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An Assessment on Gaps of Legal Mechanisms of B&R Implementation in Africa: Ethiopia's Perspective

Yongmei Chen & Haile Andargie[1]

Abstract: While there have been discussions focusing on B&R for African countries, little has said about the legal aspects governing B&R among African countries. Against this backdrop, this article examines the legal frameworks governing the B&R in Africa, taking Ethiopia as a case in point. It analyses the available legal mechanism between China and Africa to ensure the rights and obligations of parties involved in B&R and the limitation on the existing legal issues. This article argues that despite B&R being mutually beneficial, B&R goals necessitate a legal framework governing B&R. There are hardly any specific laws that govern B&R among African countries; the existing multilateral frameworks are nonbinding and are not B&R-specific; some of the African countries including Ethiopia are not yet a member of relevant multilateral forums. These all impede the application of WTO and ICSID in the context of B&R. Therefore, in the short run, there is a need to negotiate or update the existing treaties between African countries and China. In the long term, China and Africa must work towards a legal framework applicable to all the parties eventually.

Keywords: Legal Cooperation; B&R; China; Ethiopia; African

1. Introduction

Silk Road was a network of trade routes formally established during the Han Dynasty. The road originated in Chang'an City (now Xi'an City) in the East and ended in the West's Mediterranean, linking China with the Roman Empire. As China's silk was the primary trade product, German geographer Ferdinand von Richthofen coined the Silk Road in 1877.[2] It was not just one road but rather a series of major trade routes that helped build trade and cultural ties between China, India, Persia, Arabia, Greece, Rome and Mediterranean countries. It reached its height during the Tang Dynasty but declined in the Yuan Dynasty, which was established by the Mongol Empire, as political powers along the route became more fragmented. The Silk Road ceased to be a shipping route in the Ottoman Empire's rise, whose rulers opposed the West.[3]

China's President Jinping Xi introduced the Silk Road Economic Belt and the 21st-Century Maritime Silk Road (hereinafter referred to as B&R) as the centerpiece of foreign and economic policy in 2013.[4] In its current shape, B&R has more than

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[1] The first author: Yongmei Chen, Ph.D., Professor of School of International Law at Southwest University of Political Science and Law, China; the second author: Haile Andargie, Ph.D., Assistant Professor of School of Law at Debre Markos University, Ethiopia. This article is supported by a major project of National Social Science Fund of China named "Research on the Modernization of the System and Capacity for Governance of Nuclear Security in China under the Concept 'A Human Community of a Shared Future'" (NO.20&ZD162).

[2] See Joshua J. Mark, *Silk Road-Ancient History of Encyclopedia*, http://www.ancient.eu/Silk_Road/ (accessed on October 9, 2021).

[3] See David Wijeratne & Andrew Li et al., *China's New Silk Route: The Long and Winding Road*, https://www.pwc.com/gx/en/growth-markets-center/assets/pdf/china-new-silk-route.pdf (accessed on October 9, 2021).

[4] See Raphael & Changfen Zhao, *Africa in China's One Belt, One Road Initiative: A Critical Analysis*,

half of the world's population, around 30% of the global economy, and a total infrastructure investment need of approximately USD 5 trillion.[5] The platforms are comprised of two interdependent and interrelated concepts or fields. One is the land-based economic belt that connects China with Central Asia, the Middle East, Europe and Russia. The belt is a planned network of overland road and rail routes, oil and natural gas pipelines, and other infrastructure projects that will stretch from Xi'an City in Central China, through Central Asia, and ultimately reach Moscow, Rotterdam and Venice. The other is the maritime silk road, which connects China's coastal cities through the South China Sea to ports on the Indian Ocean, the African coast, the Red Sea and the Mediterranean Sea.[6]

China has identified five areas of cooperation among B&R participating countries to operate the project. The priority is policy coordination. Enhancing policy coordination is an important guarantee for implementing B&R which includes building a multi-level intergovernmental macro policy exchange and communication mechanism, expanding shared interests, enhancing mutual political trust, and reaching a new cooperation consensus.[7]

The second priority is infrastructure connectivity, which is the fundamental objective of B&R. B&R aims to connect countries through infrastructural building and the development of common technical standards. Therefore, B&R intends to "jointly push forward the construction of international trunk passageways and form an infrastructure network connecting all sub-regions in Asia, and between Asia, Europe and Africa step by step", with due consideration of "the impact of climate change on the construction". The infrastructure connectivity focuses on three areas. The first area is transport infrastructure construction. The connectivity of energy infrastructure becomes the second, and the construction of cross-border optical cables and other communications trunk line networks is the third.[8]

The third priority is trade facilitation to remove investment and trade barriers and create a sound business environment for all B&R countries. Trade and investment cooperation within the region and with related countries is set out as a major mission of B&R construction. The primary goal of this cooperation is to create a sound business environment by improving trade and investment facilitation and removing trade and investment barriers.[9]

As for the fourth priority, China has identified financial integration to promote economic cooperation and regulatory harmonization in currency stability, bonds, newly developed banks, bank lending, and payment systems. Financial stability and adequate financial supply along B&R and beyond the region are deemed vital for the success of B&R. Efforts will be made toward building three systems in Asia, namely, a currency stability system, an investment and financing system, and a credit information system.[10]

Finally, yet importantly, the people-to-people bond promotes exchanges among the B&R countries in culture, education, media, tourism, epidemic prevention. The

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21(1) Journal of Humanities and Social Science 10, 10-21 (2016).

[5] See Jianing Cao, *Transcript of "B&R"*, https://www.yidaiyilu.gov.cn/jcsj/dsjkydyl/79860.htm (accessed on October 26, 2021).

[6] See supra note 3.

[7] See Ministry of Foreign Affairs of the People's Republic of China, *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road*, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1249618.shtml (accessed on October 9, 2021).

[8] Ibid.

[9] Ibid.

[10] Ibid.

scope of the people-to-people bond scheme is broad and profound, including "extensive cultural and academic exchanges, personnel exchanges and cooperation, media cooperation, youth and women exchanges and volunteer services".[11]

Over the past decades, China's engagement in Africa has grown significantly. China's connection with Africa, including Ethiopia, encompasses trade, investment, security, diplomacy, and social development. The long-lasting African countries' relation with China has become more vital than ever since 2013 amid B&R launching. According to some literature source published in 2020, as of September 2019, 49 of the 54 African countries have already signed Memoranda of Understanding (hereinafter referred to as MoUs) with China.[12] Besides bilateral deals, China has also signed MoUs with the African Union on B&R cooperation. In 2017, Ethiopia officially participated in a B&R forum that was held in Beijing. However, it remains to be seen how China and Africa cooperate in the legal fields to achieve the desired goals of B&R.[13]

The proper implementation of B&R priorities requires appropriate legal frameworks. Implementation of B&R should be based on a sustained and solid international legal foundation. The success of B&R imperatively needs the initiation and enhancement of legal framework at the national, bilateral, regional, and international levels. Until now, neither China nor any other B&R country has enacted real B&R-specific laws, rules or regulations. Against this backdrop, this article mainly examines the existing modality of issues between African countries and China, taking Ethiopia as a case in point. This article also analyses the gaps in the existing multilateral and bilateral legal issues of B&R and proposes a way forward.

This article is organized into five main parts. The second part discusses China's approach to cooperation in the context of B&R. This part discusses China's point of view as expressed in the vision statement and various government documents related to legal issues of B&R. The third part presents the existing domestic, bilateral, regional, and multilateral frameworks directly or indirectly related to B&R. The fourth part explores limitations of the existing legal mechanisms between Africa and China concerning addressing the rights and obligations of participating countries. Part Five puts forward suggestions for legal cooperation between China and Ethiopia.

2. Trends of China's Approach on B&R

Given the vast scope of B&R, China could follow two approaches in dealing with B&R. One is a rule-based approach that China sets rules at bilateral, regional, and multilateral levels. The other is a more flexible approach that embraces varieties of participating countries' interests. In this respect, China chooses a more flexible and informal approach which some writers called a "partnership-based relational approach".[14] It is noted that "B&R does not have a treaty-based institutional framework, which means B&R is neither an international treaty nor an international organization." B&R is a framework for partnering with China on economic, political, and infrastructural development — a series of unrelated but interconnected bilateral

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[11] Ibid.

[12] See Venkateswaran Lokanathan, *China's Belt and Road Initiative: Implications in Africa*, https://www.orfonline.org/wp-content/uploads/2020/08/ORF_IssueBrief_395_BRI-Africa.pdf (accessed on November 10, 2021).

[13] See Xinhuanet, *Joint Communique of Leaders' Roundtable of Belt and Road Forum*, http://www.xinhuanet.com//english/2017-05/15/c_136286378.htm (accessed on October 9, 2021).

[14] See Jiangyu Wang, *Dispute Settlement in the Belt and Road Initiative: Progress, Issues, and Future Research Agenda*, 8(1) Chinese Journal of Comparative Law 4, 4-28 (2020).

trade pacts and partnerships. The "partnership" dimension in B&R indicates that the bilateral cooperation between China and individual B&R countries is always oriented toward building a partnership on which B&R does not impose a uniform model applying to all countries concerned. Instead, China seemingly seeks a model of "One Country One Approach". China's bilateral cooperation with B&R countries can adopt different models if there are some mutually acceptable solutions through friendly bilateral negotiations.[15]

The partnership approach of China could be inferred from various governmental documents and official statements. For example, the Vision and Actions on Jointly Building the Silk Road Economic Belt and 21st-Century Maritime Silk Road, which is issued on March 28, 2015, describes B&R as a cooperative effort to be led by China, to promote trade, development, and regional cooperation in the countries.[16] From the statement, it is understandable that China proposes B&R to cooperate among B&R participating countries instead of asking countries to join the ready-made project. All countries, big or small, rich or poor, can participate on an equal footing.[17] Thus, although China has launched the project, B&R is indispensable in forging efforts together instead of China dictating other participating countries to subscribe to pre-established norms or institutions.

B&R is regarded as a positive endeavor to seek new models of international cooperation and global governance, asserting that this move is in the international community's interests as a whole and reflects the shared vision and pursuit of humanity.[18] China treats the cooperation under B&R framework as something in which all countries concerned adhere to the principle of achieving shared growth through discussion and collaboration and join hands to build a new global economic governance system.

When it comes to the legal mechanism, China chooses soft laws at the multilateral level and finds a tailor-made solution with each country. The notion of soft law is a valuable concept to capture norms that are neither law nor mere political or moral statement but lie somewhere in between.[19] According to Abbott and Snidal, soft laws have certain independent advantages of their own. It is easier to achieve than traditional legalization, especially when the countries concerned are not willing to be seen to have their sovereignty directly challenged.[20] Soft legalization is more effective in dealing with uncertainty, especially when the countries concerned need some time to learn the impact of actual hard law agreements. However, as time passes, soft laws must be replaced with comprehensive and binding legal cooperation to avoid uncertainties in the implementation of B&R.

In addition to the more flexible partnership approach, China has managed to apply the existing regional trade agreements (hereinafter referred to as RTAs) and the multilateral system under World Trade Organization (hereinafter referred to as WTO) and the International Center for Settlement of Investment Disputes (hereinafter

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[15] Ibid.

[16] See supra note 7.

[17] See Hongliu Gong, *The Belt and Road Initiative (BRI): A China-specific Approach for Global Governance*, 8(4) Journal of WTO and China 36, 36-60 (2018).

[18] See the State Council of the People's Republic of China, *Action Plan on the Belt and Road Initiative*, http://english.www.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm (accessed on October 9, 2021).

[19] See Abbott & Snidal, *Hard and Soft Law in International Governance*, https://doi.org/10.1162/002081800551280 (accessed on October 9, 2021).

[20] Ibid.

referred to as ICSID) to B&R issues on a case-by-case basis.[21] On the bilateral front, the Chinese government has been entering agreements with foreign countries and international organizations on a piecemeal basis—by concluding bilateral agreements. This method's advantage is efficiency; based on an individual country's preferences and needs, agreements may be reached quickly through negotiation. According to this approach, all the bilateral negotiations will be built on the same framework, and at the same time, the countries concerned may depart from it on specific issues.[22] The assumption of entering piecemeal-based bilateral treaties is that strategically, successful implementation of bilateral forms of cooperation should lead to a unified state of legal cooperation among B&R participating countries. Further connections and expansion of the mini-multilateral arrangements will result in the multilateral cooperation framework such as free trade areas, one along the ancient Silk Road and the other along the coastal line. Eventually, when most of the countries along B&R have joined B&R, a comprehensive agreement would be established. By then, all the participants must sign a complete agreement. The disadvantage of this method is also apparent — potential inconsistency with other agreements. It may be equally dangerous and unrealistic to get all B&R countries to agree on an arrangement before starting B&R, as too many countries with diversified needs are involved.[23]

3. Existing Bilateral, Regional and Multilateral Legal Mechanisms Governing B&R

3.1 Possible Sources of Regional Legal Mechanisms Governing B&R

Ethiopia is an active player in the African Union, and China has maintained a robust relationship with the organization. Therefore, China's cooperation with the African Union is an important benchmark for Ethiopia and China to cascade legal cooperation according to their context.

China is a leading trading partner to Ethiopia. It accounts for over 18% of Ethiopia's total imports. Imported items include machinery & equipment, electronics, textile & apparel, pharmaceuticals, construction materials, chemicals, and other processed products. China is also emerging as the main export destination for some of the key export commodities out of Ethiopia, mainly coffee, sesame, and soybean.[24]

China has emerged as a major Foreign Direct Investment (hereinafter referred to as FDI) sourcing destination for Ethiopia. Ethiopia is an increasingly favored investment destination for China as well, representing more than 21% of Chinese FDI inflow to Africa over the period from 2010 to 2017. In 2017, the number of Chinese investment projects accounted for half of the total FDI projects in the country. In the following two years, i.e., 2018 and 2019, the percentage of Chinese investment projects to total FDI projects climbed to 60%, making China the single largest source of FDI in Ethiopia. Both in volume of investment and number of projects, Chinese FDI inflow has averaged at around 27% of total FDI inflows to Ethiopia over the last five years.[25]

One vital cooperation is the African Union Agenda 2063 (hereinafter referred to

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[21] See supra note 17.

[22] See Guiguo Wang, *Legal Challenges to the Belt and Road Initiative*, 4(2) Journal of International and Comparative Law 309, 309-30 (2017).

[23] Ibid.

[24] See China's foreign trade, *Ethiopia-China Economic and Trade Cooperation*, https://baijiahao.baidu.com/s?id=1688598224888375195&wfr=spider&for=pc (accessed on October 26, 2021).

[25] Ibid.

as Agenda 2063). Agenda 2063 has interwoven alignment of purpose with B&R. In 2015, the African Union published Agenda 2063. The organization document provides a set of goals and milestones of development that the continent seeks to bring to fruition by 2063.[26] The African Union sets an agenda that by 2063, the necessary infrastructure will be in place to support Africa's accelerated integration and growth, technological transformation, trade, and development. These include High-speed railways, networks, roads, shipping lines, sea and air transport, well-developed information and communications technology (hereinafter referred to as ICT), and the digital economy.[27] A Pan-African High-Speed Train Network will connect all the major cities/capitals of the continent, with adjacent highways and pipelines for gas, oil, water, ICT broadband cables and other infrastructure. This will be a catalyst for manufacturing, skills development, technology, research and development, integration and Intra-African trade, investments, and tourism. Therefore, Agenda 2063 and B&R implementation offer an opportunity for Chinese investment direction along the African Union-determined channels as set out in its aspirations.

Another important stated goal of Agenda 2063 is the rollout of "an integrated e-economy where every government, business and citizen has access to reliable and affordable ICT services".[28] This goal has congruence with another stated aspect of B&R in the China-ASEAN Cooperation and Development Forum of B&R Space Information Corridor.[29] In the Action Plan on B&R, China seeks to advance the joint construction of cross-border optical cables and other communications track line networks, improve international communications connectivity, and create an Information Silk Road.[30] Part of this includes "building bilateral cross-border optical cable networks at a quicker pace, planning transcontinental submarine optical cable projects, and improving spatial (satellite) information passageways to expand information exchanges and cooperation". There is an alignment of purpose between Agenda 2063 and B&R in ICT areas. Hence, China and African countries can take it as a mechanism to draw an agreeable legal framework to manage B&R legal issues.

Further, one aspiration of the African Union is to forge people-to-people connectivity where Pan-African diversity in culture, heritage, languages, and religion shall be a cause of strength, including the tangible and intangible heritage of African countries. This could lead to a far greater intra-continental people-to-people exchange than what has so far taken place, which could, in turn, be an essential step in the formation of cross-national awareness and identities. At the same time, people-to-people bond is among the significant areas of cooperation in B&R. Thus, the purposes of Agenda 2063 and B&R are complementary and reinforce each other.

Cognizant of the alignment of purposes, China and the African Union signed MoUs in 2016 on cross-continental infrastructure development, including railways, highways, aviation, and high-speed train network which is a flagship project of Agenda 2063. Moreover, the 2018 Beijing Summit of the Forum on China and African Cooperation described the alignment of purpose between B&R and Agenda 2063 as follows:

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[26] See Bhaso Ndzendze & David Monyae, *China's Belt and Road Initiative: Linkages with the African Union's Agenda 2063 in Historical Perspective*, 11(1) Transnational Corporations Review 38, 49 (2019).

[27] Ibid.

[28] See African Union, *African Union E-Commerce Conference*, https://au.int/en/newsevents/20180723/african-union-e-commerce-conference (accessed on October 30, 2021).

[29] China Daily, *The Belt and Road Space Information Corridor*, http://www.chinadaily.com.cn/a/201809/13/WS5b99b2c5a31033b4f4655bde.html (accessed on October 30, 2021).

[30] See supra note 26.

Like China's dream of national rejuvenation, Africa is striving to build an integrated, prosperous, and peaceful continent. The two sides share similar philosophies, compatible strategies, and complementary strengths in terms of development. The two sides take B&R as an opportunity to strengthen multi-dimensional, wide-ranging, and in-depth cooperation for mutual benefits and joint development.[31]

The submission assured that Agenda 2063 is a foundation and reference document from which China and African countries build up legal cooperation, at least in form of soft law. In this regard, Africa and China can take B&R as a means of legal cooperation that tends to realize the very objective of Agenda 2063. As a result, the African Union's aspiration helps forge China's legal cooperation with B&R participating countries. In this respect, instead of negotiating with every B&R country, China and the African Union representing African interests can negotiate and define the rights and obligations of participating countries to achieve their common goals. Then, if individual B&R participating countries in Africa have contextual differences, they should negotiate with China and reach specific terms of cooperation in line with MoUs. Similarly, the MoUs between China and the African Union serve as a reference document to formulate detailed rules. Then, Ethiopia and China as MoU members can cascade legal cooperation that may fit into their context.

In October 2000, China initiated the Forum on China-Africa Cooperation (hereinafter referred to as FOCAC) to promote trade and investment relations in both public and private sectors, putting China-Africa economic relations on the fast track.[32] FOCAC is a multilateral platform for collective, pragmatic consultation and dialogue between African leaders and their Chinese counterparts. It is a robust deliberation platform between African leaders and Chinese counterparts on investment and trade. FOCAC also creates a significant opportunity for Africa and China to draw legal cooperation to achieve the objectives of B&R. More specifically, FOCAC is meant to promote legal cooperation between African countries and China in building B&R. For instance, the 2018 Beijing Summit of FOCAC underscores the importance of legal cooperation in the following terms:

China and Africa will continue to improve the mechanism of the FOCAC Legal Forum, raise its influence and efficacy, and continue to hold the Conference on Legal Risks and Countermeasures of International Investment and Trade. The two sides will continue to improve the China-Africa joint arbitration mechanism and the China-Africa Joint Arbitration Center. The two sides will expand the scope and depth of the studies on the legal system of countries involved in jointly building B&R.[33]

The joint statement underscores essential areas of legal cooperation between Africa and China in the areas of investment, trade, and dispute settlement. It underlines the need to examine legal risks in B&R operation and the way outs to counter investment and trade risks. It is also mentioned in the joint statement that studies have to be conducted about the legal systems of B&R participating in African countries and China. Thus, the 2018 Beijing Summit of FOCAC outlines the general

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[31] See 2018 Beijing Summit of the Forum on China-Africa Cooperation, *Beijing Action Plan (2019-2021)*, http://focacsummit.mfa.gov.cn/eng/hyqk_1/t1594297.htm (accessed on October 9, 2021).

[32] See Essam Abdel-Aziz Sharaf et al., *Preview Policy Report for the 2018 FOCAC Summit*, http://www.chinadaily.com.cn/pdf/2018/china-africa-report-final.pdf (accessed on October 9, 2021).

[33] See supra note 31.

framework of legal cooperation at the leadership level and sometimes at the expert level.

Significantly, the 2018 Beijing Summit of FOCAC emphasizes the need to cooperate in dispute settlement mechanism that may arise in implementing B&R. From this perspective, it underscores the urgency of strengthening Africa and China's joint arbitration mechanism. The joint arbitration mechanism was established in August 2015 to address the resolution of commercial disputes between Chinese and African parties.[34] In this regard, the 2018 Beijing Summit of FOCAC is helpful not only to endorse already existing legal cooperation between African countries and China, but also to propose new ways of legal cooperation within the scope of B&R.

