
谭瑞
许长乐
殷上弘

顾问委员会

张伟仁教授
王振民教授
冯象教授
屠凯教授

申卫星教授
陈卫佐教授
崔国斌教授

科恩教授
王泽鉴教授
高丝敏教授
刘晗教授

特别顾问

裴洁思
杨蔚然
张兆函
林子郁
林盟

陈旺
孟璐
邓炳勋
宋金洋
JOEL EVANS

罗伯特
傅书宁
刘子赫
崔家乐

The *Tsinghua China Law Review* (TCLR), ISSN: 2151-8904 (cite as TSINGHUA CHINA L. REV.), is the first student-run organization that publishes a journal of legal scholarship on Chinese Law internationally. The organization is a collaborative effort by international and Chinese students at the School of Law, Tsinghua University. Student editors make all editorial and organizational decisions in addition to carrying out day-to-day operations. The *Tsinghua China Law Review* is formatted in accordance with *The Bluebook* system, the most widely-followed legal citation authority in the United States. It is printed by Joe Christensen, Inc. in Lincoln, Nebraska, U.S. and distributed across the globe biannually, publishing articles by professors, judges and practitioners on legal issues pertaining to China.

Subscriptions

If you are interested in receiving bi-annual volumes of the *Tsinghua China Law Review* in bound, hard copy format, please contact us via email at tsinghuaclr@gmail.com.

Submissions

The *Tsinghua China Law Review* encourages scholars and legal practitioners from all backgrounds to submit original academic discussion of all issues relating to China's law, legal economy, and society. For details on submission policy, please visit our website at <http://www.tsinghuachinalawreview.org/submissions>.

Permission

For information on how to request permission to reproduce articles or information from the *Tsinghua China Law Review*, please contact us via email at tsinghuaclr@gmail.com.

Disclaimer

Statements of fact or opinion in the works published in the *Tsinghua China Law Review* are those of the respective authors and contributors and not of the *Tsinghua China Law Review*.

Tsinghua China Law Review

would like to thank

The Tsinghua University Humanities
and Social Sciences Development
Initiative

for its generous financial support

[《清华中国法律评论》感谢清华大学文科建设“双高”计划资助]



TABLE OF CONTENTS

ARTICLE

CHINA'S REGULATORY PATHWAY TO GREEN FINANCE <i>Wenting Cheng & Peter Drahos</i>	195
LEGITIMATIZING UN SECURITY COUNCIL AS LEGISLATOR — THE CONSTITUTIVE AND SOCIO-POLITICAL RATIONALE <i>Hou Meizhu</i>	221
NEITHER LI NOR LAW: AN ANALYSIS OF THE LATE QING CHINA'S OVERSEAS SETTLEMENTS <i>Yan Liyuan</i>	261
A LINGUISTIC APPROACH TO LATE QING CHINA'S ENCOUNTER WITH INTERNATIONAL LAW <i>Mingqian Li</i>	283

CHINA LAW UPDATE

TRANSFORMATION, CHALLENGE, AND OPTIMIZATION: THE ESG EVOLUTION OF CHINESE CORPORATE GOVERNANCE <i>Li Runqi & Ren Ke</i>	307
A BALANCE BETWEEN SOCIAL MEDIA USERS' PERSONAL INFORMATION PROTECTION AND COMBATING (MIS) AND (DIS)INFORMATION IN CHINA <i>Fan Jinghe & Tang Wenhan</i>	321



PREFACE

China is a dynamic country worth studying in many different aspects, among which Chinese law is a great treasure to unearth. The Spring 2022 issue of *Tsinghua China Law Review* consists of four articles and two notes and deals with three essential legal topics related to China: First, how does China achieve a green economy through legal instruments, such as green finance and ESG in corporate governance? Second, what is the recent development of international law deserving our attention and how did international law root in China? Third, how should we protect personal information while combating severe cyber mis/disinformation? In this issue, all the authors give their novel answers to these questions, which will provoke our thinking.