Chinese investment in Ethiopia was non-existent when the first FOCAC summit was held in Beijing in 2000. By the time the 6th summit was held in 2018, Chinese FDI stock in Ethiopia had exceeded USD 4 billion. Some of the major investments have been sourcing from China since the early 2000s, as a result of discussions held between Ethiopian and Chinese government officials and private sector representatives during the summits and on the sidelines.[35]

3.2 Legal Cooperation in the Form of Bilateral Treaties: Ethiopia's Case

China has a long history of cooperation with Ethiopia. Both countries are known for their ancient civilizations and long histories.[36] The first contact of China with the horn of Africa, particularly with Ethiopia, might begin around A.D.1000 when the Chinese started to import rhinoceros' horn from Ethiopia.[37] China and Ethiopia established diplomatic relations in 1970, following Premier Enlai Zhou's visit to Ethiopia in 1964. This was reciprocated by the Ethiopian Emperor Haileselassie's visit to Beijing in 1971. More recently, Ethiopia and China signed an agreement enabling them to offer preferential market access to Ethiopia's export to China on January 12, 2010.[38]

Several agreements were signed during this period, including, the Second Trade Agreement (1976), Trade Protocols (1984, 1986, and 1988), and an Agreement for Mutual Protection of Investment (1988). Ethiopia-China ties have continued to strengthen after Derg's removal from power and the formation of the Federal Democratic Republic of Ethiopia in 1991. High-level visits and interactions became more frequent, and two major milestone bilateral agreements were signed, for Trade, Economic, and Technological Cooperation (1996) and to Eliminate Double Taxation (2009).[39]

Further, the diplomatic ties between the two countries became closer when Ethiopia hosted the second and the fifth ministerial meetings of FOCAC. The forum has been launched as a mechanism for collective dialogue and multilateral cooperation between China and Africa. By 2016-2018, Chinese direct investment in

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[34] See DENTONS, *The China Africa Joint Arbitration Centre*, https://www.dentons.com/en/insights/newsletters/2017/january/26/south-africa-newsletter/south-africa-newsletter-January-edition/the-china-Africa-joint-arbitration-centre (accessed on October 9, 2021).

[35] See supra note 26.

[36] See Richard Pankhurst, *An Introduction to the Economic History of Ethiopia*, Lalibela House, p.134 (1961).

[37] See Larkin Bruce, *China and Africa 1949-1970*, University of California Press, p.23 (1971).

[38] See Manickam Venkataraman & Solomon M. Gofie, *The Dynamics of China-Ethiopia Trade Relations: Economic Capacity, Balance of Trade & Trade Regimes*, 2(8) Journal of the Global South 1, 7 (2015).

[39] See supra note 26.

Ethiopia had reached USD 4 billion, and bilateral trade had grown to USD 5.4 billion.[40] In May 2017, Ethiopia-China relation was elevated to a Comprehensive Strategic Cooperation Partnership level, in demonstration of the strong and unique partnership the two nations enjoy. Ethiopia had licensed around 1300 Chinese investment projects during the 2017/18 Ethiopian fiscal year that ended on July 7 according to the Ethiopian calendar, constituting around 25 percent of all foreign direct investment to the east African countries.[41]

More recently, in September 2018, Premier Keqiang Li held talks with Ethiopian Prime Minister Abiy Ahmed at the Great Hall of the People in Beijing. The two leaders discussed the implementation of B&R. They discussed the achievement and progress of significant infrastructure projects, including Africa's first transnational electrified railway which links Ethiopia's capital Addis Ababa with the Red Sea nation Djibouti, underscoring the importance of all-around legal cooperation to achieve B&R goals.

The existing differences between the two countries regarding culture, policies, governance system, and domestic laws necessitate proper legal coordination to accomplish B&R goals. In this respect, B&R by itself could be an opportunity to harmonize further legal cooperation in the areas of investment, extradition, and dispute settlement. The legal collaboration may take the forms of multilateral forums under the ambit of regional, international organizations or bilateral treaties between China and Ethiopia.

So far, there has been no treaty concluded between China and Ethiopia of independently dealing with B&R cases. Thus, the matter related to B&R regulation is supposed to be governed either by the multilateral framework mentioned before or by existing bilateral treaties. The significant activities in building B&R fall within investor relations as B&R involves many investment projects. Hence, the investment-related aspect of B&R suits the objectives and frameworks of China and Ethiopia Bilateral Investment Treaty.

Consequently, China and Ethiopia Bilateral Investment Promotion and Protection Agreement in May 1998 (hereinafter referred to as China and Ethiopia BIT) serves as one modality of legal cooperation regulating B&R.[42] As mentioned in the preamble, China and Ethiopia BIT aims to create favorable investment conditions and desires to intensify both countries' economic cooperation based on equality and mutual benefits. It also indicates that under Article 4 of China and Ethiopia BIT neither contracting parties shall expropriate, nationalize, or take similar measures against the investment of investors of the other contracting party in its territory except that the host state may expropriate investment for public interests following domestic legal procedure without discrimination and pay commensurate compensation.

Article 8 of China and Ethiopia BIT also provides two types of disputes. The first type is any dispute between the contracting parties concerning the interpretation or application of China and Ethiopia BIT itself, and it shall be settled by consultation through the diplomatic channel. For the parties involved in the dispute that are sovereign states, diplomatic ways of settling an argument are set to be the priority. If

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[40] See Ethiopia News Agency, *Chinese FDI in Ethiopia Reached 4 billion USD*, https://www.ena.et/en/2018/08/31/chinese-fdi-in-ethiopia-reached-4-billion-usd/ (accessed on November 5, 2021).

[41] See New China, *Ethiopia Licenses 1,294 Chinese Investment Projects in 2017/18*, http://www.xinhuanet.com/english/2018-09/01/c_137436489.htm (accessed on November 5, 2021).

[42] See *China and Ethiopia Bilateral Investment Promotion and Protection Agreement in May 1998*, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/732/download (accessed on November 10, 2021).

the dispute cannot be settled within six months, it shall be resolved by ad hoc arbitration. The arbitral tribunal shall determine its procedure. The tribunal shall reach its award under this agreement's provisions and international law principles recognized by both contracting parties. The second type of dispute involving an investor and a contracting party is a common and more frequent one. When the dispute involves an investor or a state in connection with an investment in the territory of the other contracting party, it shall be settled amicably through negotiations between the parties to the dispute. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the contracting party accepting the investment. Here, the investor has to face a domestic court proceeding with all its limitations. In the context of China and Ethiopia BIT, Chinese investors should meet unknown venues, laws, and languages that are inconvenient for them.

Article 9 of China and Ethiopia BIT adopts a different approach when a dispute involves compensation for expropriation. After resorting to negotiations, the dispute may be submitted at the request of either party to an ad hoc arbitral tribunal or arbitration under the auspices of ICSID, once both contracting parties become member states thereof. Therefore, when the dispute involves compensation, one of the disputant parties can submit to an ad hoc arbitral tribunal or arbitration under the auspices of ICSID instead of submitting to local courts.

However, China and Ethiopia BIT has three limitations to apply in disputes. First, China and Ethiopia BIT concluded between China and Ethiopia under Article 9(3) explicitly states that both China and Ethiopia shall be a member of the ICSID Convention to settle an investment dispute by an ad hoc tribunal arbitration under the auspices of ICSID. Nonetheless, Ethiopia is not a member of ICSID. Therefore, it is unlikely to apply the ICSID Convention for disputes arising between Chinese inventors and Ethiopia.

Secondly, in accordance with China and Ethiopia BIT, dispute settlement tribunal shall apply to the dispute the laws of the contracting parties who accept the investment, including their rules on the conflict of laws, the provisions of Article 9 of China and Ethiopia BIT, and generally recognized rules of international law taken by China and Ethiopia. China and Ethiopia BIT uses a general statement that the tribunal shall apply domestic laws, China and Ethiopia BIT itself, and international law rules accepted by both parties without specifying detailed rules. Applying domestic laws to an international dispute involving China and Ethiopia BIT does not effectively protect foreign investors' interests. To make it into context, a modern investment treaty would provide detailed provisions regarding the applicable law should the dispute arise between the host state and foreign investors. For example, the US-Mexico-Canada Agreement (hereinafter referred to as USMCA) has a new approach under its investment chapter, Annex 14-D. USMCA itself contains very detailed provisions of dispute settlement. It embraces rules on consultation, negotiation, submission of the arbitration claim, and selection of arbitrators. Article 14 of USMCA provides the tribunal to decide disputes per USMCA itself and international law rules, not domestic laws. Therefore, it is crucial to draw a lesson from USMCA investment chapter and revisit China and Ethiopia BIT to embrace detailed rules of dispute settlement mechanisms.

Third, Article 9 of China and Ethiopia BIT provides a "fork-in-the-road" clause. If the parties to the dispute choose to settle the dispute in domestic courts, the option of international arbitration is no longer available and vice versa. This approach is different from other BITs concluded by China, such as the Agreement among the

Government of the People's Republic of China, the Government of Japan and the Government of the Republic of Korea for the Promotion, Facilitation and Protection of Investment (hereinafter referred to as CJK Investment Agreement).[43] The latter BIT does not adopt the fork-in-the-road clause as Article 15(3) allows any of the disputing parties to choose a competent court or arbitration. A similar approach has been adopted in the 2008 China-Mexico BIT and the 2012 China-Canada BIT, both of which provide that a disputing investor may submit an arbitration claim,[44] without the preconditions of local remedies requirements and fork-in-the-road clauses. The recent BITs are more liberal than ever and favor the protection of investors' interests by containing neither local remedies requirements nor fork-in-the-road clauses. Investors are granted the right to go straight to international arbitration before resorting to domestic venue.

B&R is a vast project involving intricate issues of finance, trade, investment, tax. More importantly, most B&R projects involve the large scale of business that targets developing countries with relatively lower governmental transparency and high risks of corruption.[45] Thus, precaution should be taken to reduce and prevent illegal activities such as corruption that would be an obstacle to the proper implementation of B&R. This holds true for Ethiopia where the judicial system lacks transparency and accountability, and corruption is rampant. According to the 2019 Corruption Perceptions Index reported by Transparency International, Ethiopia is the 96 least corrupt nation out of 180 countries.[46] Top of all, many of the projects under B&R run from a distance, so the corruption risk and temptation for expatriates to engage in corrupt behaviors are high. If B&R projects are not adequately managed, it discourages the Initiative's successes in the future. Therefore, China and Ethiopia should work on legal cooperation to ensure that the goals of B&R would not be contaminated by corruption. Hence, providing a mechanism that reduces and prevents corruption must be taken seriously. In this respect, the extradition treaty plays an essential role in making violators accountable for corrupt behavior.

Indeed, China has enacted a law that criminalizes bribery of foreign officials since 2011.[47] According to Article 164(2) of Criminal Law of the People's Republic of China,[48] both natural and artificial persons under Chinese criminal jurisdiction are prohibited from giving property to any foreign public official or official of an international public organization to seek illegitimate commercial benefits.[49] Just as Rasipuram rightly pointed out, one notable feature of this provision is that it exercises a wide-reaching jurisdiction over all Chinese citizens, regardless of where they are located. If a Chinese citizen commits a crime under the criminal law in Ethiopia, the Chinese criminal rules are still applicable to that Chinese citizen thanks to the

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[43] See Liyan Yang, *The Influence of ASEAN Community on the Integration of South China Sea Policy and China's Countermeasure*s, 1(1) Found for Law & International Affairs Review 65, 67-70 (2020); Xiaoli Wang, *Research on the Legal Issues of CJK Investment Agreement*, http://www.doc88.com/p-9853674744047.html (accessed on October 9, 2021).

[44] See YuTing Ye, *Towards a Balanced and Liberal Chinese Bilateral Investment Treaty Regime in the Context of One Belt One Road*, 41(1) Houston Journal of International Law 107, 107-46 (2018).

[45] A country or territory's rank indicates its position relative to the other countries and territories in the index. See Transparency International, *Ethiopia Corruption Index*, https://tradingeconomics.com/ethiopia/corruption-index (accessed on October 9, 2021).

[46] Ibid.

[47] See Hong Ying Ngai & Hong Wah Ngai, *To Build a "Clean" Belt and Road: A Critical Review on China's Anti-Corruption Efforts*, 2018 (2) Acta Universitatis Lucian Blaga 132, 132-58 (2018).

[48] See *Criminal Law of the People's Republic of China*, http://www.moj.gov.cn/subject/content/2020-02/14/1449_3241661.html (accessed on October 26, 2021).

[49] See supra note 47, at 140.

extraterritorial effect of Article 164.[50]

However, to punish and extradite perpetrators requires legal cooperation between China and Ethiopia. Among other things, the extradition treaty would help bring criminals to justice. It is in this context that the Treaty on Extradition between the People's Republic of China and the Federal Democratic Republic of Ethiopia comes into effect (hereinafter referred to as China-Ethiopia extradition treaty). China-Ethiopia extradition treaty describes the requirement of extradition of nationals if the conduct indicated in the request for extradition constitutes an offence according to China and Ethiopia's laws. Thus, the extradition treaty between the two countries supports the effort towards preventing corruption in B&R. However, the existing general extradition treaty should be supported with detailed rules that fit the specific situations of B&R.

3.3 Arbitration Centre for B&R

B&R boosts trade, commerce and investment cooperation between China and Africa. The growing volume of investment and trade cooperation between China and Africa necessitates neutral and cost-effective mechanisms for resolving investment and commercial disputes between African and Chinese parties. There are many reasons for having alternative forms of dispute resolution than domestic court settlement in B&R cases. First, Chinese investors in Africa face challenges across the African continent, including different legal systems, cultural distinctions, language barriers, political instability, and corruption.

Second, Alternative Dispute Resolution is more suitable for B&R disputes as the domestic court system has its limitation in efficiency, transparency, and fairness. There have long been traditional distrust and reluctance among investors to utilize foreign courts. From an investor's perspective, lack of experience or familiarity with a foreign judicial system may be a disadvantage vis-à-vis the local party to the dispute. Such concerns may be exacerbated by the lack of confidence in certain jurisdictions' judicial independence or that the system will otherwise favor a local party.[51]

Third, the parties' interests in preserving future relations also demand Alternative Dispute Resolution to be more than a win-loss approach of local court decisions. For example, preservation and further continuation of relations of parties in B&R are generally better served by the confidentiality of arbitral process rather than the default open litigation system.[52]

In 2015, cognizant of the importance of dispute settlement mechanisms, FOCAC adopted the Johannesburg Action Plan to establish the China-Africa Joint Arbitration Centre (hereinafter referred to as CAJAC) in South Africa, representing China and 50 African countries.[53] FOCAC adopted the non-judicial resolution of disputes as a fundamental principle in China's investment in Africa. The action plan was designed to foster trade and investment, harmonize business practices and arbitral systems, and draw arbitrators familiar with China and African nations' cultural norms and rules. As of October 2021, there are three arbitration centers situated in Johannesburg, Shanghai and Nairobi.[54]

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[50] See supra note 47, at 152.

[51] See Weixia Gu, *China's Belt and Road Development and a New International Commercial Arbitration Initiative in Asia*, 51(1) Vanderbilt Journal of Transnational Law 1309, 1309-52 (2018).

[52] Ibid.

[53] See supra note 34.

[54] See supra note 51. CAJAC Shanghai is designed to be an international platform in service for B&R. Relying on its extensive arbitration administration experiences and abundant legal experts familiar with

Disputes arising out of Chinese business activities in Africa will be resolved in Johannesburg and Nairobi, and controversies arising out of African business activities in China will be resolved in Shanghai.[55]

Each CAJAC center is supported by an arbitral authority with the legal know-how to deal with international disputes, offering globally recognized and enforced arbitration awards under the New York Convention.[56] The composition of arbitrators and rules applicable to settle disputes in the CAJAC reflects China and Africa's interests. It will have an arbitral committee consisting of arbitrators nominated by both China and Africa. The parties to a dispute can appoint arbitrators from this arbitral committee to resolve their disputes.[57] Overall, the establishment of CAJAC avail Chinese and African countries partners with a cost-effective, speedy, and reliable mechanism for settlement of investment and commercial disputes involving B&R. This reduces the risk of taking disputes to local courts, domestic arbitration, international arbitration or ad-hoc arbitration.[58]

4. Legal Issues of the Existing Legal Mechanism in B&R

Previously, a possible legal mechanism governing B&R has been outlined. Although there are no rules specifically applicable to China-Africa countries at the continental level, attempts have been made to use the existing regional and multilateral frameworks. It is also noted that the existing bilateral treaty could also be applicable depending on the type and scope of B&R projects. Nonetheless, the existing legal mechanisms are not adequate to deal with B&R cases. In the following sections, some of the significant challenges of existing legal mechanisms are discussed.

4.1 Some of the BITs are Outdated and Insufficient to Deal with B&R

Looking into China and Ethiopia BIT, the treaty is out of date and fails to embrace the modern concepts in B&R. For instance, it is indicated that China and Ethiopia BIT shall remain in force for ten years. China and Ethiopia BIT was entered into force in 1999. Accordingly, the expiry date has already lapsed in 2019, since either the contracting party fails to give written notice to the other contracting party to terminate the agreement one year before China and Ethiopia BIT expiration. In the latter case, the application of China and Ethiopia BIT can be extended for a while. It is not clear whether China or Ethiopia has submitted a notice of termination of the agreement. From a pragmatic point of view, a year-on-year increment of Chinese investment in Ethiopia implies that the current China and Ethiopia BIT is still functioning.

Keeping China and Ethiopia BIT expiry in limbo, the current China and Ethiopia

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China-Africa economic and trade practices, CAJAC Shanghai provides both Chinese and African parties with fair, efficient, convenient and financial arbitration services. For the details, also see http://www.shiac.org/CAJAC/aboutus_E.aspx?page=3 (accessed on October 9, 2021).

[55] In 2015, Ministers and Heads of State of 50 African countries and China issued the "Johannesburg Action Plan" in which they committed themselves to establish CAJAC, the Chinese Africa Joint Arbitration Centre. See the discussion on the new arbitration center, https://www.keatingchambers.com/wp-content/uploads/2017/12/DW-CAJAC.pdf (accessed on October 9, 2021).

[56] Nowadays, there are about five arbitration centers, including Johannesburg, Nairobi, Beijing, Shanghai and Shenzhen.

[57] See supra note 34.

[58] See Francis Kariuki, *The Vision of Co-building China-Africa Joint Arbitration Centers in Different Legal Systems*, http://kmco.co.ke/wp-content/uploads/2018/08/Co-building-China-Africa-Joint-Arbitration-Centres-in-Different-Legal-Systems.pdf (accessed on October 9, 2021).

BIT has many inherent limitations. First, the content of China and Ethiopia BIT does not accommodate the current need for B&R, which was launched four years after the conclusion of China and Ethiopia BIT. Most importantly, China and Ethiopia BIT failed to incorporate the modern concept of treatment of investment in cases of armed conflict or civil strife, environment, health and safety, and corporate responsibilities. China and Ethiopia BIT involves massive infrastructure building and other forms of investments that are sensitive to the environment, labor, indigenous and aboriginal peoples' rights, and should incorporate such modern concepts. China and Ethiopia BIT needs to set environmental standards and social responsibility provisions to sustainably proceed without compromising the local community's interests, which may turn out public hunger. Seen from this approach, China and Ethiopia BIT either purposefully or negligently has omitted these elements. The absence of any side environmental agreement concluded between the two exacerbates the need to incorporate environmental issues in the future renegotiation between China and Ethiopia. According to the current China and Ethiopia BIT, Chinese investors engaged in Ethiopia's investment are not required through bilateral agreement to comply with environmental requirements. Consequently, B&R may be built at an environmental cost, which affects the projects' sustainability.

Comparison of the China and Ethiopia BIT with other modern BITs shows that the former failed to incorporate contemporary concepts. For example, the CJK Investment Agreement has adopted a separate environmental clause under Article 23. Accordingly, each contracting party recognizes that it is inappropriate to encourage investment by investors of another contracting party by relaxing its environmental measures. To this effect, each contracting party should not waive or otherwise derogate from such environmental measures to encourage the establishment, acquisition or expansion of investments in its territory. Such a provision in BITs is a positive input to build B&R without compromising domestic environmental standards or affecting the host state's communities. The BITs that Ethiopia has concluded with European countries also show a shift towards environmental protection. For example, the treaties with Finland in its preamble include the environmental provision emphasizing that states protection and promotion of investment can be achieved without relaxing health, safety and environmental measures of general application.[59] The treaty between Ethiopia and Belgium- Luxembourg under its preamble and Article 5 has also envisaged contents of environmental protection provision.[60]

Moreover, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (hereinafter referred to as CPTPP) is called a "21st century" free trade agreement to inculcate environmental standards both as an independent chapter and within its investment chapter.[61] The environment chapter aims to promote mutually supportive trade and environment policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the CPTPP

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[59] See Investment Policy Hub, *the BIT preamble between Finland and Ethiopia*, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/1474/ethiopiaFinland-bit-2006 (accessed on October 9, 2021).

[60] See JUS MUNDI, *the BIT between Ethiopia and Belgium-Luxembourg Economic Union*, https://jusmundi.com/en/document/treaty/en-agreement-between-the-belgian-luxembourg-economic-union-on-the-one-hand-and-the-federal-democratic-republic-of-ethiopia-on-the-other-hand-on-the-reciprocal-promotion-and-protection-of-investments-bleu-belgium-luxembourg-economic-union-ethiopia-bit-2006-thursday-26th-october-2006 (accessed on October 9, 2021).

[61] See Mitsui & Co. Global Strategic Studies Institute Monthly Report, *USTR'S Stance Reflected in CPTPP Environment Chapter*, https://www.mitsui.com/mgssi/en/report/detail/__icsFiles/afieldfile/2018/10/10/1809c_matano_e.pdf (accessed on October 9, 2021).

parties' capacities to address trade-related environmental issues. The environment chapter includes both binding and non-binding commitments relating to environmental protection and three multilateral environmental agreements (hereinafter referred to as MEAs)—Montreal Protocol on Substances that Deplete the Ozone Layer; London Protocol to the International Convention for the Prevention of Pollution from Ships; and the Convention on Trade in Endangered Species are incorporated. In its investment chapter, which is more relevant to the case at hand, Article 9(9) of the CPTTP encourages parties to ensure that investment activity in their territory is undertaken in a manner sensitive to the environment, health or other regulatory objectives.

Another example is the 2012 USA model bilateral investment treaty (hereinafter referred to as the model BIT). The model BIT has envisaged the environment clause in a detailed manner. According to Article 12, each party to a bilateral investment treaty shall ensure that it does not waive or offer to waive or otherwise derogate from its environmental laws in a manner that weakens or reduces the protections afforded in those laws. The model BIT prohibits an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory at the cost of the environment. These clauses seek to ensure the respect of existing environmental standards and avoid that contracting parties compete for investment by lowering environmental standards, as some rightly call it a race to the bottom.

Finally, the USMCA allows parties to agree to adopt, maintain, or enforce any measure that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives. Paragraph 17 of Article 9 further affirms each party's importance to encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines and principles of corporate social responsibility about environmental protection.

All the above-mentioned investment agreements have one thing in common: the need to incorporate environmental clauses. They reflect a growing trend on governments to negotiate new agreements or renegotiate old ones to reflect concerns about social and environmental issues. Given China and Ethiopia BIT's insufficiency in addressing the issue of environment and incorporating social responsibilities, it would be inevitable for the parties to apply their domestic laws. In Ethiopia, investors must obtain an environmental license for their proposed developments, which is granted following the successful production and review of an environmental impact assessment or Project Report for low-risk projects.[62] Non-compliance with environmental requirements can result in improvement requirements, followed by closure, imprisonment, and financial penalties if the investors don't do what are required. Looking at the Chinese side, the government explicitly aims for outbound Chinese investment to contribute to the 2030 Agenda for Sustainable Development.[63] For instance, in 2013, the Chinese government launched Guidelines for Environmental Protection in Foreign Investment and Cooperation, which provide

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[62] See Mellese Damtie & Mesfin Bayou, *Overview of Environmental Impact Assessment in Ethiopia: Gaps and Challenges*, https://chilot.files.wordpress.com/2011/01/overview-of-eia-book-html.pdf (accessed on October 9, 2021).

[63] See Simon Zadek & Guoqiang Long et al., *Advancing Sustainable Competitiveness of China's Transnational Corporations*, https://www.iisd.org/publications/advancing-sustainability-practices-chinas-transnational-corporations (accessed on October 9, 2021).

recommendations for companies operating abroad.[64] The spirit of the guideline is to establish the concept of environmental protection and encourage enterprises to fulfill their responsibilities in environmental protection according to law. It requires enterprises to abide by rules and regulations of the host country in environmental protection; fulfill such legal obligations of environmental protection as environmental impact assessment, discharge standards, and emergency management; and at the same time encourage enterprises to research in order to meet international standards. Its drive for more socially responsible investment and operations is also reflected in B&R. It states that B&R will "support localized process and management of Chinese companies to boost the local economy, increase local employment, improve local livelihoods, and take social responsibilities in protecting local biodiversity and eco-environment".[65] However, resorting to the domestic rule of either party has its challenges. There is a difference in environmental standards between the host state and the home state. Therefore, companies will be stacked with various requirements. On the other hand, China's guideline for environmental protection in foreign investment and cooperation only provides policy statement. It does not impose an abiding obligation on Chinese foreign investors.

In summary, environmental protection has been given attention in almost all contemporary trade and investment agreements. Thus, the same approach should have been adopted in China and Ethiopia BIT. Thus, the possible ways to address environmental protection in B&R are either to renegotiate the current China and Ethiopia BIT to incorporate an environmental clause or to conclude sideline environmental agreements to make B&R environmentally friendly.

The second main problem related to China and Ethiopia BIT's content is the protection of intellectual property (hereinafter referred to as IP). Reference to IP rights has already been a common feature of modern BITs. In some cases, the reference to IP appears in the preamble of BITs. For example, the 1999 US-Turkey BIT recognizes the importance of providing adequate and effective protection and enforcement of IP rights and adherence to IP rights conventions.[66] Although not mandatory, provisions of a treaty's preamble deserve particular consideration for treaty interpretation as part of the context under Article 31(2) of the Vienna Convention on the Law of Treaties. Another approach is to include IP rights in the definition of investment. This is found in the case of the BIT between Benin and Ghana (2001), which states that: "Investment means every kind of asset invested by investors of one contracting party under laws and regulation of other contracting parties in the territory of the latter and in particular, though not exclusively includes."[67]

Including IP rights in the definition of investment could provide a legal basis to foreign investors for a cause of action against the host state for failing to protect their IP. The more recently concluded USMCA has envisaged IP issues in its part that defines investment. According to Article 14.1(f) of USMCA, the investment includes every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk

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[64] See Ministry of Commerce of the People's Republic of China, *Notification of the Ministry of Commerce and the Ministry of Environmental Protection on Issuing the Guidelines for Environmental Protection in Foreign Investment and Cooperation*, http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml (accessed on October 9, 2021).

[65] Ibid.

[66] See Lahra Liberti, *Intellectual Property Rights in International Investment Agreements: An Overview*, http://dx.doi.org/10.1787/5kmfq1njzl35-en (accessed on October 9, 2021).

[67] Ibid.

including IP rights.

Overall, modern BITs envision IP rights protection in their preamble or separate provisions. Consequently, the future China and Ethiopia BIT should be renegotiated in such a way as to incorporate the IP rights protection and guarantee the interests of investors in the platform of B&R.

4.2 Existing Multilateral Forums Do Not Fully Address B&R

China has not proposed a one-size-fits-all approach when it comes to B&R. Instead, B&R is said to be conducted within the confines of both international law and the domestic laws of participating countries.[68] Building B&R within the confines of international law requires participating countries to be part of international treaties or harmonize their domestic laws and rules according to international law. In the latter case, China has brought domestic regulations and standards in line with international ones. To look this point into perspective, Chinese Foreign Minister Yi Wang once noted, "China has joined almost all universal inter-governmental organizations and acceded to over 500 international conventions." According to his speech, the correlation rate between China's national standards and international ones was already over 90%. Such a nexus between domestic laws and international laws gives positive impetus to apply domestic laws to B&R cases when it is required. Besides applying internationalized domestic laws to regulate B&R, the Chinese government explicitly stated that B&R is designed to uphold the global free trade regime and should enhance the role of multilateral cooperation mechanisms within WTO.[69] This phrase shows that the existing rules of international law *mutatis mutandis* apply to B&R cases. Nonetheless, B&R participating countries have to be a member of such international organizations or subscribe to those international treaties, which is not always the case. For example, Ethiopia is not yet a member of some important intergovernmental organizations and international conventions relevant to B&R. As is mentioned before, investment-related disputes arising out of B&R could be settled via an arbitration mechanism under the auspices of the ICSID Convention if both Ethiopia and China have consented to it.[70] Nonetheless, it is impossible to settle disputes involving B&R through the ICSID mechanism since Ethiopia is not a party to the convention.[71] Even for those states who are a member of ICSID Convention, the enforcement of ICSID investment arbitral award generally depends on the willingness of the losing host state and the pressure from the international society. This will certainly challenge the applicability of ICSID mechanisms to B&R.

Similarly, the WTO system cannot be a reliable choice to deal with B&R for many reasons. For one thing, some members are not yet a member of WTO.[72] On the other hand, only WTO members have standing in the WTO dispute resolution mechanism. Enterprises and individuals of a member can only bring a complaint against another member through their government. The exclusion of private parties from the WTO dispute system's jurisdiction would affect private disputant parties,

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[68] See Foreign Minister Wang Yi's speech on the Belt and Road Legal Cooperation Forum, *Stronger Legal Cooperation for Sound and Steady Development of the Belt and Road Initiative*, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1573636.shtml (accessed on October 9, 2021).

[69] Ibid.

[70] Article 54(1) of the ICSID Convention requires the contracting parties to recognize and enforce arbitral awards rendered by the ICSID Centre.

[71] See ICSID, *Database of ICSID Member States*, https://icsid.worldbank.org/about/member-states/database-of-member-states (accessed on October 9, 2021).

[72] See Berihu Assefa & Andualem Telaye, *What Shapes Ethiopia's Foreign Economic Policy? The Case of Ethiopia's Accession to the WTO*, Munich Personal RePEc Archive, p.14 (2017).

which accounts for substantial numbers in B&R cases. Finally, the WTO dispute settlement body has become ineffective because of the USA's refusal to appoint appellate members.[73] Therefore, it is unlikely to address B&R issues through WTO mechanisms in the current context of China and Ethiopia.

Resolving B&R-related disputes via the CAJAC, as discussed in the previous section, also has a limitation. The CAJAC has no uniform rules of arbitration. Each arbitral center in Johannesburg, Nairobi and Shanghai administers matters under its own rules and practices that conform to the requirements of the legal jurisdictions in which they operate. This is partly attributable to the existing difference in the legal systems among African countries and China. The legal systems in Africa vary from civil law, common law, Roman-Dutch, religious laws, customary law and hybrid jurisdictions, and cultural differences range from Anglophone and Francophone backgrounds.[74] This plurality of legal systems poses a challenge in adopting uniform arbitration rules between China and Africa as international arbitration differs from country to country and from region to region. Lack of uniformity among arbitration centers encourages forum shopping by the disputant parties and makes the outcome of arbitration involving B&R unpredictable.

Lastly, looking at Agenda 2063 and FOCAC as platforms of legal cooperation, both of them are too general and too soft to protect and guarantee the interests of parties involved in B&R. Both provide a much broader framework of declarations of the principles of cooperation than specifically addressing B&R.[75] Both of them call for voluntary cooperation instead of hard law-imposing treaty obligations backed by enforcement mechanisms.[76] By this nature, soft laws are insufficient to protect investors from the uncertainty of grave risk since they are treated as recommendations other than hard and fast obligations on states involved in B&R.

4.3 Domestic Rules Do Not Always Fit the Multisided B&R Cases

In the absence of a uniform international legally binding treaty to regulate B&R, a resort can be made to domestic rules. In the latter case, either Chinese law or Ethiopian law can be applied. On the Chinese side, there is an attempt to establish a dispute settlement platform involving B&R. Chinese high officials made remarks that the government intends to establish a dispute settlement mechanism for B&R.[77] Soon after the announcement, the Chinese State Council announced the two international commercial courts in China to settle and arbitrate cross-border commercial disputes.[78] Consequently, in June 2018, the Supreme People's Court of the People's Republic of China issued Provisions on Several Issues Regarding the Establishment of China International Commercial Courts (hereinafter referred to as CICC).[79] This Provision

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[73] See WTO, *Appellate Body*, https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm (accessed on September 20, 2021).

[74] See Collins Namachanja, *The Challenges Facing Arbitral Institutions in Africa, Alternative Dispute Resolution*, 82(1) International Journal of Arbitration, Mediation and Dispute Management 144,144-62 (2016); Stuart Dutson, *Africa's Century – The Rise of International Arbitration in Africa and What it Means for Users of Arbitral Institutions in Africa*, Addis Abba, p.104 (2015).

[75] See Heng Wang, *China's Approach to the Belt and Road Initiative*, University of New South Wales Law Research Series, p.8 (2018).

[76] Ibid.

[77] See CGTN, *China to Build Belt and Road Dispute Settlement Mechanism*, https://news.cgtn.com/news/3d3d774d796b7a4e79457a6333566d54/index.html (accessed on October 9, 2021).

[78] Ibid.

[79] See Norton Patrick, *Conflicts on the Belt & Road: China's New Dispute Resolution Mechanism*, 8(1) Indian Journal of Arbitration Law 82, 82-105 (2019).

formally established the CICC as an organ of the Supreme People's Court of the People's Republic of China under the Supreme People's Court of the People's Republic of China's fourth Civil Division's direction and administration. The first CICC was established in Shenzhen City to handle disputes concerning the "Maritime Silk Road". The second CICC was based in Xi'an City, the Chinese terminus of the ancient Silk Road, to handle disputes concerning the "Land Silk Road".[80]

Article 1 of the CICC provides that the CICCs are to "[provide] an international commercial dispute resolution mechanism that integrates litigation, mediation and arbitration for the parties to resolve disputes efficiently, conveniently and economically".[81] Hence, the CICC is mandated to resolve disputes through mediation, litigation, arbitration, or a combination thereof. The CICC has its salient feature of Sino-centrism because all judges in the panel are Chinese, and the CICC rules require a nexus with the host country as a jurisdictional prerequisite.[82] It's too early to say this feature of the CICC does encourage other countries to submit cases before proceedings staffed with Chinese judges. However, theoretically speaking, it is challenging for other countries to refer B&R-related disputes to CICCs before Chinese judges, using Chinese lawyers and having difficulty in enforcing outside China. On the other hand, the mediation part of CICC may be an attractive feature for other countries.[83] It provides the parties with an opportunity, at the outset, to avoid costly adversarial proceedings before Chinese judicial or arbitral institutions. The last limitation is that investor-state disputes are not included in the CICC's jurisdiction, while many B&R projects involve investor-state disputes.

5. The Need to Build a Comprehensive Legal Mechanism Governing B&R

It is clear that the current China and Ethiopia BIT is outdated. Thus, China and Ethiopia should take this opportunity to renegotiate a new BIT that embraces the typical characteristics of B&R. The renegotiated BIT needs to develop detailed provisions on dispute settlement, investment protection, and environmental provisions like Article 23 of the CJK Investment Agreement or articles in the investment chapter of USMCA. Specifically, China and Ethiopia should incorporate into the needs of B&R such as solid investment protection, convenient dispute settlement mechanism and cross-cutting clauses of environment, IP and corporate social responsibility. Consequently, the current China and Ethiopia BIT should be renegotiated to impose on parties the obligation not to be waived or otherwise derogated from such environmental measures to encourage the establishment, acquisition or expansion of investments in their jurisdiction. As many aspects of B&R involve IP, China's BIT with other countries should give due consideration to IP protection. In this case, the lesson can be drawn from several modern model bilateral investment treaties.[84]

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[80] Ibid.

[81] Ibid.

[82] By Comparison, Singapore and Abu Dhabi are different in that courts are "international" in the sense that each maintains a panel of judges from various countries; their rules do not require a nexus with the host country's jurisdictional prerequisite. The Singapore and Dubai courts also permit qualified international lawyers from other jurisdictions to argue cases. See supra note 71.

[83] Article 12 of Provisions on Several Issues Regarding the Establishment of China International Commercial Courts directs that, with the parties' consent, the CICC may, within seven days of accepting a case, submit the claim to mediation either with one or more Members of the Expert Committee or with a designated mediation institution.

[84] See Model Text for the India Bilateral Investment Treaty, https://www.dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf (accessed on October 9, 2021). It begins with defining investment

Incorporating IP in BIT would play an essential role in guaranteeing and protecting investors' IP under B&R platform. Moreover, China and Ethiopia's future BITs need to add provisions that encourage investors and their enterprises to voluntarily incorporate internationally recognized standards of corporate social responsibility into their practices and internal policies. These principles may address labor, the environment, human rights, community relations and anti-corruption issues.

Second, it is found that Ethiopia is not yet a member of some necessary multilateral forums of cooperation such as WTO and ICSID. Rules of WTO that may have some relevance to B&R cannot be hence applicable. Therefore, Ethiopia should work hard to complete the WTO accession as soon as possible, to apply the WTO system with all its limitations.[85] In the same fashion, Ethiopia needs to ratify the ICSID Convention to settle B&R investment disputes.

Third, cooperation in judicial affairs and law enforcement should be deepened. As trade and investment exchanges among parties participating in B&R would become more frequent, civil and commercial disputes and illegal and criminal activities would increase. Thus, there has to be a cooperation mechanism that allows both China and Ethiopia to extradite persons that offer, promise or give any undue financial or other advantages, whether directly or through intermediaries, to a public official of the host state to achieve any favor concerning a proposed investment or any licenses, permits, contracts or other rights concerning an investment.[86] This would create a common obligation on corruption for investors, host states, and home states, instead of planting separate rules for each actor.

Fourth, comprehensive legal research on legal cooperation should be focused on. B&R involves many legal issues, which require combined efforts. Hence, higher education institutions, law firms, and research institutes in B&R countries should work together to identify the challenges of existing legal cooperation and look forward to possible solutions.

Fifth, to overcome legal barriers arising from the different legal systems in Africa and bring certainty as to what rules and procedures would apply to arbitration, there is a need for the CAJAC to consider a regional approach in developing arbitration procedures. Developing a set of region-wide arbitration rules could help alleviate the problem of the inconsistency of the procedural rules among B&R countries and minimize excessive intervention by domestic institutions in the arbitral processes.

Lastly, in the long term, China and other B&R countries should sign a bilateral treaty specifically addressing B&R. A binding treaty could provide predictability and consistency in achieving B&R goals.

6. Conclusion

From the above analyses, it is safe to conclude that China adopts a non-treaty-based approach to B&R. There is no B&R-wide treaty or similar international law instrument covering B&R. B&R has neither a constituting treaty with all B&R countries, as is the case with international organizations, nor formal membership protocols. B&R is flexible enough to evolve with the time. All B&R-specific documents call for voluntary cooperation instead of hard law-imposing

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as including copyrights, knowledge and intellectual property rights such as patents, trademarks, industrial designs, and trade names, to the extent they are recognized under a Party's law.

[85] Ethiopia has applied to be a member of WTO in 2001 and not yet become a member.

[86] See Article 10 of South African Development Community, SADC Model Bilateral Investment Treaty Template with Commentary (2012).

treaty obligations backed by enforcement mechanisms. The legal cooperation between China and Ethiopia is not an exception in this regard. The two countries have not yet signed an independent legal cooperation mechanism to deal with B&R. This does not mean the matter is left unregulated. Indeed, there are multilateral, regional and domestic legal mechanisms to address B&R. At a regional level, Agenda 2063, FOCAC, and China-Africa joint arbitration mechanisms have an alignment of purposes and could serve as a foundation for the legal rules to deal with B&R. As far as bilateral cooperation is concerned, the BIT and the extradition treaty between China and Ethiopia are relevant instruments to deal with B&R cases. However, up to date, none of the existing legal mechanisms is comprehensive, binding and B&R-specific. Therefore, it is time to renegotiate or update these treaties and find a concerted way to achieve B&R benefits mutually.

International Convergence of Criminal Procedural Law in China: A Critical Discourse Analysis of Defendant's Rights

Suqing Yu & Mingxue Zhu[1]

Abstract: After the Second World War, the issue of human rights protection has aroused extensive discussion on a global scale, and many domestic and international laws that have been born after that have reflected concerns about human rights issues. As far as criminal litigation is concerned, due to the obvious inequality of power in the criminal litigation process, the issue of how to restrain public power and protect the rights of the defendant in criminal litigation has also received a lot of attention. From 1979 to 2018, in the context of globalization and reform and opening up policies, China's criminal procedure law has also undergone a series of reforms. During the reform of the Criminal Procedure Law of the People's Republic of China, there is an obvious trend of internationalization, and the gradual improvement of the protection of the rights of the defendant is an example of this trend. The attention paid to the rights of the defendant in the reform of the Criminal Procedure Law of the People's Republic of China is reflected in the specific language use in each version. This article aims to use Fairclough's critical discourse analysis theory to analyze the differences in language expression related to the rights of the defendant in the four editions of the Criminal Procedure Law of the People's Republic of China revised from 1979 to 2018 from a language level. Based on the theoretical framework of Critical Discourse Analysis proposed by Fairclough, three types of verb phrases related to the accused: "kěyǐ+X"(may+X), "yǒuquán+X" (have the right to+X), and "tígōng+X" (provide+X) in the four versions of the Criminal Procedure Law of the People's Republic of China from 1979 to 2018 are analyzed for two other interrelated dimensions of discourse-discursive practice and social practice that occur in a specific political and social context. The research results of this article show that these three types of verb phrases have been used more frequently in the several editions of the Criminal Procedure Law revised in 1996 and later, and their collocations are more abundant. This linguistic phenomenon shows that the Criminal Procedure Law of the People's Republic of China has gradually given the defendant more rights in the reform process, so that it can have more opportunities to contend with public power. The emergence of this change is closely related to the globalization of law, the development of market economy, the development of socialist democracy and the rule of law. In addition, this article also found that since the outbreak of the COVID-19 pandemic, the judicial department has also taken corresponding convenient measures to protect the rights of the defendant in criminal proceedings.

Keywords: Human Rights Protection; Criminal Procedural Law; Fairclough's Critical Discourse Analysis Theory

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[1] The first author: Suqing Yu, Ph.D., Dean and Professor of School of Foreign Studies at East China University of Political Science and Law; the second author: Mingxue Zhu, master candidate in Legal Linguistics at East China University of Political Science and Law. This article is the preliminary output of National Social Science Fund of China named "The Legal Language Changes and Contextualization in the Modernizing Process of Criminal Procedure System in China"(NO.20byy075).

1. Introduction

The development of globalization has become prominent after the Second World War, as interactions between different countries and regions rapidly increase, benefiting from the fast development of transportation and communication. Globalization of law is an important part of the whole process of globalization, and the past few decades have witnessed active interactions between different legal systems. The integration of common law system and civil law system has become a new trend, and countries today frequently transplant and learn about other countries' law and legal systems. Globalization of law has become the universal background for all countries seeking legal innovations and reform, including China.[2] From 1979 to 2018, the Criminal Procedure Law of the People's Republic of China went through a series of reforms, in which a clear sign of international convergence can be witnessed, especially in its focus on the rights of the accused. Due to the special power relation that is very asymmetric in criminal proceedings, there has been much attention to how to restrain public power and protect the rights of criminal defendants. Such focus on the rights of the accused in the Criminal Procedure Law of the People's Republic of China reforms reflects the influence of the widespread concern about the protection of human rights after the Second World War. Many international laws and domestic laws in other countries have already tried to address the issue of human rights protection, and they all provide experiences and lessons for Chinese legal system.[3]

The focus on the rights of the accused in the Criminal Procedure Law of the People's Republic of China reforms can be seen in the specific language used in the four versions. Meanwhile, changes in language use are not merely a linguistics phenomenon, as many discourse scholars have revealed. Power relations and ideologies related to language use are also important aspects of discourse. Therefore, based on the theoretical framework of Critical Discourse Analysis[4] proposed by Norman Fairclough,[5] this article intends to analyze three types of verb phrases related to the accused: "kěyǐ+X" (may+X),[6] "yǒuquán+X" (have the right to+X),[7] and "tígōng+X" (provide+X) in the four versions of the Criminal Procedure Law of the

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[2] See Shaobo Li, *Condition, Limits and Means of Globalization of Criminal Proceedings*, 25(5) Journal of South-Central University for Nationalities (Humanities and Social Sciences) 97, 97-102 (2005).