The first article deals with green finance, which has been a hot topic in recent years. In the article entitled *China's Regulatory Pathway to Green Finance*, Dr. Wenting Cheng and Professor Peter Drahos discern two mechanisms in China's implementation of green finance policy, which could be regarded as an alternative answer to how China's socialist regime operates and on a larger scale, how China succeeds in its own way to achieve its goals, compared to previous theories, such as "command and control," "top-down regulation," or "fragmented authoritarianism." From their perspective, China's green finance regulation incorporates the pressure-driving mechanism, which compels the local authorities to implement the policy of the central government through the effect of promotion tournament, and the experimental governance mechanism, which aggregates local information to test the proposed measures and diffuse those effective ones to other areas. As Dr. Cheng and Professor Drahos see it, China's experience may set an example for other countries, especially the developing ones.

The next three articles concern the development of international law in the United Nations Security Council and in the history of modern China. In the article entitled *Legitimatizing UN Security Council as Legislator — The Constitutive and Socio-Political Rationale*, Ms. Hou Meizhu argues that some UN Security Council resolutions could be considered as legislations with a set of examples. She specifies a "three-pillar measurement" to determine these legislative resolutions. First, these resolutions have to consist of terms like "decides" or "requires," which indicate *binding obligations*; Second, these resolutions shall be directed to an *abstract object*, e.g., unspecified terrorists; Third, these resolutions shall be directed to a *general subject*, such as "all Member States" of the United Nations. Ms. Hou lays out five reasons for the necessity of the Security Council's legislative resolutions and refutes those dissenting voices. At last, she discusses how to control Security Council legislation to avoid its arbitrariness.



Tsinghua China Law Review

Volume 14

Spring 2022

Number 2

In the article entitled *Neither Li Nor Law: An Analysis of the Late Qing China's Overseas Settlements*, Professor Yan Liyuan outlines the development of Late Qing China's settlements in Korea, whose existence is beyond one's imagination as settlements have been seen as a colonial instrument in China because of the long historical experience of being half-colonized by the Western powers. Indeed, China's settlements in Korea are not quite the same as Western ones. In Professor Yan's view, China's settlements are the final attempt to save traditional Chinese *Dian-li* (典礼, Grand Ritual) and *Bin-li* (宾礼, Guest Ritual) norms which emphasize preferential treatment to vassal States and had been used to deal with the Sino-Korea relationship in the past. However, they took the form of European international law, which creates an inherent paradox, because European international law was backed by force. In contrast, Japan completely abandoned the traditional Confucian *Li* (礼) and embraced force-backed European international law. As a result, Japan conquered and annexed Korea as a colony and kicked China out of sight.

In the article entitled *A Linguistic Approach to Late Qing China's Encounter with International Law*, Professor Li Mingqian offers a textual analysis from the perspective of translation of treaties and international law works. She finds that translators in late Qing China resorted to traditional Chinese intellectual resources to fill the cognitive gap when choosing terminology that they deemed proper. Many of these terms were chosen intentionally to add universality and morality to European international law. For Chinese intellectuals, it increased the acceptability of international law. For example, "international law" *per se* was translated as Gong Fa (公法), meaning "law for all and just." Sometimes, translators even purportedly used different, often inaccurate terms to achieve their own political aims. The translation of "superintendent" as "领事官" in the Treaty of Nanking is an example. In the view of Professor Li, linguistics matters when reviewing the development of international law in China.¹

Besides these four articles, there are also two notes in the column of China Law Update. The first one concerns the development of ESG in corporate governance in China in recent years. In the note entitled *Transformation, Challenge, and Optimization: The ESG Evolution of Chinese Corporate Governance*, Mr. Li Runqi and Mr. Ren Ke sketch the overall legal and regulatory structure for ESG in corporate governance in China. They elaborate on how Chinese companies are required to incorporate the concept of