[3] See Yuhong Hu, *The Construction of An Academic Discourse System in the Discipline of Law in Contemporary China*, 29(4) Journal of Shanghai Jiaotong University (Philosophy and Social Sciences) 21, 21-8 (2021).

[4] Critical Discourse Analysis is an interdisciplinary approach to the study of discourse that views language as a form of social practice. Certain notable writers of this approach include Norman Fairclough, Paul Chilton, Teun A. van Dijk and Ruth Wodak.

[5] Norman Fairclough is an emeritus Professor of Linguistics at Department of Linguistics and English Language at Lancaster University. He is one of the founders of Critical Discourse Analysis as applied to sociolinguistics.

[6] "Kěyǐ", written as "可以" in Mandarin Chinese, is a modal verb. "X" refers to any word or phrase that collocates with "kěyǐ", and a further discussion of the use of "Kěyǐ" in legal context is provided in Section V. According to Modern Chinese Dictionary, "Kěyǐ" has three senses: expressing possibility or capability; expressing permission; and expressing positive evaluation of something. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.739 (2016).

[7] "Yǒuquán", written as "有权" in Mandarin Chinese, is a formulaic sequence that is frequently seen in legal context (which will be further analyzed in Section V). "Yǒu" is a verb that is primarily used to express ownership, it can also be used to indicate a certain amount or degree of something, the occurrence of an illness or situation, etc. "Quán", as a noun, commonly refers to right or power. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1081 (2016).

People's Republic of China from 1979 to 2018 to reveal two other interrelated dimensions of discourse-discursive practice and social practice that occur in the social-political context.[8]

2. Research Background

2.1 International Human Rights Development

Disregard and contempt for human rights had resulted in the tragedy of the Second World War, and after the Second World War, widespread concern about human rights protection occurred, which lead to the drafting of the Universal Declaration of Human Rights (hereinafter referred to as UDHR). Adopted by the United Nations in 1948, the Declaration is still one key text that the authors consider to be extremely important today when referring to human rights. UDHR enshrines the rights and freedom of all human beings and it has had a huge influence, both in terms of spreading the philosophy of human rights and in terms of inspiring legal texts and decisions.[9] At the same time, many treaties and intergovernmental declarations supplemented the content of human rights proclaimed in UDHR. Later in 1966, General Assembly of the United Nations adopted two other covenants concerning human rights — International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as ICESCR), and International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR). These two covenants were drafted by the United Nations' Human Rights Commission as multilateral treaties containing legally binding commitments. ICESCR covers several kinds of human rights, including labor rights, the right to health, the right to education, and the right to an adequate standard of living. Meanwhile, ICCPR covers human rights in other areas, such as the right to live, the right to liberty, the right to fair trial, as well as the rights to freedom of movement, thought, conscience, peaceful assembly, family, and privacy. These two covenants commit parties to promoting the realization of rights granted by the covenants.

In addition to UDHR, ICESCR, and ICCPR, the United Nations also adopted some other treaties concerning human rights as the concern about human rights became widespread in many countries and areas. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as CAT), Convention on the Rights of the Child (hereinafter referred to as CRC), International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as ICERD), and Convention on the Elimination of all Forms of Discrimination Against Women (hereinafter referred to as CEDAW) are some of these treaties.[10] Figure 1 below illustrates the ratification of 18 United Nations International Human Rights Treaties.

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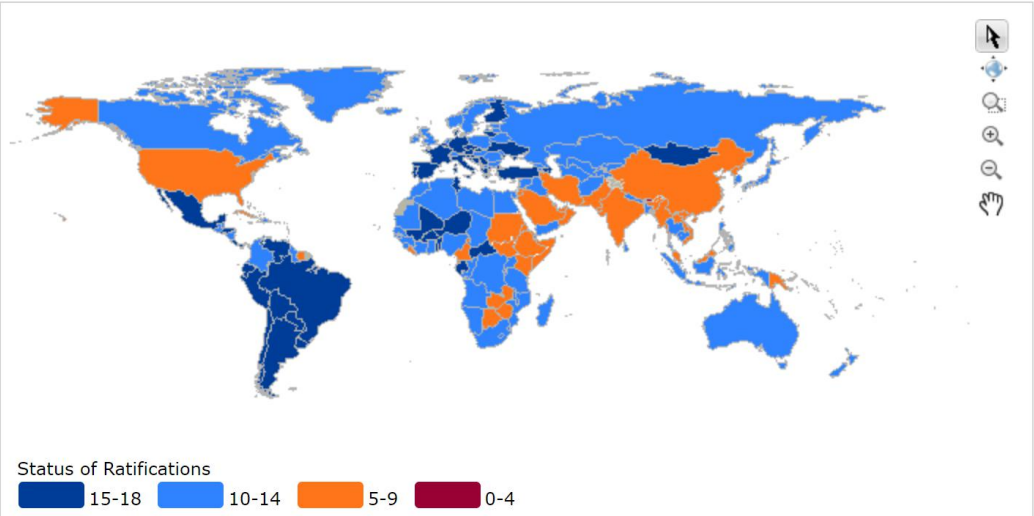
[8] "Tígōng", written as "提供" in Mandarin Chinese, is a verb, which refers to the action of providing something (such as ideas, supplies, conditions, etc.) to somebody. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1285 (2016).

[9] See Andrew Clapham, *Human Rights: A very short introduction*, Oxford University Press, p.50 (2015).

[10] See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Ratification of 18 International Human Rights Treaties*, https://indicators.ohchr.org/ (accessed on February 18, 2021).

Figure 1: Ratification of 18 United Nations International Human Rights Treaties



As shown in Figure 1, many countries have at least ratified 5 to 9 treaties of international human rights, and the number of countries that have ratified 10 to 18 treaties is also considerable. The ratification rates of some core treaties are even higher. For example, ICESCR already has 171 state parties up to February 9, 2021. Human rights are universal in the sense that they have been accepted by almost all states as establishing obligations that are binding in international law.[11] Though states around the globe might differ in culture, economy, religion, or politics, these human rights granted by UDHR and other United Nations treaties have been internationally agreed upon and recognized by almost all of them.

Besides the efforts made by the United Nations in promoting human rights protection, lots of regional institutions and bodies also have been trying to address this issue. In Europe, the Council of Europe drafted the European Convention on Human Rights (hereinafter referred to as ECHR) in 1950, and since then ECHR has played an important role in protecting human rights and increasing human rights awareness in Europe. First members of the European Court of Human Rights were elected by the Consultative Assembly of the Council of Europe on January 21, 1959. Around the same period in Latin America, the Organization of American States (hereinafter referred to as OAS) established the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The American Convention on Human Rights (hereinafter referred to as ACHR) adopted in 1978 then specifies the activities of these two institutions. Throughout their practices, the European Court of Human Rights and the Inter-American Court of Human Rights have developed a case law that brings more concrete protection of human rights and at the same time deepens understandings about human rights.[12]

To make sure that human rights conventions and treaties help to protect human rights in state parties, monitoring bodies consisting of many experts are also established within the United Nations and other regional institutions. They examine and consider government reports on the parties' compliance with human-right obligations and may also make country visits. In the context of the prevention of torture, the Council of Europe's expert committee makes periodic and *ad hoc* visits to

[11] See Jack Donnelly, *Universal Human Right in Theory and Practice*, Cornell University Press, p.94 (2013).
[12] See supra note 9, at 52.

places of detention in forty-seven European states, and the United Nations' committee undertakes similar visits to those states that have ratified the relevant treaty.[13]

2.2 The Influence of International Human Rights Development on the Reforms of the Criminal Procedure Law of the People's Republic of China

The origination and development of the Criminal Procedure Law of the People's Republic of China is a long process of constantly sublating the old rules and practices and learning from foreign advanced experience, especially during the past century since the late Qing Dynasty and the early Republic of China. The Criminal Procedure Law (Draft) of 1911 was formulated in the last year of the Qing Dynasty as the first criminal procedure code, but unfortunately it was not enacted because of the fall of the Qing Dynasty. However, it was still the foundation version of China's modern criminal procedure law since it had a very far-reaching impact on the criminal procedure legal system in the ensuing Republic of China (1911-1949) and even on the criminal procedure legal system in the first decades of the People's Republic of China since 1949. The Republic of China enacted the Criminal Procedure Regulations in 1921, and then amended it into the Criminal Procedure Law in 1928 as the first national criminal procedure code. The Criminal Procedure Law Amendment in 1935 could be described as the first mature criminal procedure legislation and is generally believed to be the predecessor of the current "Criminal Procedure Law" in Chinese Taiwan. The Draft Criminal Procedure Law of the People's Republic of China in 1963 was another landmark document that formed the base of the Criminal Procedure Law of the People's Republic of China of 1979, which was the first code of criminal procedure in the history of the People's Republic of China, amended in 1997, 2012 and 2018 respectively. In the process of criminal procedural law reforms, legal transplantation is undoubtedly a main character and a clear sign of international convergence. As the rights of the accused gain more and more attention worldwide in the past few decades, the Criminal Procedure Law of the People's Republic of China of 1979 begins to consider some human rights concerns related to the accused.[14]

The special power relation in criminal proceedings makes it extremely important to protect the human rights of the criminal defendants and restrain public power. Therefore, many covenants and treaties mentioned above in Section A, including ICCPR, ECHR and ACHR have specified the right to fair trial and some specific rights of the defendants. Based on the treaties mentioned above, Stefan Trechsel in her book Human rights In Criminal Proceedings discusses and analyzes general guarantees of human rights in trials and the specific rights of the defendants.[15] According to Trechsel's categorization, the general guarantees include the right to an impartial tribunal, the general right to a fair trial, the right to public hearing, and the right to be tried within a reasonable time.[16] Meanwhile, the defendants have a series of specific rights, including the right to be presumed innocent, the right to be informed of the accusation, adequate time and facilities, the right to defend oneself and to have the assistance of counsel, the right to test witness evidence, the right to the free assistance of an interpreter, the privilege against self-incrimination, the right

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[13] See supra note 9, at 55-6.
[14] See Qing Ye & Xiaomeng Li, *Retrospect of Prospect of 40th Anniversary of the Promulgation and Implementation of the Criminal Procedure Law*, 39(6) Chinese Criminal Review 2, 2-14 (2019).
[15] See Stefan Trechsel, *Human Rights in Criminal Proceedings*, Oxford University Press, p.45 (2005).
[16] Ibid.

to appeal, the right to compensation for wrongful conviction and the protection against double jeopardy.[17]

The fast development of international human rights treaties and such awareness of defendants' human rights in trials in the past few decades have had a considerable impact on China's criminal procedural law reforms. The transplanting of law is not only necessary but also possible throughout human history,[18] and after the Reform and Opening-up Policy, China has actively engaged in the process of international legal convergence. In the Criminal Procedure Law of the People's Republic of China reforms, such sign of international legal convergence is evident and meaningful. The first version of Criminal Procedure Law of the People's Republic of China was adopted in 1979, and later a series of amendments were made, while each introduces important changes to the previous procedures. These changes are solid evidence of the phenomenon of international convergence, especially focusing on human rights protection. Here is a brief introduction of the four versions of the Criminal Procedure Law of the People's Republic of China.[19]

The Criminal Procedure Law of the People's Republic of 1979 regulated the basic system of criminal procedure in a comparatively systematic manner for the first time. It had been an important landmark in the development of China's legal system since the foundation of the People's Republic of China, and around the same period, China ratified two important United Nations conventions: CEDAW and ICERD. However, due to some historical restrictions, several rights of the defendants were not included in this version, and it had some obvious drawbacks. For example, Article 26 of the Criminal Procedure Law of the People's Republic of 1979 provides that "In addition to exercising the right to defend himself, the defendant may also entrust the following persons to defend him […] ", and this Article empowered defendants to defend themselves before the court. However, only 20 to 30 percent of defendants were represented by lawyers during the trial; even in cases of serious criminal offenses, only 40 percent of defendants retained lawyers.[20] Furthermore, The Criminal Procedure Law of the People's Republic of 1979 structured China's criminal process in such a way that, in law and practice, a criminal trial and the role of defense attorneys were mere formalities. The criminal defendants' right to counsel was not satisfyingly realized.[21]

China signed and ratified two more United Nations conventions in the 1980s and early 1990s: CAT and CRC. Then the Criminal Procedure Law of the People's Republic of 1996 pursued the idea of presumption of innocence (which embodies the basic spirit of protecting human rights) and took further steps to provide protection for the defendants' human rights. First, criminal defendants were no longer referred to as "offenders" (rénfàn) before the court rules on their cases,[22] and Article 12 of the Criminal Procedure Law of the People's Republic of 1996 establishes the principle that "No person shall be found guilty without being judged as such by a People's

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[17] Id., at 153.

[18] See Qinhua He, *On the Transplantation and Naturalization of Law*, 22(3) China Legal Science 3, 3-15 (2002).

[19] See supra note 14.

[20] See Hualing Fu, *Criminal Defence in China: The Possible Impact of the 1996 Criminal Procedural Law Reform*, 153(2) The China Quarterly 31, 31-48 (1998).

[21] Ibid.

[22] Written as "人犯" in Mandarin Chinese, is the general term referring to criminal defendants or suspects in Criminal Procedure Law of the People's Republic of 1979. This term is strongly associated with the presumption of guilt and the ignorance of criminal defendants' rights. See Qiang Liu, *On the Appellation of the Accused*, 12(4) Journal of Beijing People's Police College 37, 37-41 (2010).

Court according to law." Meanwhile, attorneys were allowed to participate in litigation in advance, as Article 96 provided that "After the criminal suspect is interrogated by an investigation organ for the first time or from the day on which compulsory measures are adopted against him or her, he or she should appoint a lawyer to provide him or her with legal advice and to file petitions and complaints on his or her behalf." The Criminal Procedure Law of the People's Republic of China of 1996 also reformed the trial mode, as the burden of proof fell on the prosecutor. The principle of "presumption of innocence" was also established.[23]

Around the millennium, China signed a series of new treaties, including the two United Nations Covenants: ICCPR and ICESCR. The Criminal Procedure Law of the People's Republic of China of 2012 explicitly included the principle of "Respecting and Protecting Human Rights" (Article 2), and the protection of defendants' human rights could be seen throughout the criminal proceeding.[24] For example, in the evidence stage, it was stipulated that no one could be forced to prove himself or herself guilty (Article 50), and a system of exclusion of illegal evidence had also been established (from Article 54 to Article 58); in terms of compulsory measures, the conditions for arrest, and the procedures for people's procuratorate to examine and approve arrests were improved; as for the enforcement procedure, the provisions on community correction were added; in the special procedure, special proceeding measures were set up to supervise criminal cases and other specific cases, to safeguard the legitimate rights and interests of the minors.

The Criminal Procedure Law of the People's Republic of China of 2018 is the newest version, while it has made certain progress in protecting the defendants' human rights.[25] The procedure for trial in absentia was added, and the duty lawyer system and the procedure of leniency of the guilty plea were established (Article 15 & Article 30).[26]

3. Theoretical Framework and Design

3.1 Critical Discourse Analysis and Data

After the Second World War, functions of government have gradually extended, which make public services more complicated and specialized.[27] As illustrated in the last section, the reforms of the Criminal Procedure Law of the People's Republic of China gradually demonstrate more and more concern about the defendants' rights, including the specific language used in each version of the Criminal Procedure Law of the People's Republic of China. A text can be viewed as a discursive practice as well as a social practice occurring in a particular institution, and the specific language use in the text can be used to analyze these practices and the corresponding social and political context. Such assumption is held by many discourse analysis linguists in the field of Critical Discourse Analysis, in which the relationship between language,

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[23] See Guangzhong Chen, *Assumptions on Revising the Structural System of Criminal Procedure Law,* 12(4) Tribune of Political Science and Law 3, 3 (1994).

[24] See Wenhua Zhong & Yuanwei Wang, *Implementation of Respecting and Protecting Human Rights in the New Criminal Procedure Law*, 5(1) Proceedings of the 8th State Senior Prosecutors' Forum: Implementation of the Article on Respecting and Protecting Human Rights in Criminal Justice 75, 75-9 (2012).

[25] See Chongyi Fan, *The Highlight and Prospect of the 2018 Amendment of Criminal Procedure Law,* 27(1) Journal of National Prosecutors College 3, 3-15 (2019).

[26] Ibid.

[27] See Xiaofu Li, *Rethink and Suggestions on the Practice of Statutory Board in Chinese Mainland,* 6(5) China Legal Science 83, 83-5 (2018).

power relations, ideologies, and social structures is the key issue. Therefore, this article intends to apply the theoretical framework of Critical Discourse Analysis proposed by Fairclough,[28] to analyze the specific language use in the four versions of the Criminal Procedure Law of the People's Republic of China from 1979 to 2018 to examine two other interrelated dimensions of discourse- discursive practice and social practice happening in the specific political and social context in Chinese Mainland. The following is a brief introduction to Fairclough's theoretical framework.

Critical Discourse Analysis starts with Fairclough's book Language and Power, which was first published in 1989. Critical Discourse Analysis focuses on specific social phenomena and the role language plays in them,[29] and in Language and Power Fairclough points out that institutional practices which people draw upon without thinking often embody assumptions that directly or indirectly legitimize existing power relations.[30] Practices that appear to be universal and commonsensical can often be shown to originate in the dominant class or the dominant bloc and to have become naturalized.[31] Therefore, the goal of Critical Discourse Analysis is to denaturalize these commonsense and reveal the underlying relationships and interactions between language, ideology (in a narrow sense), and power relations.[32]

In Discourse and Social Change, Fairclough establishes three dimensions of discourse based on his previous works: text (actual language use), discursive practice (the practice which involves the production, distribution, and consumption of text), and social practice (the entire social and political context as well as ideologies in which text is produced, distributed and consumed).[33] On the text dimension, formal properties of a text are analyzed;[34] on the discursive practice dimension, the focus of analysis is given to how the author(s) of a text draws on already existing discourse to create text, and how receivers consume and interpret the text and the power relations between them;[35] while the social practice dimension analyzes the social and political context and the overall social ideologies, as well as the social determination of the processes of the production, distribution, and consumption of the text.[36]

As one of the key concepts in Critical Discourse Analysis, power has always been discussed by many scholars or Critical Discourse Analysis linguists. Michel Foucault, the French postmodernist, has been hugely influential in shaping understandings of power, leading away from the analysis of actors who use power as an instrument of coercion, and even away from the discreet structures in which those actors operate, toward the idea that "power is everywhere", diffused and embodied in discourse, knowledge and "regimes of truth".[37] Power for Foucault is what makes us what we are, operating on a quite different level from other theories. Thornborrow noted that power relations emerge in the interplay between participants locally constructed, discursive identities and their institutional status. Power tends to be associated with rank and status, and hierarchies are built around these relative

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[28] See Norman Fairclough, *Language and Power* (2nd Edition), Routledge, p.21 (2013).
[29] Id., at 10.
[30] Id., at 27.
[31] Id., at 40.
[32] See Bin Xin & Xiaoli Cao, *Critical Discourse Analysis: Goal, Methodology and Recent Trends*, 29(4) Foreign Languages and Their Teaching 1, 1-5 (2013).
[33] See Norman Fairclough, *Discourse and Social Change*, Polity Press, p.73 (1992).
[34] Id., at 73-8.
[35] Id., at 79-86.
[36] Id., at 87-91.
[37] See Michel Foucault, *Discipline & Punish: The birth of prison*, Vintage Books, pp.1-10 (1995).

positions of social, professional and political power.[38] Fairclough pointed out that "…power in discourse is to do with powerful participants controlling and constraining the contributions of non-powerful participants. It is useful to distinguish broadly between three types of such constraints — constraints on:" contents, on what is said or done; relations, the social relations people enter in discourse; subjects, or the 'subject positions' people can occupy."

Accordingly, the authors agree in legal context, power is the most influential factor in an institutional interaction. Language power basically originates from the following three aspects: (1) authority that is granted by the government, as that to the legislators, public prosecutors, judges, or policemen; (2) knowledge which includes one's Encyclopedia knowledge, professional knowledge, or experiences. For Foucault, power and knowledge are not seen as independent entities but are inextricably related — knowledge is always an exercise of power and power always a function of knowledge; (3) controlling and constraining the contributions of non-powerful participants in an interaction by questioning, giving a new topic, or talk strategically.

China has passed through massive transformation since the Third Plenary Session of the 11th Central Committee of the Communist Party of China, from a planned to a market economy, and from an economy that was almost totally closed to one that is much more open than most countries that are at the same level of income.[39] As this article focuses on the linguistic traces related to the human rights of the accused, it takes the texts of the four versions of the Criminal Procedure Law of the People's Republic of China from 1979 to 2018 as the research data.

3.2 Method

The Criminal Procedure Law of the People's Republic of China of 1979 consisted of 164 articles, and it was organized into four parts. The Criminal Procedure Law of the People's Republic of China of 1996 had 225 articles in total and it consisted of four parts and the supplementary provisions. There were 290 articles in the Criminal Procedure Law of the People's Republic of China of 2012, and they were organized into five parts and the supplementary provisions. The newest version, the Criminal Procedure Law of the People's Republic of China of 2018 expanded to 308 articles, and it was also organized into five parts and the supplementary provisions.

To examine the changes in the status of the accused in the power relation of criminal proceedings and the protection that the accused has concerning his or her human rights in the four versions of the Criminal Procedure Law of the People's Republic of China, the following three types of verb phrases related to the accused in the four versions of the Criminal Procedure Law of the People's Republic of China are analyzed: "kěyǐ+ X" (may+X), "yǒuquán+X"(have the right to+X) and "tígōng+X" (provide+X). The specific reasons for choosing these phrases will be given in the following sections.

First, articles containing "kěyǐ" are retrieved in the electronic forms of the texts of the four versions of the Criminal Procedure Law of the People's Republic of China. Then, those articles that take the accused as the subject of "kěyǐ+X" are retained, others are removed. After that, the frequency of the phrase "kěyǐ+X" in each version is calculated separately, and each collocate of "kěyǐ" which appears in the position of

[38] See Joanna Thornborrow, *Power Talk: Language and Interaction in Institutional Discourse*, Pearson Education Asia Pte l.td, pp.2-7 (2002).

[39] See Jianfu Chen, *The Transformation of Chinese Law: From Normal to Substantial*, 37(1) Hong Kong Law Journal 689, 689-770 (2007).

X is analyzed. This same method is also adopted when analyzing "yǒuquán+X". As for the analysis of "tígōng+X", most steps are the same, while the only difference is that those articles that take the accused as the object of "tígōng+X" are retained for analysis.

Note that the accused may be referred to by several expressions: the accused (bèigàorén),[40] the criminal suspect (fànzuìxiányírén),[41] the participant in the proceedings (sùsòngcānyùrén),[42] the litigant (dāngshìrén)[43] or the offender (rénfàn).[44]

4. Analysis and Findings

4.1 Analysis and Findings of Text Dimension

"Kěyǐ+X" (May+X)—The use of the Chinese modal verb "kěyǐ" in legal texts is often considered to express permission or to confer rights.[45] Some scholars held the view that "kěyǐ" confers a kind of selective right to certain legal subjects, especially subjects of private rights, and those subjects may choose to exercise this right or not.[46] Therefore analysis of the frequency of the phrase "kěyǐ+X" (with the accused as subject) and its collocation in each version of the Criminal Procedure Law of the People's Republic of China can help reveal changes in the rights conferred to the accused.

Table 1 Frequency of "kěyǐ+ X" in Each Version of Criminal Procedure Law

Version of Criminal Procedure Law	1979	1996	2012	2018
Frequency of " kěyǐ+ X"	13	20	24	24

From Table 1, it is apparent that the frequency of the phrase structure "kěyǐ+ X" increases as the Criminal Procedure Law of the People's Republic of China develops. The frequency of this phrase structure is 13 in the Criminal Procedure Law of the People's Republic of China of 1979, while it increases to 20 in the Criminal Procedure Law of the People's Republic of China of 2018. This result suggests that the Criminal Procedure Law of the People's Republic of China nowadays shows more concern about the rights of criminal defendants, and they may enjoy more rights conferred by the law compared to those several decades before. Next, an analysis of

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[40] Written as "被告人" in Mandarin Chinese, refers to the person who is accused of a crime and is subject to prosecution in accordance with the law. See Dictionary Editing Office, *Law Dictionary*, Law Press China, p.158 (2003).

[41] Written as "犯罪嫌疑人" in Mandarin Chinese, refers to the person suspected of committing a crime and therefore being investigated by the Investigative Organ before the Procuratorial Organ initiates an official public prosecution. See Dictionary Editing Office, *Law Dictionary*, Law Press China, p.355 (2003).

[42] Written as "诉讼参与人" in Mandarin Chinese, in the context of the Criminal Procedure Law of the People's Republic of China of 1996, 2012 and 2018, refers to the litigants, legal representatives, agents ad litem, defenders, witnesses, expert witnesses and interpreters.

[43] Written as "当事人" in Mandarin Chinese, in the context of the Criminal Procedure Law of the People's Republic of China of 1996, 2012 and 2018, refers to victims, private prosecutors, criminal suspects, defendants and the plaintiffs and defendants in incidental civil actions.

[44] See Qiang Liu, *On the Appellation of the Accused*, 12(4) Journal of Beijing People's Police College 37, 37-41 (2010).

[45] See Yun Zhou, *A Study on Normative Words in Legislation*, Law Press China, p.69 (2011).

[46] Ibid.

the specific collocation of " kěyǐ" in each version of the Criminal Procedure Law of the People's Republic of China is presented in Table 2 below.

Table 2 Collocates of "kěyǐ" and the Corresponding Frequency in Each Version of Criminal Procedure Law

Frequency / Version / Collocates	1979	1996	2012	2018
shēnqǐng (apply for) v.[47]	2	1	2	2
wěituō (entrust) v.[48]	1	1	2	2
jùjué (refuse to) v.[49]	1	1	1	1
tíchū (put forward) v.[50]	1	1	2	2
qǐngqiú (request) v.[51]	1	1	1	1
pìnqǐng (appoint to) v.[52]	0	1	0	0
shàngsù (file an appeal) v.[53]	1	1	1	1
héjiě (become reconciled with) v.[54]	0	0	1	1
lìngxíng (do separately or at some other time) v.[55]	1	1	1	1
zài (at/in) prep.[56]	1	0	0	0

[47] "Shēnqǐng", written as "申请" in Mandarin Chinese, is a verb that refers to the action of filing an application to relevant departments to ask for something. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1157 (2016).

[48] "Wěituō", written as "委托" in Mandarin Chinese, is a verb that refers to the action of entrusting somebody with something. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1365 (2016).

[49] "Jùjué", written as "拒绝" in Mandarin Chinese, is a verb that refers to the action of rejecting or refusing. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.707 (2016).

[50] "Tíchū", written as "提出" in Mandarin Chinese, is a verb phrase which refers to putting forward considerations, ideas, proposals, requests, etc. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1284 (2016) .

[51] "Qǐngqiú", written as "请求" in Mandarin Chinese, has two senses. As a verb, it refers to the action of making a request and asking for something (such as help, remedy, forgiveness, etc.); while as a noun, it refers to a request. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1070 (2016).

[52] "Pìnqǐng", written as "聘请" in Mandarin Chinese, is a verb that refers to appointing someone to a particular role or position. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1005 (2016).

[53] "Shàngsù", written as "上诉" in Mandarin Chinese, is a verb that is frequently used in legal context, and it refers to the action of filing an appeal to a higher court by a litigant. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1147 (2016).

[54] "Héjiě", written as "和解" in Mandarin Chinese, is a verb which refers to becoming reconciled with someone. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.526 (2016).

[55] "Lìngxíng", written as "另行" in Mandarin Chinese, is a verb which refers to doing something separately or at some other time. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.833 (2016)).

[56] "Zài", written as "在" in Mandarin Chinese, is commonly used as a verb or a preposition. As a

duì (to) prep.[57]	2	4	4	4
xiàng (towards) prep.[58]	1	1	5	5
zì (from) prep. [59]	0	1	1	1
jiù (regarding) prep.[60]	0	2	1	1
tóng (with) prep.[61]	0	2	1	1
hùxiāng (with each other) adv.[62]	1	1	1	1

As shown in Table 2, the frequency of the collocation of "kěyǐ" with some prepositions increases remarkably, especially the preposition "duì (to)" and the preposition "xiàng (towards)". The total frequency of "kěyǐ+ duì" and "kěyǐ+xiàng" is merely 3 in the Criminal Procedure Law of the People's Republic of China of 1979, however, in the Criminal Procedure Law of the People's Republic of China of 2018, the number comes to 9. In the context of the Criminal Procedure Law of the People's Republic of China, these prepositions are usually followed by a target party (which is also involved in judicial proceedings) and an action of the subject (which is the accused in this study).

Take Article 35 of the Criminal Procedure Law of the People's Republic of China of 2018 presented below for example,

【第三十五条】犯罪嫌疑人、被告人因经济困难或者其他原因没有委托辩护人的，本人及其近亲属**可以向(**kěyǐxiàng**)**法律援助机构*提出申请*。对符合法律援助条件的，法律援助机构应当指派律师为其提供辩护。[……]

【Article 35】*Where a criminal suspect or defendant has not retained an advocate for financial difficulties or other reasons, the criminal suspect or defendant or his or her near relative* ***may*** *file an application* ***to*** *a legal aid*

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preposition, it indicates that something is at or in (a place, a certain time, a condition, etc.). See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1629 (2016).

[57] "Duì", written as "对" in Mandarin Chinese, has four different senses and can be used as a noun, a verb, a preposition or a classifier. Here, it is used as a preposition and it indicates who or what an action or a feeling is directed toward. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.329 (2016).

[58] "Xiàng", written as "向" in Mandarin Chinese, has three different senses and can be used as a noun, a verb or a preposition. As a preposition, it indicates the direction or object of an action. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1433 (2016).

[59] "Zì", written as "自" in Mandarin Chinese, is frequently used as a pronoun or a preposition. As a preposition, it indicates where or when somebody or something starts, or what the origin of somebody or something is. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1736 (2016).

[60] "Jiù", written as "就" in Mandarin Chinese, has more than seven senses, and here it is used as a preposition, which indicates the subject that is being talked or written about. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.701 (2016).

[61] "Tóng", written as "同" in Mandarin Chinese, also has many senses, and here it is used as a preposition to introduce the person or thing that accompanies the subject of an action. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1312 (2016).

[62] "Hùxiāng", written as "互相" in Mandarin Chinese, is an adverb, and it indicates that an action is done mutually by two or more people. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.553 (2016)).

institution. If the legal aid conditions are met, the legal aid institution shall designate a lawyer to defend him or her.[…]

The phrase "kěyǐxiàng " (**may … to**) is followed by "a legal aid institution" (a target party) and "filing an application*"* (an action the defendant may perform). The increase in the frequency of such collocation suggests that later versions of the Criminal Procedure Law of the People's Republic of China gradually confer more rights to the accused to actively perform certain actions towards other parties who also participate in criminal proceedings, either to seek aid, to ask questions, or else.

"Yǒuquán+X" (Have the Right to+X). "Yǒuquán + X" is also a frequent type of phrasal expression in legal texts, and as Lijue Song pointed out, it is mainly used to confer certain rights to certain legal subjects to perform or not perform certain actions.[63] Thus, analyzing the frequency of the phrase "yǒuquán+X" (with the accused as a subject) and its collocation in each version of the Criminal Procedure Law of the People's Republic of China can also reflect changes in the rights of the accused.

Table 3 Frequency of "yǒuquán+X" in each version of Criminal Procedure Law

Version of Criminal Procedure Law	1979	1996	2012	2018
Frequency of "yǒuquán + X"	6	17	22	26

Table 3 reveals that the frequency of the expression "yǒuquán+X" increases from 6 in the Criminal Procedure Law of the People's Republic of China of 1979 to 26 in the Criminal Procedure Law of the People's Republic of China of 2018. This indicates that more rights are conferred to the accused in the recent version of the Criminal Procedure Law of the People's Republic of China compared to the past. A more specific analysis of the collocates of "yǒuquán" in each version of the Criminal Procedure Law of the People's Republic of China is presented in Table 4.

Table 4 Collocates of "yǒuquán" in each version of the Criminal Procedure Law of the People's Republic of China

Version / Frequency / Collocates	1979	1996	2012	2018
huòdé (acquire) v.[64]	1	1	1	1
tíchū (put forward) v.[65]	1	1	1	1
yāoqiú (demand) v.[66]	1	3	3	3
shēnqǐng (apply for) v.[67]	1	2	5	5

[63] See Lijue Song, *The Collocational Features of Formulaic Sequences in Legislative Translated Texts*, 38(4) Foreign Language Research 105, 105-9 (2015).

[64] "Huòdé", written as "获得" in Mandarin Chinese, is a verb which refers to the action of obtaining something. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.596 (2016).

[65] See supra note 50.

[66] "Yāoqiú", written as "要求" in Mandarin Chinese, is a verb which refers to the action of asking for something firmly. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1521 (2016).

[67] See supra note 47.

wěituō (retain) v.[68]	0	6	7	8
yòng (with) prep.[69]	1	1	1	1
yuējiàn (schedule a meeting) v.[70]	0	0	0	1
suíshí (at any time) adv.[71]	0	2	2	2
duì (to) prep.[72]	1	1	1	2
xiàng (towards) prep.[73]	0	0	1	2

As Table 4 illustrates, the collocation of "yǒuquán" become more diverse in later versions of the Criminal Procedure Law of the People's Republic of China. Its collocate "wěituō" (entrust) first appears in the Criminal Procedure Law of the People's Republic of China of 1996 and the frequency of "yǒuquán+wěituō" increases in the latter two versions. Its collocates "xiàng" (towards) and "suíshí" (at any time) appear in the Criminal Procedure Law of the People's Republic of China of 2012, while the collocation "yǒuquán+yuējiàn" (schedule a meeting) appears in the Criminal Procedure Law of the People's Republic of China of 2018. As for the frequencies of these collocates, "yāoqiú" (demand), "shēnqǐng" (apply for) and "wěituō" (entrust) become more frequently used in later versions of the Criminal Procedure Law of the People's Republic of China. This also suggests that the accused gradually has more rights conferred by law to ask for and apply for what he or she wants, and there are more occasions that he or she may exercise the right to counsel.

Actually, in the context of Chinese legislative text, "yǒuquán" can basically substitute "k ě yǐ", especially when the law provides or stipulates that someone "yǒuquán" do something. Whereas, when it comes to "kěyǐ", it is not necessarily the case. That is because "kěyǐ" has at least three meanings in legislative texts: one is to confer someone the rights to do something; the second is to set a certain condition; while the third is to specify the obligation(s). In legislative texts, "kěyǐ" is basically used to mean "to confer someone the rights to do something", just as Bentham once argued that "The will being undecided, there is no wish, that can be operative or efficient, to express: all that the mandate can express is the negation of one or other of the two operative kinds of mandates: it is accordingly either what may be termed a non-command, or else a non-prohibition, that is to use the common language a permission."[74]

"Kěyǐ" means to grant someone a power that he or she does not otherwise have. When "kěyǐ" is used to mean "to confer rights", it can be substituted by "yǒuquán".[75]

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[68] See supra note 48.

[69] "Yòng", written as "用" in Mandarin Chinese, has many senses, and here it is used as a preposition to indicate the instrument by which an action is performed. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1579 (2016).

[70] "Yuējiàn", written as "约见" in Mandarin Chinese, is a verb which refers to scheduling a meeting or an appointment. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1616 (2016).

[71] "Suíshí", written as "随时" in Mandarin Chinese, is an adverb which indicates that an action may be performed at any time. See Dictionary Editing Office, *Modern Chinese Dictionary* (7th Edition), The Commercial Press, p.1253 (2016).

[72] See supra note 57.

[73] See supra note 58.

[74] See H. L. A. Hart, *Bentham on Legal Powers*, 81(5) The Yale Law Journal 799, 799-822 (1972).

[75] See Yinan Guan, *On Normative Words Such as "yīngdāng" "kěyǐ" in Legal Texts*, 19(1) Business

So the increase of the frequency of the expression "yǒuquán+X" from 6 in the Criminal Procedure Law of the People's Republic of China of 1979 to 26 in the Criminal Procedure Law of the People's Republic of China of 2018 provides more evidence that more and more rights are conferred to the accused with the reforms of the legal system of Criminal Procedure Law.

"Tígōng+X" (provide+X). Another type of phrase examined in this article is "tígōng+X". "Tígōng", which means "to provide" in Chinese, is also worth analyzing because this verb involves a provider and a receiver, and from the perspective of the accused, what the Criminal Procedure Law of the People's Republic of China provides to him/her is an important source of protection concerning their rights. The frequency of "tígōng+X" in each version of the Criminal Procedure Law of the People's Republic of China is presented in Table 5 below.

Table 5 Frequency of"tígōng +X" in each version of Criminal Procedure Law

Version of Criminal Procedure Law	1979	1996	2012	2018
Frequency of "tígōng+ X"	3	5	7	10

As Table 5 illustrates, the phrase structure "tígōng+X" is overall not very frequent, but an increase in the use of "tígōng + X" in the Criminal Procedure Law of the People's Republic of China is evident. The frequency of this phrase structure is only 3 in the Criminal Procedure Law of the People's Republic of China of 1979, and it turns into 10 in the Criminal Procedure Law of the People's Republic of China of 2018. Further analysis of the collocation of "tígōng+X" in each version of the Criminal Procedure Law of the People's Republic of China is indicated in Table 6.

Table 6 Collocates of "tígōng" in each version of Criminal Procedure Law

Frequency / Version / Collocates	1979	1996	2012	2018
biànhù (defense) n.[76]	3	4	4	5
fǎlǜzīxún (legal advice) n.[77]	0	1	1	2
fǎlǜbāngzhù (legal assistance) n.[78]	0	0	2	2

145, 146 (2012).

[76] "Biànhù", written as "辩护" in Mandarin Chinese, can be used as a verb or noun in sentences, and here it is a noun referring to the defense a criminal defendant get from a lawyer. The 7th Edition of Modern Chinese Dictionary had not included the use of "biànhù" as a noun, however, this mode of use has become very common. As for the use of "biànhù" in the four versions of the Criminal Procedure Law of the people's Republic of China, it always follows a verb and functions as the object of the verb, therefore it is a noun in this context.

[77] "Fǎlǜzīxún", written as "法律咨询" in Mandarin Chinese, is a compound noun, and it refers to the professional legal advice provided by legal professionals to state agencies, companies, social groups or individuals. See Dictionary Editing Office, *Law Dictionary*, Law Press China, p.318 (2003).

[78] "Fǎlǜbāngzhù", written as "法律帮助" in Mandarin Chinese, is a compound noun which refers to the legal assistance provided to a litigant. This noun is not included in major dictionaries of Mandarin Chinese, and the frequency of this noun in CCL Corpus (a large corpus of Chinese language developed by the Center for Chinese Linguistics in PKU) is only 120. As Zhe Liu points out, the concept of "fǎlǜbāngzhù" is generally considered as referring to the work of duty lawyers in cases concerning guilty plea. See Zhe Liu, *The "Bulking" and "Individualizing" of Legal Assistance*, https://new.qq.com/omn/20200826/20200826A032PE00.html (accessed on July 13, 2021).

biànlì (convenience) n.[79]	0	0	0	1

As Table 6 presents, "tígōng" only has one collocate—"biànhù"(defense) in the Criminal Procedure Law of the People's Republic of China of 1979, and its collocation gradually become more diverse in the Criminal Procedure Law of the People's Republic of China. In the Criminal Procedure Law of the People's Republic of Chinaof1996, it collocates with "fǎlǜzīxún" (legal advice), and later in the Criminal Procedure Law of the People's Republic of China of 2012 and the Criminal Procedure Law of the People's Republic of China of 2018, it also collocates with "fǎlǜbāngzhù" (legal assistance) and "biànlì" (convenience). Such changes in the collocation of "tígōng" suggest that the Criminal Procedure Law of the People's Republic of China nowadays pays more attention to the legal and procedural aids provided to the accused. Article 36 of the Criminal Procedure Law of the People's Republic of China of 2018, which contains the expression "tígōng(provide)+fǎlǜzīxún" (legal advice), also regulates the specific kinds of legal assistance a duty lawyer may provide to the accused, such as recommendations on the selection of procedures, application for the modification of compulsory measures, and offering opinions on the handling of the case. This is also evidence of the efforts that have been made in protecting the rights of the criminal defendants. Since courtroom interaction as an institutional discourse is power-laden and what's more, there are power hierarchies and great power asymmetry among the participants, which cause the differences of the participants' language power. The judge is on the top of the hierarchy because he or she is conferred the authority to try the case on behalf of the government; they are also legal professionals and have years or decades of trial experiences. In the process of a trial, they are also the most powerful in controlling the trial order, speaking turns, asking questions to all the other participants.[80] The public prosecutors are on the second level in the power hierarchy, since they are not so powerful in the controlling of the interactions as the judges, despite the same authority from the government, legal professional knowledge/experiences, or their knowledge about the whole story of the case. They comparatively have less power than the judge whereas more power than the advocates, witness, or the accused in controlling the interaction. On the third level of the power hierarchy are the advocates who represent the accused. As lawyers, they have legal professional knowledge and debating or defending experiences. They know part of the case story and have the rights to question the witnesses or the accused. The witnesses are on the fourth level, because they are basically legal laypersons and they do not ask questions but answer questions from all the upper participants except the accused. However, they know some of the case story and for some expert witnesses, they also

[79] "Biànlì", written as "便利" in Mandarin Chinese, can be used as a verb, an adjective or a noun. Here in the context of the Criminal Procedure Law of the People's Republic of China of 2018, it is used as a noun referring to the convenience of getting legal assistance from a duty lawyer. (Similar to the situation of "biànhù", the use of "Biànlì" as a noun also had not been included in the 7th Edition of Modern Chinese Dictionary, yet such use is common in Mandarin Chinese. Ying Zhang considers that some words in Mandarin Chinese are going through a change in their part of speeches, as there exists flexible use of verbs as nouns, therefore, this article believes that "biànhù" and "biànlì" are among these words. See Ying Zhang, *The Cross-class Part of Speeches and Flexible Usage of Verbs Used as Nouns in Modern Chinese*, 5(4) Journal of Social Science of Harbin Normal University 86, 86-9 (2014).

[80] A Chinese judge does not need the National Medical Licensing Examination, but confronting a criminal case might be a work, including medical certification and law knowledge. See Xiaofu Li & Xiaofan Li, *Exploring criminal responsibility of PTSD patients; findings from a survey in Chinese Mainland courts*, 178(5) Annales Me dico-Psychologiques 510, 515 (2020).

have professional knowledge on what they are required to prove. The most powerless are the defendants who have no authority from the government, no legal professional knowledge, no trial experiences, and no opportunities to question others. The power asymmetry among the participants would inevitably cause the unfair outcomes of the trial to the least powerful defendants. So, the increases of the frequencies of the collocation of "tígōng"+"biànhù"(defense), "fǎlǜzīxún" (legal advice), "fǎlǜbāngzhù" (legal assistance) and "biànlì" (convenience) indicate the ways to add more rights and power — including legal professional knowledge or assistance — to the defendants. This also suggests that the idea of criminal trial begins to shift from "investigation centrism" to "trial centrism" in Chinese Mainland, which is also an international trend.