¹ As a matter of fact, Professor Yan's and Professor Li's articles on the Chinese history of international law were intended to be a part of the symposium published in our journal's volume 14, issue 1, which did not come true because of the tight time schedule. It is quite meaningful to trace the origin of international law in the world as well as in China in such a more unilateral world. Besides the literature mentioned in the preface of volume 14, issue 1, for more information about the topic, see e.g., *MORALITY AND RESPONSIBILITY OF RULERS: EUROPEAN AND CHINESE ORIGINS OF A RULE OF LAW AS JUSTICE FOR WORLD ORDER* (Anthony Carty & Janne Nijman ed., 2018).



ESG into operation when they deal with internal management and external relations, such as with shareholders, stakeholders, and regulatory authorities. Nonetheless, a lot of challenges exist for companies to comply with these mandates, *e.g.*, no financial incentive for compliance, no industrial pertinence for implementation, or no clear criteria for disclosure. In response to these challenges, Mr. Li and Mr. Ren propose to learn from other countries' experiences. In their view, China shall impose a compulsory obligation to comply with the ESG requirements and unify the disclosure criteria, whereas how to disclose the ESG information shall be left to the corporation directors to decide.

The second note focuses on the *Provisions on Management of Internet Users' Account Information*,² which requires Internet information service providers to display the territorial information of the IP address of the Internet user for the public good (mainly to strike cyber mis/disinformation). Since the release of its Draft for Comment,³ multiple internet platforms began to comply with the *Provisions* and show the province (if in China) or the country (if not in China) where users are located. In the note entitled *A Balance Between Social Media Users' Personal Information Protection and Combating (Mis) and (Dis)information in China*, Ms. Fan Jinghe and Ms. Tang Wenhan scrutinize the legality of the *Provisions* against the backdrop of the Personal Information Protection Law (2021).⁴ They argue that territorial information is a kind of personal information protected by the PIPL and the disclosure of such information could only be justified by the public interest exception allowed for in Article 13 Paragraph 1(3) of PIPL. However, it does not mean that there is no limit. In their opinion, the disclosure of territorial information to comply with the *Provisions* needs to pass the test of the proportionality principle.

In the end, we would like to thank Professor Gao Simin of Tsinghua University School of Law for her kind mentorship, and Professor Shen Weixing, the dean of Tsinghua University School of Law, for his continuous support. Special thanks go to the Tsinghua University Humanities and Social Sciences Development Initiative for their generous financial support for this

² See Hulianwang Yonghu Zhanghao Xinxi Guanli Guiding (互联网用户账号信息管理规定) [Provisions on the Administration of Internet Users' Account Name Information Administration] (promulgated by the Cyberspace Administration of China, Jun. 27, 2022, effective Aug. 1, 2022) (hereinafter "the *Provisions*"), art. 12, http://www.cac.gov.cn/2022-06/26/c_1657868775042841.htm.

³ See Hulianwang Yonghu Zhanghao Mingcheng Xinxi Guanli Guiding (Zhengqiu Yijiangao) (互联网用户账号名称信息管理规定(征求意见稿)) [Provisions on the Administration of Internet Users' Account Name Information Administration (Draft for Comment)], CYBERSPACE ADMINISTRATION OF CHINA (Oct. 26, 2021), http://www.cac.gov.cn/2021-10/26/c_1636843202454310.htm.

⁴ See Geren Xinxi Baohu Fa (个人信息保护法) [Personal Information Protection Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 20, 2021, effective Nov. 1, 2021) (hereinafter "PIPL"), CLI.I.5055321 (Chinalawinfo).



Tsinghua China Law Review

Volume 14

Spring 2022

Number 2

issue. At the same time, we extend our highest gratitude to all the contributors and readers for their constant support of our journal.

CAO Wenjiao & WU Peiyao
Co-Editors-in-Chief

* * *