4.2 Comparison between Chinese Mainland and Other Country

The outbreak of the COVID-19 pandemic has brought many changes to the world, including changes in criminal proceedings. In China and many other countries of the world, new approaches in criminal procedures have been implemented to protect the rights of criminal defendants during and after the pandemic. In the United Kingdom, the most immediate change in the criminal courts is the move from in-person hearings to "live link" audio or video hearings.[81] In the United Kingdom's Coronavirus Act 2020, Paragraph 2 of Schedule 23,[82] stipulates that "A person may, if the court so directs, take part in eligible criminal proceedings through — (a) a live audio link, or; (b) a live video link." Again, here the modal verb "may" be used to confer the right to use a live audio link or a live video link to the participants in judicial proceedings. The situation is similar in Chinese Mainland, as new approaches have also been implemented for criminal proceedings. Online litigation is a new mode of litigation in Chinese Mainland, as part of the product of the "smart justice" project. Its application during the pandemic becomes frequent. In the Notice by the Supreme People's Court of the People's Republic of China Strengthening and Regulating the Online Litigation Work during the Period of Prevention and Control of the COVID-19 outbreak, the Supreme People's Court of the People's Republic of China uses the verb "tígōng" (to provide) several times,[83] with which the court regulates the legal assistance and procedural aids litigants in online litigations during the pandemic ought to have. One example of the use of "tígōng" in this notification is presented below.[84]

> 七、当事人及其诉讼代理人通过电子化方式提交诉讼材料和证据材料的，经人民法院审核通过后，可以不再提交纸质原件。当事人及其诉讼代理人采取邮寄等方式提交纸质材料的，人民法院应当及时扫描录入案件办理系统。对提交的纸质原件材料，要及时立卷归档。人民法院应当积极引导当事人及其诉讼代理人提交电子化材料，为其**提供**(tígōng)平台支撑和技术便利。
>
> *Seven, if the litigation materials and evidentiary materials submitted*

[81] See Will Hays & Alex du Sautoy, *Criminal Justice in the Time of a Pandemic*, 25(2) Judicial Review 133, 133-50 (2020).
[82] See Paragraph 2 of Coronavirus Act 2020, Schedule 23, https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted (accessed on July 25, 2021).
[83] See Supreme People's Court of China, *Notice by the Supreme People's Court of Strengthening and Regulating the Online Litigation Word during the Period of Prevention and Control of the Covid-19 Outbreak*, http://www.court.gov.cn/fabu-xiangqing-220071.html (accessed on July 25, 2021).
[84] Ibid.

through electronic means by the parties and their agents ad litem are reviewed and approved by the people's court, submission of paper originals is optional. If a litigant and his/her agent ad litem submit paper materials by mail, the people's court shall promptly scan and type the materials in the case processing system. The submitted original paper materials need to be filed in a timely manner. People's courts should actively guide the parties and their agents ad litem to submit electronic materials, and ***provide*** *them with supporting platforms and technical convenience.*

The use of "may" in the United Kingdom's Coronavirus Act 2020 and the use of "tígōng" in the Supreme People's Court of the People's Republic of China's notification both reflect the protection and consideration for the rights of trial participants during the pandemic. For criminal defendants, such consideration and protection are even more vital, as the right to go through online criminal proceedings prevents the risk of getting infected or experiencing extended detention.

4.3 Analysis and Findings of Discursive Practice Dimension

The discursive practice dimension in Fairclough's framework focuses on the production, distribution, and consumption of a text. For the analysis of discursive practice, Fairclough emphasized the analysis of intertextuality, because it links the text and the social practice behind it. Therefore, this article analyzes the four versions of the Criminal Procedure Law of the People's Republic of China from the perspective of intertextuality. In Discourse and Social Change, Fairclough provides the definition for intertextuality and offers several examples. According to Fairclough, intertextuality is basically the property the texts have of being full of snatches of other texts, which may be explicitly demarcated or merged in, and which the text may assimilate, contradict, ironically echo, and so forth.

Fairclough differentiates two types of intertextualities: manifest intertextuality and constitutive intertextuality (also known as interdiscursivity). In manifest intertextuality, other texts are explicitly present in the text under analysis. The constitutive intertextuality refers to the configuration of discourse conventions that go into its production. Manifest intertextuality focuses on the existence of quotation or speech reporting in a text, while interdiscursivity concerns the configuration of genres, styles and discourse types of the text in discussion and other texts. The analysis below focuses on both types of intertextualities involving the Criminal Procedure Law of the People's Republic of China, and the elements of intertextuality, such as genre, text structure and text function will be analyzed. When employing the intertextuality approach to analyze a discursive practice, it is also important to understand and interpret the power relations in the discourse.[85] Therefore, the power relations involved in the drafting and reforming of the Criminal Procedure Law will also be discussed in this section.

In a broad sense, the four versions of the Criminal Procedure Law of the People's Republic of China are interrelated with each other, and at the same time, they are in conversation with other texts, such as other domestic laws and international laws. These two kinds of relationships both need to be considered when analyzing the intertextuality of the Criminal Procedure Law.

From the perspective of constitutive intertextuality, the relationship between the four versions of the Criminal Procedure Law of the People's Republic of China provides a good example. First, they are of the same genre, which is the legislative

[85] See supra note 33.

text. This type of genre has its special functions, social image, as well as structure of text. The primary function of legislative text is to regulate people's behaviors and maintain social order, and to make sure that legislative texts function effectively, an authoritative and positive image of their needs to be constructed. Just as one scholar pointed out, the image of legal language is presumed as rational, universal, scientific, accurate, certain, predictable, and repeatable. When drafting legislative texts, legislators have the purpose of constructing such a positive image for the laws and the legislature.

To achieve this goal, corresponding methods are employed to maintain the unity and consistency of the formal features of legislative texts, such as the structure of text. As Sarcevic mentions, legislative texts are very similar in text structures, and a legislative text generally includes three parts: preliminary provisions, principal provisions, and final provisions.[86] Except for the Criminal Procedure Law of the People's Republic of China of 1979, the other three amendments all share this structure of text arrangement mentioned by Sarcevic. More specifically, in the four versions of the Criminal Procedure Law of the People's Republic of China, articles are first organized into chapters, and chapters are then organized into parts. This kind of article-chapter-part organization is consistent throughout the reform of the Criminal Procedure Law of the People's Republic of China, and this stylistic feature is important in constructing an authoritative image for the law as well as our legislature. From the perspective of manifest intertextuality, the Criminal Procedure Law of the People's Republic of China is in close relationship with criminal procedure rules and Constitution rules, due to its procedural nature. In Article 1 of the four versions, it is regulated that "this law is enacted in accordance with the Constitution…". This direct reference to the Constitution shows that the Constitution is the basis and foundation of criminal procedure rules, and changes in the Constitution might influence the amendment of the Criminal Procedure Law of the People's Republic of China. For example, the principle of "Respecting and Protecting Human Rights" was written into the Constitution of the People's Republic of China of 2004, and this same principle is also added in the Criminal Procedure Law of the People's Republic of China of 2012. As for the intertextuality between criminal rules and criminal procedure rules, the Criminal Procedure Law of the People's Republic of China of 1996, and the following amendments after it explicitly regulate in Article 1 that the enactment of the Criminal Procedure Law of the People's Republic of China is for "the purpose of ensuring correct enforcement of the Criminal Law".

In other words, the Criminal Procedure Law assists the Criminal Law in its enforcement and plays a supporting role. This adjustment made in the Criminal Procedure Law of the People's Republic of China of 1996 demonstrates that procedural justice began to gain attention in Chinese judicial process in 1990s. Through the intertextuality analysis, it can be seen the four versions of the Criminal Procedure Law of the People's Republic of China are not entirely independent, and in fact, they are in a web of other texts.

Behind the relationship between the Criminal Procedure Law of the People's Republic of China and other texts, there are institutions and special power relations involved in the judicial process. The unity of text structure as well as the reference to other legislative texts mentioned before reflects the thought and aim of the legislators. As producers of legislative texts, legislators represent the authority of public power, and they should consider conditions concerning the texts, the participants in the legal

[86] See Susan Sarcevic, *New Approach to Legal Translation*, Kluwer Law International, p.127 (1997).

contexts, and the overall image of legislature and judiciary organs in Chinese Mainland. In the context of the Criminal Procedure Law of the People's Republic of China, the relationship between participants becomes a crucial question for legislators during the legislative process. Although the four versions of the Criminal Procedure Law of the People's Republic of China discussed in this article were made by legislators of different periods of time, they all involve two types of receivers: legal professionals and laypersons (including suspects). The legal professionals, such as judges, lawyers, and public prosecutors are experienced in criminal proceedings and their legal knowledge is far beyond laypersons. As argued in previous sections, this fact results in the asymmetric power relation in criminal trials, as legal professionals can exercise more control over suspects and other laypersons due to the power generated by the legal knowledge they have or the authority they have in the context of criminal proceedings. In contrast, suspects and other laypersons who are unfamiliar with trials and lacking legal knowledge, are placed at a lower position in the power hierarchy and remain rather passive. To let criminal suspects, have more power and offer them more protection in criminal trials, the Criminal Procedure Law needs to confer more rights to them, and the previous textual and intertextuality analysis have proved such progress. With more rights conferred to criminal defendants by law, either allowing them to seek legal aid in criminal proceedings or to defend and express themselves more in court, those suspects can get more power, and come to a comparatively higher position in the power hierarchy. These rights conferred to them, to a certain degree, can make up for their lack of legal knowledge and experience and enable them to have more control over topics and content that are argued during criminal trials.

4.4 Analysis and Findings of Social Practice Dimension

Such a phenomenon suggests a sign of international convergence in criminal procedural rule reforms, which happen in the specific social and political contexts of different periods in the development in Chinese Mainland.

The market economy is undoubtedly one key element that promotes this trend of international convergence in criminal procedural rule reforms. First of all, the market economy is a free economy, which fosters the development a pluralistic concept of rights among citizens. As people begin to reflect on the relation between individual rights and the public power, they are likely to evaluate the advantages and disadvantages of both individual-oriented concept of rights and social-oriented concept of rights. Through this process, a pluralistic and comprehensive understanding of rights can be formed.[87] As a result, such a pluralistic concept of rights has become popular among many people since the Reform and Opening-Up Policy, and people's awareness and understanding of rights get updated gradually. Besides, the market economy also emphasizes the importance of equality in opportunity, instead of the equality in results, and this particular feature of market economy also encourages the international transplanting of laws that help protect the rights of individuals and uphold justice.

The development of socialist democracy and rule of law also encourages the trend of international convergence in criminal procedural rule reforms. Equality, freedom, and openness are important concepts of democracy, they imply the need to establish the rule of law that transcends blood and geographical ties and confronts

[87] See supra note 2.

power and privilege.[88] The rule of law requires all aspects of society to be regulated by law. In terms of the relationship between state power and citizens' rights and interests, the rule of law requires that any deprivation of citizens' rights and interests by the state should have a proper legal basis and legal procedure. This point is of special importance in criminal proceedings, as the accused in criminal proceedings is obviously in an asymmetric power relation and faces the risk of being manipulated by legal professionals with more power and legal knowledge. Therefore, the rule of law also requires that the accused should be allowed to confront the state prosecution institutions to effectively resist the illegal abuse of public power.[89] Meanwhile, as China has signed and ratified more and more international treaties concerning human rights, it becomes the duty as a state member to facilitate the protection of citizens' rights in aspects of social life and contribute to the international human rights movement. The protection of the rights of the accused in criminal proceedings is one important component in human rights development.[90]

To sum up, the past few decades have witnessed great changes in all dimensions of social life, especially the development of market economy, socialist democracy, and the rule of law in Chinese Mainland. Changes in these social and political aspects of China bring many modern concepts and awareness to the people, including a pluralistic concept of rights, the concept of equality in opportunity. As people's perceptions of rights and law change accordingly, China's legal system and laws and regulations also need to change, to better adapt to people's needs. Hence, advanced experiences of other jurisdictions concerning the protection of individual rights provide with possible solutions and methods. This is the major background factor behind the international transplanting process happening in criminal procedural rule reforms. Besides, another factor that brings this trend of international convergence is the role of China in international interaction. As more and more frequently participate in international cooperation, China plays an active role, and the international treaties and conventions ratified require China to perform duties properly. Among these duties, protecting human rights is one key component.

5. Conclusion

Based on Fairclough's framework, a critical discourse analysis of the four versions of the Criminal Procedure Law from 1979-2018 is carried out in this article, and three types of verb phrase structures are examined: "k ě yǐ+X" (may+X), "yǒuquán+X" (have the right to+X) and "tígōng+X" (provide+X). The analysis shows that the frequencies of these phrases increase in latter versions of the Criminal Procedure Law of the People's Republic of China, and their collocations also become more diverse in range. Since these three types of phrases are closely related to the rights conferred to the criminal defendants, our findings suggest that in China's criminal procedural rule reforms, more protection and attention are given to the defendants' rights and more efforts are made to restrain public power. Such change in the focus of human rights of the accused indicates that there is a sign of international convergence in the reforms of the Criminal Procedure Law of the People's Republic of China. This sign of convergence appears in the context of legal globalization, market economy, socialist democracy, and rule of law, and is influenced by the active

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[88] See supra note 2.
[89] See supra note 15.
[90] See Di Li, *Restorative Justice, Impunity and Amnesty in International Criminal Law*, 1(1) Foundation for Law and International Affairs Review 21, 21-5 (2020).

role China plays in global interactions. As a result, criminal defendants get more rights guaranteed by the Criminal Procedure Law of the People's Republic of China nowadays when going through criminal proceedings. Even during the hard times of the COVID-19 pandemic, the judiciary has also facilitated the implementation of new approaches in criminal proceedings to protect criminal defendants' rights.

Determining Illegal Expropriation of IP-related Investment in ISDS

Ruisi Peng[1]

Abstract: Most countries have concluded bilateral investment treaties and free trade agreements containing investment chapters. In these bilateral investment treaties and free trade agreements, intellectual property is regarded as a type of investment. Many bilateral investment treaties and free trade agreements explicitly contains the item of "intellectual property". While some others only define "intangible property" as one type of investment with tacitly approving intellectual property laid in the scope of "intangible property". Thus IP-related rules are playing an important role in bilateral investment treaties and free trade agreements, which make host countries protecting IP-related investment from being expropriated. In cases of Philip Morris v. Uruguay and Eli Lily v. Canada, intellectual property investors had recourse to Investor-State Dispute Settlement arbitration on the basis of investment-related rules in bilateral investment treaties and free trade agreements. The controversial issues in such two cases are whether host countries taking IP-related regulatory measures concerning tobacco control legislation (in Philip Morris v. Uruguay) and patent granted standards (in Eli Lily v. Canada) violated expropriation clauses that prohibiting illegal expropriation in bilateral investment treaties and free trade agreements. Investment arbitration tribunals dismissed investors' allegations and rendered awards to the effect that host countries' these measures were not illegal expropriation. However, investment arbitration tribunals did not clearly weigh economic benefits in IP-related investment against public health interests in enforcing IP-related measures. For the balance that giving considerations to economic benefits in IP-related investment and public health interests, more balanced legal approaches can be taken. For instance, the Agreement for the Regional Comprehensive Economic Partnership and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership tried to strike a balance between host countries and foreign investors. Such rules should be consciously strengthened in further conclusion of treaties.

Key Words: Investor-State Dispute Settlement; IP-related Investment; Illegal Expropriation; the Regional Comprehensive Economic Partnership; the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

1. Introduction

In the bilateral investment treaty (hereinafter referred to as BIT) between the Federal Republic of Germany and Pakistan, which was signed in 1959, there defined patents including techniques and inventions as one type of investment.[2] It is the era of knowledge-based economy, which has resulted in a more and more important role of knowledge-based investment on international economic cooperation, and competitions on the development of proprietary intellectual property (hereinafter referred to as IP) rights are increasingly fierce among countries as well as transnational corporations.[3]

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[1] Ruisi Peng, Ph.D. candidate in KoGuan School of Law at Shanghai Jiao Tong University.

[2] See Article 1 of Germany-Pakistan BIT, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/1732/germany---pakistan-bit-1959- (accessed on December 25, 2021).

[3] See Amir Ullah Khan &Aarti Bharadwaj, *Protecting Intellectual Property Rights and Promoting*

In this context, many international investment agreements have stipulated those intangible properties are an investment under the definition clauses, which explicitly contains the item of "IP". While some other agreements just only define "intangible property" as one type of investment, but they tacitly approve IP laying in the scope of "intangible property". In this sense, it has reached the consensus that IP belongs to the "investment" mentioned in international investment agreements, where IP has been an object of investment protection articles.

Carlos M. Correa and Jorge E. Viñuales have indicated that the "IP",[4] which is usually defined as an "investment" in international investment agreements, was required to embody the inner characteristics of investment liberalization and investment promotion. In other words, the definition of "IP" as an investment is not just to follow the existing requirements in TRIPS and IP chapters of free trade agreements (hereinafter referred to as FTAs) without change. In this regard, "IP" as an investment must be qualified for the existing IP rights in accordance with domestic laws of host countries,[5] and be equipped with attributes of "investment" conforming to the relevant rules in international investment agreements,[6] as well as the business circumstances of IP-related investment in host countries.[7] Susy Frankel discussed the investor-state dispute settlement (hereinafter referred to as ISDS) investment arbitration tribunals' position on determinations of IP-related investment disputes,[8] in the light of teleological interpretation of Vienna Convention on the Law of Treaties 1969 as well as the trend where a broader interpretation towards "investment" of BITs and FTAs led by ISDS arbitration tribunals. Thus, such articles above have showed out the actual eligibility of IP being an investment both in international investment agreements and ISDS practice.

According to the paper of case study issued by International Centre for Trade and Sustainable Development,[9] one growing trend in IP-related investment protection of 1990s was illustrated and expected to continue, in which international investment agreements (mainly in forms of BITs and FTAs) are tending to introduce host countries' TRIPS/TRIPS-plus obligations into investment protection obligations through adding the TRIPS/TRIPS-plus rules into the expropriation clauses of BITs and FTAs. Furthermore, the Organization for Economic Co-operation and Development has made the summary of IP-related investment articles in the BITs and

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Economic Growth: Is it Really a Chicken and Egg Story, 3(1) Review of Market Integration 69, 69-70 (2011).

[4] See Carlos M. Correa & Jorge E. Viñuales, *Intellectual Property Rights as Protected Investments: How Open are the Gates?*, 19(1) Journal of International Economic Law 91, 91-120 (2016).

[5] See Dany Khayat &William Ahern, *Reliance on Investment Treaty Standards to Claim for Failures to Recognize or Protect Intellectual Property Rights*, 3(2) BCDR International Arbitration Review 399, 406-9 (2016).

[6] See Siegfried Fina & Gabriel M. Lentner, *The European Union's New Generation of International Investment Agreements and Its Implications for the Protection of Intellectual Property Rights*, 18(1) Journal of World Investment &Trade 271, 284-5 (2017).

[7] See Ruth L. Okediji, *Is Intellectual Property "Investment"? Eli Lily v. Canada and the International Intellectual Property System*, 35(4) University of Pennsylvania Journal of International Law 1121, 1126-7 (2014).

[8] See Susy Frankel, *Interpreting the Overlap of International Investment and Intellectual Property Law*, 19(1) Journal of International Economic Law 121, 121-43 (2016).

[9] See Pedro Roffe & David Vivas et al., *Maintaining Policy Space for Development: A Case Study on IP Technical Assistance in FTAs*, International Centre for Trade and Sustainable Development Programme on IPRs and Sustainable Development Series Issue Paper No.19, pp.1-15 (2007).

FTAs among its member states.[10] Thus it is obvious that the protection of IP-related investment has been strengthening whereas the risk of national regulatory power being infringed has been rising accordingly.[11]

Besides that above, James Hosking and Markus Perkams have pointed out the phenomena,[12] where the territory of institutional autonomy that members allowed in TRIPS has been eroded and even wiped out in the conclusion of recent BITs and FTAs, and so it is with the paper of Betram Boie.[13] Such phenomena are bound to make a remarkable legal requisition on IP protection going beyond TRIPS standards, which can not only consolidate but enhance the track of contracting parties exercising TRIPS-plus rules in the protection of IP-related investment.

All of the above have outlined the blueprint where international investment agreements and rules in international protection of IP have taught each other, mixed together and interacted, indicating the necessity and objectivity of IP-related investment protection being considered in the application of international investment agreements. In the beginning of IP-related investment disputes resolutions, domestic judicial remedies were in the dominance, the consequences of which came out either the failure of claimants (investors) or the compromise made by claimants (investors) to respondents (host countries).

Compared with the ISDS mechanism, the domestic judicial remedies has made a broader and more flexible space for host countries realizing autonomy deriving from the sovereign of states, which has showed out more varied requirements or standards in IP-related investment protection catering to different domestic regulations.[14] In order to promoting the consistency and predictability of IP-related investment disputes resolution, foreign investors involved in such disputes are more and more appealing to ISDS arbitration tribunals, which have resulted in the cases of Philip Morris v. Uruguay and Eli Lily v. Canada.

By means of ISDS mechanism, foreign investors in cases of Philip Morris v. Uruguay and Eli Lily v. Canada, can challenge host countries' IP-related regulatory measures, such as tobacco control legislation (in Philip Morris v. Uruguay) and patent granted standards (in Eli Lily v. Canada). In their challenges, investors tended to introduce host countries' TRIPS/TRIPS-plus obligations into investment protection obligations in BITs and FTAs. Investors alleged that host countries taking IP-related regulatory measures violated expropriation clauses in BITs and FTAs, for the impairment and deprivation of economic benefits in IP-related investment. But host countries argued that IP-related regulatory measures are aimed at safeguarding public health interests. Investment arbitration tribunals decided that host countries have regulatory power to take these measures, which do not violate expropriation clauses.

For the review of relevant literature on illegal expropriation of IP-related

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[10] See Lahra Liberti, *Intellectual Property Rights in International Investment Agreements: An Overview*, OECD Working Paper on International Investment, pp.4-37 (2010).

[11] See Rochelle Dreyfuss & Susy Frankel, *From Incentive to Commodity to Asset: How International Law Is Reconceptualizing Intellectual Property*, 36(4) Michigan Journal of International Law 557, 566 (2015).

[12] See James Hosking & Markus Perkams, *The Protection of Intellectual Property Rights through International Investment Agreements: Only a Romance or True Love?*, 6(2) Transnational Dispute Resolution 1, 1-26 (2009).

[13] See Betram Boie, *The Protection of Intellectual Property Rights through Bilateral Investment Treaties: Is There a TRIPS-plus Dimension?*, World Trade Institute Working Paper No.2010/19, pp.4-50 (2010).

[14] See Christopher F. Dugan & Noah D. Rubins et al., *Investor-State Arbitration*, Oxford University Press, p.340 (2008).

investment, there are books which have referred to some discussions on illegal expropriation of IP-related investment in international investment agreements as well as the ISDS mechanism. One of such books is the collaborative work of Tania Voon and Andrew D. Mitchell,[15] while another is written by Valentina Vadi.[16] In the two books, the IP-related investment disputes on illegal expropriation in foreign investors' cigarettes trademarks versus host countries' tobacco control legislation and pharmaceutical products patents versus patent granted standards were discussed. In the authors' eyes, host countries would take such IP-related regulatory measures on the purpose of public health interests, but it must be in an appropriate way.

Furthermore, Christophe Geiger has edited a handbook where a group of scholars' articles on the themes relating to both IP and international investment law are gathered.[17] The handbook has discussed in outline the necessity and flexibility of host countries regulating IP-related investment to foster public interests and realize non-economic value in accordance with the TRIPS Agreement, and also has aimed at providing background works for the drafting of IP-related rules in future international investment agreements as well as the implementation of a more balanced solution to IP-related investment disputes in ISDS mechanism promisingly. However, such books just mentioned the IP-related investment disputes on illegal expropriation in a more general way, more details still need to be gone into. Especially the discussion on connotations of the contradiction between economic benefits in IP-related investment and public health interests should be extended.

Furthermore, the article of Suzanne A. Spears discussed the definition of "investment" in international investment agreements, and also mentioned the contradiction in value judgement between public power of host countries and private right of foreign investors in determinations of illegal expropriation.[18] And Bryan Mercurio also focused on the public health-related rules in international investment agreements, advocating the balance between investors' rights and the power of host countries in the application of relevant BITs as well as FTAs on conditions that expropriation-related investment disputes occurring.[19] The two articles have highlighted the dispute focal point when arbitration tribunals intended to make decisions on illegal expropriation of IP-related investment, which also would be the dilemma in determinations of arbitration tribunals facing the expropriation-related disputes of IP-related investment. In other words, the two articles have made the very sense to indicate the further research issue of how the ISDS arbitration tribunals weighing economic benefits in IP-related investment against public health interests.

There were also articles mentioned disputes on illegal expropriation of IP-related investment in ISDS mechanism. Gabriele Gagliani has illustrated that the arisen cases of Philip Morris v. Uruguay and Eli Lily v. Canada are shaping the way where foreign investors expect to challenge host countries' IP-related regulatory measures for illegal

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[15] See Tania Voon & Andrew D. Mitchell et al., *Public Health and Plain Packaging of Cigarettes: Legal Issues*, Edward Elgar, pp.173-99 (2012).

[16] See Valentina Vadi, *Public Health in International Investment Law and Arbitration*, Routledge, pp.63-125 (2012).

[17] See Christophe Geiger & Henning Grosse Ruse-ayan et al., *Research Handbook on Intellectual Property and Investment Laws*, Edward Elgar, pp.207-527 (2020).

[18] See Suzanne A. Spears, *The Quest for Policy Space in a New Generation of International Investment Agreements*, 13(4) Journal of International Economic Law 1037, 1037-75 (2010).

[19] See Bryan Mercurio, *Awakening the Sleeping Giant: Intellectual Property Rights in International Investment Agreements*, 15(3) Journal of International Economic Law 871, 871-915 (2012).

expropriation of IP-related investment through ISDS mechanism.[20] The article of Valentina Vadi,[21] as well as the article where Caitlin Pley, Maarten Rutger van der Heijden and Charlotte Tulinius[22] as a co-writing credit both talked about the case of Philip Morris v. Uruguay, reflecting that the tobacco company (Philip Morris Corp.) would continue to make use of the ISDS mechanism to support for economic benefits in its cigarette trademarks-related investment, which the host country (Uruguay) treated as a threat to the erosion in the territory of its public health interests and the deprivation of investment regulation derived from its police power, if Uruguay taking tobacco control legislation measures were considered as illegal expropriation. Similarly, Brook K.Baker and Katrina Geddes,[23] along with Jason Yackee and Shubha Ghosh,[24] have displayed the probable relevancy among "promise utility doctrine" rules, invalidation of pharmaceutical patents made by domestic court and illegal expropriation of pharmaceutical patents-related investment, through narrating the case of Eli Lily v. Canada.

In conclusion, despite the articles above mentioned the cases of Philip Morris v. Uruguay and Eli Lily v. Canada, more systematic and detailed discussions on positions of disputing parties as well as arbitration tribunals' determinations towards illegal expropriation of IP-related investment in the two cases still need to be consolidated and reinforced. Furthermore, considering the fragmentation of current international investment agreements and individual case expression of ISDS investment arbitration tribunals' awards,[25] the determinations on illegal expropriation of IP-related investment depend largely on arbitration tribunals implementing behaviors of treaty interpretation in accordance with relevant BITs and FTAs. Besides the relevancy of TRIPS/TRIPS-plus rules and international investment agreements as well as economic benefits in IP-related investment versus public health interests, it will be necessary for scholars to further concern about and promote the discussion on arbitration tribunals' interpretation and determinations towards expropriation-related disputes of IP-related investment in ISDS mechanism. In addition, the instrumental existence of provisions referring to IP-related investment and public health-related rules in BITs and FTAs, which contributes to arbitration tribunals making decisions on illegal expropriation of IP-related investment and weighing economic benefits in IP-related investment against public health interests, also need to be expounded.

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[20] See Gabriele Gagliani, International Economic Disputes, *Investment Arbitration and Intellectual Property: Common Descent and Technical Problems*, 51(2) Journal of World Trade 335, 346 (2017).

[21] See Valentina Vadi, *Global Health Governance at a Crossroads: Trademark Protection v. Tobacco Control in International Investment Law*, 48(1) Stanford Journal of International Law 93, 93-130 (2012).

[22] See Caitlin Pley & Maarten Rutger van der Heijden, *A Health Professional's Guide to the Intersection of Public Health with Intellectual Property Rights in Trade and Investment: The Case of Tobacco Plain Packaging*, 41(1) Journal of Public Health Policy 52, 52-62 (2020).

[23] See Brook K. Baker & Katrina Geddes, *The Incredible Shrinking Victory: Eli Lily v. Canada, Success, Judicial Reversal and Continuing Threats from Pharmaceutical ISDS*, 49(2) Loyola University Chicago Law Journal 479, 479-513 (2017).

[24] See Jason Yackee & Shubha Ghosh, *Eli Lilly and the International Investment Law Challenge to a Neo-Federal IP Regime*, 21(2) Vanderbilt Journal of Entertainment and Technology Law 517, 517-48 (2018).

[25] See Campbell Mclachlan, *Investment Treaties and General International Law*, 57(2) International and Comparative Law Quarterly 361, 363 (2008); Charles N. Brower & Stephan W. Schill, *Is Arbitration a Threat or a Boon to the Legitimacy of International Investment Law?*, 9(2) Chicago Journal of International Law 471, 473-87 (2009).

2. Positions of Claimants and Respondents in Determining Illegal Expropriation

From the late 1990s, the school of theory on economics known as "neo-liberalism" has been in a fading display.[26] In eyes of parties in a market economy, to gain economic benefits is no longer the whole idea for their participation in the market, but to make and promote coordinated growth between economic benefits and public interests including public health protection is the deal. Based on this background, the objective of international investment agreements is not significantly partial to investment liberalization and investment promotion, but contributes to realizing a more balanced development between public power of host countries and private right of foreign investors.[27]

Generally speaking, developed countries, which are in the position of capital-exporting countries, more tend to make their domestic investors investing into other countries where an open and fair market can exist for all investors in the territories.[28] While developing countries, which are in the position of capital-importing countries, usually more focus on their regulating on foreign investment when foreign investment inflow.[29] Whereas such separated positions between developed countries and developing countries has been no longer clear since the early 2000s.

For developed countries, they are beginning to defense against expropriation-related claims of investors from the emerging economies among developing countries, with more and more concentrating on the "police power" of host countries in ISDS mechanism, which have taken the position of capital-importing countries into account.[30] For developing countries, especially the emerging economies of which, have an increasing economic strength to invest in developed countries, obviously catering to the position of capital-exporting countries.[31] With both developed countries and emerging economies increasingly showing out the mixture position of capital-exporting and capital-importing countries, the pursuit in realizing the balance between economic benefits of foreign investors and public interests of host countries will be outstanding and continue to be promoted.

In the practice of ISDS arbitration, there have existed two typical cases where arbitration tribunals concluded the expropriation-related disputes of IP-related

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[26] See Ian Bremmer, *The End of the Free Market: Who Wins the War between States and Corporations?*, 9(4) European View 249, 249-52 (2010).

[27] See Kenneth J. Vandevelde, *Sustainable Liberalism and the International Investment Regime*, 19(2) Michigan Journal of International Law 373, 375-98 (1998); Andrew Newcombe, *Sustainable Development and Investment Treaty Law*, 8(3) Journal of World Investment and Trade 357, 368-405 (2007).

[28] See Jeswald W. Salacuse, *The Emerging Global Regime for Investment*, 51(2) Harvard International Law Journal 427, 427-73 (2010); Jeswald W. Salacuse, *The Law of Investment Treaties*, Oxford University Press, pp.115-7 (2010).

[29] See Andrew T. Guzman, *Why LDCs Sign Treaties that Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38(4) Virginia Journal of International Law 639, 667-73 (1998); Jeswald W. Salacuse & Nicholas P. Sullivan, *Do BITs Really Work? An Evaluation of Bilateral Investment Treaties and Their Grand Bargain*, 46(1) Harvard International Law Journal 67, 72 (2005).

[30] See Julia Hueckel, *Rebalancing Legitimacy and Sovereignty in International Investment Agreements*, 61(3) Emory Law Journal 601, 616-8 (2012).

[31] See Congyan Cai, *China-US BIT Negotiations and the Future of Investment Treaty Regime: A Grand Bilateral Bargain with Multilateral Implications*, 12(2) Journal of International Economic Law 457, 457-506 (2009).

investment with express or not implied representations, known as the cases of Philip Morris v. Uruguay and Eli Lily v. Canada. In such two cases, Philip Morris Corp. as well as Eli Lily and Co.'s have alleged that, host countries taking IP-related regulatory measures concerning tobacco control legislation (in Philip Morris v. Uruguay) and patent granted standards (in Eli Lily v. Canada) violated expropriation clauses that prohibiting illegal expropriation in Switzerland-Uruguay BIT and North American Free Trade Agreement (hereinafter referred to as NAFTA), which are the position of foreign investors expecting ISDS arbitration tribunals to ensure their economic benefits in IP-related investment. Whereas Uruguay and Canada have just defensed the allegations above, asking ISDS arbitration tribunals to respect and maintain their public health interests for both the justice and legitimacy of IP-related regulatory measures.

As thus, we can recognize the existence and thoroughly understand the objectivity of economic benefits in IP-related investment versus public health interests, through the cases study of Philip Morris v. Uruguay and Eli Lily v. Canada. Also, we are expected to be given some enlightenment in weighing economic benefits in IP-related investment against public health interests, in the analyses of parties' positions as well as tribunals' determinations on the expropriation-related disputes of IP-related investment.

2.1 Investors' Allegations against Host Countries' Illegal Expropriation

2.1.1 The claimant's allegations in Philip Morris v. Uruguay

In case of Philip Morris v. Uruguay, Article 3 of the Ordinance 514 required the tobacco products in Uruguay must have been a single presentation of its brand, which led to the prohibition of using multiple presentations of any brand. In fact, tobacco companies could market variant presentations for each family brand before Uruguay issuing the Ordinance 514. For example, Philip Morris ran Marlboro Red, Marlboro Light, Marlboro Blue and Marlboro Green (Fresh Mint) for the Marlboro family brand, three of which were taken off the Uruguay market based on Ordinance 514.

Meanwhile, Uruguay also promulgated a Decree 287/009. In the Decree, an increasing proportion in the size of health warnings on cigarette packages is imposed, which illustrates 80% of the surface of packages containing front and back. Obviously, Decree 287/009 prevented Philip Morris Corporation (Philip Morris Corp.) from displaying their trademarks in the original form. That was to say, Decree 287/009 discouraged Philip Morris Corp. from exercising trademark rights in TRIPS. In position of investors (Philip Morris Corp.),[32] the "single presentation" requirements of Ordinance 514 and the 80% (health warnings) requirements of Decree 287/009 had no causal relationship with getting rid of tobacco products which were false, misleading, deceptive or probably making an erroneous impression both on its characteristics and health effects.

On the one hand, Ordinance 514 caused a decrease in the sales of tobacco products for rendering Philip Morris Corp. stopping selling a multiple number of its product varieties. On the other hand, Decree 287/009 discouraged large categories of perfectly acceptable and desirable advertisements through packaging and labeling of tobacco products. Actually, the enforcement of Ordinance 514 and Decree 287/009

[32] Philip Morris Corp. contains Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) in case of Philip Morris v. Uruguay.

resulted in deprivation of trademark rights (IP rights) and impairment of the value in IP-related investment which would have made Philip Morris Corp. sustaining notable and substantial losses.[33] In Philip Morris Corp.'s points, Uruguay implemented Ordinance 514 and Decree 287/009 causing illegal expropriation of their IP-related investment, which violated Article 5(1) in Agreement between the Swiss Confederation and the Oriental Republic of Uruguay on the Reciprocal Promotion and Protection of Investments (the Switzerland-Uruguay BIT).[34]

2.1.2 The claimant's allegations in Eli Lily v. Canada

In case of Eli Lily v. Canada, the applicable investment treaty was mainly NAFTA. Article 1110(1) in NAFTA forbad illegal expropriation of investment or measures tantamount to expropriation unless that for a public purpose.[35] In position of investors (Eli Lily and Company), Canada granted patents protecting Eli Lily and Company's (Eli Lily and Co.'s) pharmaceutical products of Strattera and Zyprexa in 1990s, which complied with Canada's obligations according to the utility standard required under NAFTA. However, the court in Canada invalidated Eli Lily and Co.'s pharmaceutical products patents by applying a updated and unique "promise utility doctrine", including non-statutory disclosure obligations more additional than NAFTA standard (that evidence of utility not being disclosed in patent itself as long as patent having some industrial purpose without inoperable),[36] for lacking the necessity on public purpose.

For the sake of Eli Lily and Co., Canada granted Eli Lily and Co.'s pharmaceutical products patents in the 1990s, so as to "provide adequate and effective protection and enforcement of IP rights".[37] In this way, such medicine approved safe and being commercially successful. For the sake of the public, these pharmaceutical products treating attention-deficit hyperactivity disorder, and schizophrenia and related psychotic disorders, helping hundreds of thousands of patients in Canada as well as selling copies of the very same medicines being gradually allowed, all above of three contributed to increasing public health interests. It is said that patents licensing can be identified as transaction contract based on benefits/interests exchange between investors (Eli Lily and Co.) and host countries (Canada).[38]

According to Eli Lily and Co.'s position, the court in Canada invalidating the patents of Eli Lily and Co.'s pharmaceutical products by "promise utility doctrine" was contrary to NAFTA obligations towards protection of patent rights and had resulted in illegal expropriation in Article 1110 of NAFTA.

2.1.3 Economic benefits in IP-related investment

On the one hand, theory on Economics of Tobacco holds that production costs in the tobacco industry are of high homogeneity, thus key factors affecting sales of tobacco products lay actually in how to make consumers buy more through strong

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[33] See Philip Morris Brands Sarl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID Case No.ARB/10/7, Award, paras. 70-2, 180, 193-5.

[34] Id., at paras. 182-3.

[35] See Article 1110(1) of NAFTA, https://www.trade.gov/north-american-free-trade-agreement-nafta (accessed on December 24, 2021).

[36] See Eli Lilly and Company v. Canada, ICSID Case No. UNCT/14/2, Notice of Arbitration, paras. 35-6.

[37] See Article 102(1)(d) of NAFTA.

[38] See Adam Mossoff, *Rethinking the Development of Patents: An Intellectual History, 1550-1800*, 52(6) Hastings Law Journal 1255, 1313 (2001).

brand recognition,[39] which lead to tobacco company taking great efforts in design and presentation of products brands along with protection of trademark rights. In case of Philip Morris v. Uruguay, it was the main reason that Philip Morris Corp. alleged the economic benefits in IP-related investment so much.

On the other hand, research and development in medicine need higher costs, more inputs and longer periods. Medicine does closely relate to the health and survival of human being which is not only basic but also urgent around the world.[40] And ensuring that patentee obtain monopolistic economic benefits to be involved in developing new medicine, governments can grant some medicine patents,[41] in form of which patentee exercise right to prohibit other behaviors from producing, using and selling medicine products in commercial or related ways.[42] These shows that pharmaceutical companies (as investors) are likely to gaining robust profits in host countries giving protection to patents. In case of Eli Lily v. Canada, it was the main reason that Eli Lily and Co. alleged the economic benefits in IP-related investment so much.

Furthermore, in the cases of Philip Morris v. Uruguay and Eli Lily v. Canada, besides investors' claims on host countries impairing and depriving economic benefits in IP-related investment relating to trademarks and patents, foreign investors also believed that host countries protecting IP-related investment would be positive further. Namely, the Switzerland-Uruguay BIT and NAFTA should have realized the goal of IP-related investment promotion,[43] which would become a noteworthy effect in international investment agreements.[44] In this sense, once host countries' IP-related regulatory measures possibly make negative impacts on investors' expectations of economic benefits in IP-related investment, ISDS arbitration on illegal expropriation will be initiated.

2.2 Host Countries' Defense against Investors' Allegations

2.2.1 The respondent's defenses in Philip Morris v. Uruguay

In case of Philip Morris v. Uruguay, Article 2(1) of the Switzerland-Uruguay BIT indicated that host countries would exercise police power to protect public health interests against economic benefits in IP-related investment, which allowed the contracting parties to restrict and refuse IP-related investment for "reasons of public security and order, public health or morality".[45] In position of host country (Uruguay), its taking regulatory measures according to Ordinance 514 and Decree 287/009 would not be judged as expropriation interfering with IP-related investment from foreign

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[39] See Enrico Bonadio, *Plain Packaging of Tobacco Products Under EU Intellectual Property Law*, 34(6) European Intellectual Property Review 599, 601 (2012).

[40] See International Pharmaceutical Federation, *Report of the International Summit on Medicine Shortage*, Toronto:International Pharmaceutical Federation, pp.4-6 (2013).

[41] See World Bank, *World Development Report 2000/2001, Attacking Poverty*, Oxford University Press, pp.182-4 (2001).

[42] See Kerry Williams, *Pharmaceutical Price Regulation*, 23(2) South African Journal of Human Rights 1, 7-9 (2007).

[43] See James R. Markusen, *Commitment to Rules on Investment: The Developing Countries' Stake*, 9(2) Review of International Economics 287, 287-302 (2001).

[44] See Anne van Aaken, *International Investment Law Between Commitment and Flexibility: A Contract Theory Analysis*, 12(2) Journal of International Economic Law 507, 507-38 (2009).

[45] See Article 2(1) of Switzerland-Uruguay BIT, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3004/switzerland---uruguay-bit-1988- (accessed on December 26, 2021).

investors, but as a valid exercise of police power without giving investors compensation. The Uruguay's points were made on the merits for several reasons as follows.

World Health Organization concluded Framework Convention on Tobacco Control (hereinafter referred to as FCTC); Uruguay signed FCTC to become the first contracting party in Latin-American States. Being a member in FCTC, it is Uruguay's obligations to adopt the FCTC in the course of ratification, enable and ensure the execution of domestic laws.

For applicable laws in the case of Philip Morris v. Uruguay, one is that tobacco products in Uruguay must have been a "single presentation" of its brand of Ordinance 514, in line with the mandate of Article 11 of FCTC in which the misleading that generates the illusion, where one tobacco product was less harmful than other variants, required to be avoided. (Uruguay supported that Philip Morris Corp.'s variant presentations for each family brand had implications of such misleading) The other is the requirement in the size of health warnings on cigarette packages illustrating 80% of its surface of Decree 287/009, showing Uruguay's determination to adopt additional tobacco-control measures to carry out obligations laid in FCTC along with Guidelines for the implementation of provisions (the Guidelines).

Specially, for the agreement of spirits in Article 11 of FCTC that health warnings on tobacco products' packages occupying 50% or more, paragraph 12 of the Guidelines says that Parties should present health warnings covering more than 50% of the principal packages and continue expanding the portion as much as possible.[46] In order to conform internal tobacco-control measures with the Guidelines as well as increase awareness of impairment towards public health interests deriving from consuming tobacco products, also for killing the habit of smoking and causing people to quit the habit., Uruguay referred to the consulting results and advice of the Advisory Commission's members to determine the precise size occupied in tobacco products' packaging setting at 80%.

It is true that trademarks belong to a form of IP. Besides it is an investment asset, trademarks can create value through distinguishing goods in commerce. Given the circumstance of IP being regarded as intangible property, host countries taking investment-related regulatory measures towards trademarks probably may lay in indirect expropriation. In investment arbitration practice, the regulatory measures having severe economic impact on investors' business associated with investments are always required as key evidences to being indirect expropriation.[47] Furthermore, the "severe economic impact" ought to be sufficiently restrictive enough to make/increase the economic benefits/profits in investments.[48] However, such consequences of "severe economic impact" did not occur in case of Philip Morris v. Uruguay. On the contrary, Philip Morris Corp.'s business remained to be profitable.[49] Actually, Philip Morris Corp.'s business profits were not in direct proportion to the number of family brands in tobacco products. Uruguay government investigated that gross profits had continued to grow as a whole since the adoption of Ordinance 514 and Decree 287/009.[50]

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[46] See supra note 33, at paras. 92-3.

[47] See George H. Aldrich, *What Constitutes a Compensable Taking of Property-The Decision of the Iran-United States Claims Tribunal*, 88(4) American Journal of International Law 585, 585-610 (1994).

[48] See Sempra Energy International v. The Argentine Republic, ICSID Case No.ARB/02/16, Award, paras. 194, 213, 436.

[49] See supra note 33, at paras. 180-1.

[50] See *World Health Organization Framework Convention on Tobacco Control*, http:// apps.who.int/

2.2.2 The respondent's defenses in Eli Lily v. Canada

When prior to the adoption of "promise utility doctrine", pharmaceuticals in Canada just needed to be equipped with some "de minimis" utility which means out of specific utility promised in the patent specification. With Canada more and more aware of utility and disclosure to the public in the patent bargain for the promotion of innovation, Canada's "promise utility doctrine" came out.[51] The "promise utility doctrine" is expressing heightened standards proving specific utility by requiring the basis of promised utility, which is on "sound prediction" as of date the patent application filed, along with heightened disclosure requirement on "factual basis" or "sound line of reasoning" of promised utility in original patent application.[52] Thus in the way of "de minimis" utility, it was inevitable that Eli Lily and Co.'s two pharmaceutical patents were invalidated for lacking promised utilities.

In case of Eli Lily v. Canada, Canada argued that "promise utility doctrine" was not absurd. The Court decided Eli Lily and Co.'s two pharmaceutical patents invalidated, which depended on careful review of enormous factual and expert records, the relevant policies and statutory provisions considerations in order to prove principled and rational.[53]

In fact, "promise utility doctrine" was out of discrimination that not only Eli Lily and Co.'s patents but also other pharmaceuticals patents (totally 18 pharmaceutical patents) were invalidated for lack of utilities.[54] And a court deciding a presumed property right invalid, does not amount to the "taking" of expropriation,[55] but is just juridical determination of the existence and scope of rights at law. In addition, Canadian court was in true judicial capacity, specially applying full due process and making a decision pursuant to its mandate with competent jurisdiction, that would not constitute denial of justice which as a possibility of illegal expropriation.[56] Also, Eli Lily and Co. failed to prove the foundation for the damages of US$500 Million in its allegation.[57] All of above contributed to invalidation of Eli Lily and Co.'s two pharmaceutical patents made by Canadian court not being an illegal expropriation.

2.2.3 Public health interests safeguarded by host countries taking regulatory measures

In current investment arbitration practice, there mainly exist two paths in dispute resolution, when host countries defensed against investors' expropriation-related allegations for public interests. First it was presented in the case Methanex Corporation v. United States of America, that host countries taking regulatory measures for public interests with non-discrimination and due process of law were not deemed as expropriation.[58] And second it was expressed in the case Tippetts, Abbett,

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iris/bitstream/ 10665/42811/3/ 9789245591016_chi.pdf?ua=1 (accessed on March 1, 2021).

[51] See Michael Shortt & E. Richard Gold, *The Promise of the Patent in Canada and around the World*, 30(1) Canadian Intellectual Property Review 1, 1-35 (2014).

[52] See Eli Lilly and Company v. Government of Canada, ICSID Case No.UNCT/14/2, Statement of Defence of the Government of Canada, paras. 40-1.

[53] Id., at paras. 112-3.

[54] Id., at paras. 10-1.

[55] See Land Service, Inc v. Iran, No.135-33-1, 6 Iran- U.S. CTR 149, Award, paras. 166-7.

[56] See Rumeli Telekom A.S.and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v Kazakh-stan, ICSID Case No.ARB/05 /16, Award, paras. 702, 704.

[57] See supra note 52, at paras. 94-5.

[58] See Ursula Kriebaum, *Regulatory Takings: Balancing the Interests of the Investor and the State*, 8(5) The Journal of World Investment& Trade 717, 717-44 (2007).

Mc Carthy, Stratton v. TAMS-AFFA Consulting Engineering of Iran, Government of the Islamic Republic of Iran, that whether and to what extent economic benefits in IP-related investment were impaired and deprived by host countries taking regulatory measures was a critical factor to the establishment of expropriation,[59] other than just the purpose of host countries protecting public interests.

In light of the above, host countries in the cases Philip Morris v. Uruguay and Eli Lily v. Canada not only declared that their taking regulatory measures towards IP-related investment were aimed at protecting public health interests, but also made points for no impairing and depriving of economic benefits in IP-related investment occurring when regulatory measures were implemented.

3. Dilemma in Determining Illegal Expropriation of IP-related Investment

3.1 Host Countries' Measures Were Not Expropriation

3.1.1 The arbitration tribunal's determinations in Philip Morris v. Uruguay

In case of Philip Morris v. Uruguay, the arbitration tribunal responded to debates on whether the protection of public health interests in the implementation of IP-related regulatory measures were realized or not between Uruguay and Philip Morris Corp. Usually host countries could take regulatory measures to restrain investments in order to protect public health interests, as a specific reason for exercising police power.[60] And in the circumstances of the case, Article 2(1) of the Switzerland-Uruguay BIT explicitly mentioned that contracting parties were allowed to refuse admitting foreign investments "for reasons of public security and order, public health and morality".[61] Thus arbitration tribunal indicated that Uruguay applying Ordinance 514 and Decree 287/009 to Philip Morris Corp.'s tobacco products was just manifestation of host country carrying out police powers, which can defense against claims on illegal expropriation in accordance to Article 5(1) of the Switzerland-Uruguay BIT.[62]

The arbitration tribunal's conclusion also directed to whether Uruguay taking regulatory measures had characteristics in illegal expropriation of Philip Morris Corp.'s IP-related investment. Arbitration tribunal believed that, as long as sufficient benefits of Philip Morris Corp.'s business continued to remain after the adoption of Ordinance 514 and Decree 287/009, there would be no illegal expropriation.[63]

In terms of Ordinance 514, arbitration tribunal considered benefits of Philip Morris Corp.'s business as a whole, when Ordinance 514 was adopted. Despite Ordinance 514 required Philip Morris Corp. to stop selling a multiple number of tobacco product varieties, leading to a decrease in the brands of tobacco products quantities. Actually, the arbitration tribunal examined the effect Uruguay applying Ordinance 514 to Philip Morris Corp.'s entire business. The effects showed that the sales price and revenue were lowered in December of 2009 after tobacco product varieties were taken off the market, but it tended to spring-back and gradually

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[59] See Tippetts, Abbett, Mc Carthy, Stratton v. TAMS -AFFA Consulting Engineering of Iran, Government of the Islamic Republic of Iran, No.141 / 7 /2, 6 Iran-U.S. CTR 219, Award, paras. 225-6.

[60] See Metalclad Corporation v. The United Mexican States, ICSID Case No. ARB (AF) /97 /1, Award, paras. 102-12.

[61] See supra note 45.

[62] See supra note 33, at paras. 287-8.

[63] Id., at paras. 285-6.

increased from the beginning of February 2011.

In terms of Decree 287/009, it was not forbidden that cigarette trademarks were presented on packages of Philip Morris Corp.'s tobacco products. According to the Decree, there were still 20% of the space available to making cigarette trademarks visible and recognizable by potential customers. In such limited space, advertising designed to cultivate attraction and preference of potential customers were allowed, where Philip Morris Corp. would make efforts to pursuing business benefits of trademarks investments.

3.1.2 The arbitration tribunal's determinations in Eli Lily v. Canada

In case of Eli Lily v. Canada, the arbitration tribunal confronted with Eli Lily and Co.'s allegation, where invalidation of its pharmaceuticals patents through application of "promise utility doctrine" resulted in illegal expropriation, by noting Articles 1110(1)(b) and 1110(1)(c) of NAFTA. Articles 1110(1)(b) and 1110(1)(c) of NAFTA required the nationalization or expropriation of an investment must be "on a non-discriminatory basis" and "in accordance to due process of law under Article 1105(1)".

For Article 1110(1)(b) of NAFTA, the arbitration tribunal had examined the implementation of "promise utility doctrine" as well as the invalidation of the two pharmaceuticals patents made by Canadian court, finding no arbitrary and discriminatory decisions resulted in the violation of Article 1110 of NAFTA.[64] For Article 1110(1)(c) of NAFTA, the relations in application between obligations of Articles 1105(1) and 1110 of NAFTA must be a matter for careful assessment in any given case, which ought to have made quite a few discreet before. In circumstances of Eli Lily v. Canada, the arbitration tribunal eventually decided to reject Eli Lily and Co.'s claims related to expropriation and declared that NAFTA tribunal is not an appellate tier with a mandate to review whether the judiciary decisions in invalidation of investor's pharmaceuticals patents made by member states' court breached Article 1110(1) or not.[65]

3.2 Tribunals Hardly Weighed Economic Benefits in Investment against Public Interests

3.2.1 The demand for balance between economic benefits in investment and public health interests

Actually the conclusion of BITs/FTAs can be deemed as one contracting party giving an offer to foreign investors from another party, and foreign investors referring investment-related disputes to ISDS mechanism stipulated in BITs/FTAs means they accepting the offer.[66] In this way, foreign investors can challenge host countries' IP-related regulatory measures and investors may even probably make efforts to eroding the territory of contracting parties' police power.[67] In order to prepare defenses, host countries, especially the less-developed ones of which, must have

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64 See supra note 53, at paras. 416, 442, 469.

65 Id., at paras. 417-8.

66 See Jan Paulsson, *Arbitration without Privacy*, 10(2) ICSID Review-Foreign Investment Law Journal 232, 232-54 (1995).

67 See Barnali Choudhury, *Recapturing Public Power: Is Investment Arbitration's Engagement of the Public Interest Contributing to the Democratic Deficit?*, 41(3) Vanderbilt Journal of Transnational Law 775, 775 (2008).

devoted to quite a few consumption in human and financial resources.[68] That has made the "chilling effect" of host countries keeping away from ISDS mechanism intensified,[69] as well as reinforced stimulus to foreign investors submitting investment-related disputes to ISDS arbitration tribunals.[70]

However, it is known that balance between economic benefits in investment and public health interests is "Non-zero-sum game" in arbitration tribunals determining illegal expropriation of IP-related investment.[71] Besides, for the object of IP, protection and limitation on rights exist side by side.[72] Then both economic benefits in IP-related investment and public health interests should be taken into account in arbitration tribunals determining illegal expropriation.[73]

3.2.2 The imbalance between economic benefits in IP-related investment and public health interests in Philip Morris v. Uruguay and Eli Lily v. Canada

It is obvious that arbitration tribunals should fulfil the task of weighing economic benefits in IP-related investment against public health interests when facing disputes towards determinations of illegal expropriation. Nevertheless, there were no rules directed to balancing between economic benefits in investment and public interests, which might contribute to arbitration tribunals failing in weighing the former against the latter clearly. Furthermore, BITs/FTAs defined IP as one type of investment, which would not be expropriated illegally, standing in the substantive provisions. While these agreements still added general and ambiguous terms, such as "public purpose" or "for reasons of public health", in its chapters of preamble and exceptions.

Usually substantive provisions are more binding than preamble clauses in international investment treaties, so it is the same with investment-related provisions versus public health-related provisions in the BITs and FTAs. That leads to such backgrounds where imbalances of law enforcement occurred in the protection between economic benefits in investment and public health interests. Thus foreign investors submitted investment-related disputes to ISDS arbitration tribunals for economic benefits in accordance to substantive provisions, eroding the territory of public health interests which mostly laid in the forms of soft law, such as preambles or general and ambiguous terms, that did trigger the tension between economic benefits in IP-related investment and public health interests to a great extent.[74] The tension would develop opposite positions of foreign investors and host countries, also would enhance the challenges to reconciling conflicts between claimants and respondents in arbitration tribunals determining illegal expropriation of IP-related

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[68] See Leon E. Trakman, *Investment Dispute Resolution under the Transpacific Partnership Agreement: Prelude to a Slippery Slope?*, 5(1) Journal of International Commercial Law 1, 1-38 (2013).

[69] See Holly Jarman, *The Politics of Trade and Tobacco Control*, Palgrave Macmillan, pp.3-4 (2015); Cynthia M. Ho, *A Collision Course between TRIPS Flexibilities and Investor-state Proceedings*, 6(1) UC Irvine Law Review 395, 411 (2016).

[70] See UNCTAD, *Investor-state Dispute Settlement: A Sequel*, United Nations Publication, pp.38-9 (2014).

[71] See Sornarajah M, *Resistance and Change in the International Law on Foreign Investment*, Cambridge University Press, pp.6-8 (2015).

[72] See Brian A. Carlson, *Balancing the Digital Scales of Copyright Law*, 50(3) SMU Law Review 825, 825-6 (1997).

[73] See Jessi Patton, *A Case for Investor-state Arbitration under the Proposed Transatlantic Trade and Investment Partnership*, 4(1) The Arbitration Brief 75, 79-81 (2014).

[74] See Daniel Behn & Tarald Laudal Berge et al., *Poor States or Poor Governance? Explaining Outcomes in Investment Treaty Arbitration*, 38(4) Northwestern Journal of International Law & Business 333, 333-89 (2018).

investment.

In the cases of Philip Morris v. Uruguay and Eli Lily v. Canada, the arbitration tribunals concluded that IP-related regulatory measures taken by Uruguay and Canada were not illegal expropriation. That was to say, arbitration tribunals tended to supporting the requirement in protection of public health interests when host countries had taken regulatory measures continued acting on IP-related investments. Despite investors' allegations were rejected in the end, arbitration tribunals still failed to weigh economic benefits in IP-related investment against public health interests clearly in the two cases. Concretely speaking, arbitration tribunals just referred to the public purpose of Uruguay and Canada protecting public health interests, which was regarded as an exception of nationalization or expropriation on an investment.

In arbitration tribunals' analysis, it was ambiguous that how and to what extent were economic benefits in cigarette trademarks and pharmaceuticals patents negatively affected/impaired by the adoption of Ordinance 514, Decree 287/009 as well as "promise utility doctrine", which were the critical processes in weighing economic benefits in IP-related investment against public health interests. Namely, in the investment-related disputes on determining of illegal expropriation, arbitration tribunals had made quite a lower weighing economic benefits in IP-related investment against public health interests (in the case of Philip Morris v. Uruguay) and even had evaded such weigh (in the case of Eli Lily v. Canada), which instead discouraged arbitration tribunals to decide whether illegal expropriation of IP-related investment existed or not through a predictable way of "juris et de jure".[75]

4. Balance between Economic Benefits in Investment and Public Health Interests in RCEP and CPTPP

In the Investment Policy Framework for Sustainable Development (hereinafter referred to as IPFSD) of 2012, the United Nations Conference on Trade and Development has outlined the core principles for investment policy making containing eleven items totally, the fifth of which has required investment policies makers to keep the balance in setting out rights and obligations of host countries and foreign investors.[76] According to IPFSD, international investment agreements should realize the goals of both investment protection and investment regulation. That is to say, the balance between economic benefits in investment and public health interests is not "zero-sum game", then both economic benefits in investment and public health interests should be taken into account. Thus, it has been expressed in a fair amount of international investment agreements concluded after 2012 that public interests for contracting parties, such as the protection and promotion of public health, ecological environment and labor rights, should be ensured in the forms of preambles, substantive provisions and exception clauses.

For the preambles, the international investment agreements above mentioned have still referred to investment liberalization and investment promotion as their aims, meanwhile, they have pointed out that contracting parties must consider the actual necessities for the realization of public interests, for example host countries maintaining public health, environmental safety and labor rights in their territories, or have advocated requirements for sustainable development including the intentions of

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[75] See Saluka Investments BV v. The Czech Republic (Saluka v, Czech), UNCITRAL, Partial Award of Mar. 17, 2006, paras. 304-5.

[76] See Article 5 of Core Principles for IPFSD, https://unctad.org/system/files/official-document/diaepcb2015d5_en.pdf (accessed on November 24, 2021).

public interests protection. Thus, the preambles in these international investment agreements have given remarkable considerations to both economic benefits in investment and public health interests.

For the substantive provisions, these international investment agreements have made more clear and specific statements on investment regulation, mainly manifested as articles in the name of "Investment and Environmental, Health and other Regulatory Objectives". Additionally, in the expropriation-related provisions including annexes of expropriation, the indications of "character of the government action" or others likewise have appeared. Such new articles and indications in the substantive provisions can enhance the evaluation of host countries' public health interests in arbitration tribunals determining illegal expropriation of IP-related investment, offering a more public health-friendly legal environment in ISDS mechanism.

For the exception clauses, intentionally the exception clauses on illegal expropriation of IP-related investment have been established in several international investment agreements. It has been expressed that some IP-related behaviors, such as the issuance of compulsory license and the revocation, limitation, creation of IP rights, in accordance with the TRIPS Agreement as well as the IP chapters of relevant FTAs, have been inapplicable to the expropriation-related rules in the international investment agreements.

Supposing in further expropriation-related disputes of IP-related investment, host countries will invoke such exception clauses for the defense of foreign investors, then ISDS arbitration tribunals will review the compliance and suitability of IP-related regulatory measures to the TRIPS Agreement and the IP chapters of relevant FTAs.[77] Along with public health-related rules above mentioned, the application of such exception clauses can contribute to highlighting its instrumental existence in pursuit of the balance between economic benefits in IP-related investment and public health interests for ISDS arbitration tribunals.

Significantly, China has demonstrated that the application of TRIPS-plus rules advocated by most developed countries are eroding the territory of institutional autonomy that members allowed in TRIPS, damaging to the balance between economic benefits in IP rights and public interests.[78] In recent years, China is making aggressive progress in the abilities of self-owned innovation as well as becoming much more export-orientated. But compared to the leading developed countries, China has still belonged to the economies where the rise and fall of domestic IP-dominated industries have still driven by IP-related investment from abroad.[79]

Based on the reasons above, it will be advantageous to China that the increasing calls for exaggerated IP-related investment protection are regulated and the actual voices for the realization of public health interests are heard in ISDS mechanism. Throughout the conclusion of international investment agreements after IPFSD issued in 2012, a more balanced development between public power of host countries and private right of foreign investors has stood out. Among these agreements, the effectual

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[77] See Simon Klopschinski, *The WTOs DSU Article 23 as Guiding Principle for the Systemic Interpretation of International Investment Agreements in the Light of TRIPS*, 19(1) Journal of International Economic Law 211, 238-9 (2016).

[78] See *WTO News*, *Enforcement Trends, Council Debates Anti-Counterfeiting Talks, Patents on Life*, https://www.wto.org/ english /news_e /news10_e /trip_08jun10_e.htm (accessed on October 8, 2021) .

[79] See State Administration of Foreign Exchange, *International trade in goods and services of China (BPM6, from 2015)*, http://www.safe.gov.cn /safe /2018 /0427 /8886.html (accessed on October 1, 2021).

the Regional Comprehensive Economic Partnership (hereinafter referred to as RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (hereinafter referred to as CPTPP), as the two huge and broad regional trade agreements including IP chapters and investment chapters, have played absolutely important roles in the demonstrations and influences of IP-related investment rules making. And China has been the member state of RCEP and has been applying for the membership of CPTPP, then it can be both practical and predictable for China to seek paths as well as inspirations in the balance between economic benefits in IP-related investment and public health interests from the perspectives of RCEP and CPTPP.

4.1 Public Health-related Defense in RCEP/CPTPP against Claims on Illegal Expropriation

With the entry into force of RCEP/CPTPP recently, RCEP/CPTPP rules which mainly characterized by preambles, expropriation clauses as well as exceptions, are more and more emphasizing equilibrium between host countries and foreign investors. Furthermore, such trend reflected by RCEP/CPTPP rules mentioned above is consciously being strengthened in the worldwide practice of sovereign states concluding international investment treaties lately.

4.1.1 Public health-related rules in the preambles of RCEP/CPTPP

First of all, the preambles both in RCEP and CPTPP has referred to the flexibility of parties safeguarding public welfare given to host countries. Of which, CPTPP more precisely spoke of the enumerated terms of “public welfare”, taking “public health”, “safety”, “public morals” as examples. Article 31 of Vienna Convention on the Law of Treaties 1969 pointed out that preamble clauses in treaties would be involved in the context of treaty interpretation, that was defined as a legal instrument which could direct to arbitration tribunals making decisions in ISDS mechanism.[80]

Once member states of RCEP and CPTPP are caught in IP-related investment disputes, the rules in preambles advocating the protection of public health interests can be referred by arbitration tribunals, which requires arbitration tribunals to consider the actual economic benefits in IP-related investment that investors alleged and the very public health purpose in host countries taking IP-related regulatory measures. In this way, “warning boards” reflected by public health-related rules of foreign investors being not allowed to erode the territory of host countries’ public health interests excessively will be set up.

4.1.2 Public health-related rules in RCEP/CPTPP

Secondly, the preambles in RCEP and CPTPP also refer to “inherent right to regulate” or advocate contracting parties to “regulate”. Further, CPTPP has set out provisions for “Investment and Environmental, Health and other Regulatory Objectives” (Article 9.16) in its investment chapter. As a substantive provision to protecting host countries’ public health interests against foreign investors’ economic benefits, Article 9.16 of CPTPP has rendered foreign investments being not admitted unless host countries find investments running in a manner appropriate to environmental, health as well as other regulatory objectives. That is to say, when member states of CPTPP facing IP-related investment disputes submitted to ISDS arbitration tribunals by foreign investors, they can quote Article 9.16 as a formally

[80] See Article 31 of Vienna Convention on the Law of Treaties, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed on December 5, 2021).

persuasive and binding reason for the defense of IP investors pursuing economic benefits and the insistence of host countries' public health interests.

In addition, there have yet existed requirements that "character of the government action" should be taken account into the determinations of indirect expropriation in Annex 9-B of CPTPP and Annex 10B of RCEP, specially RCEP also illustrating "character" as "objective" and "context". Thus in ISDS mechanism, member states of RCEP and CPTPP can strengthen their focus on defensing against foreign investors' claims, where illegal expropriation of IP-related investment does not occurred, which will make arbitration tribunals more aware of the point that member states taking IP-related regulatory measures for protecting public health interests in the determinations of illegal expropriation.

Meanwhile, there has been still limiting languages, defined as "except in rare circumstances", existing in the provision indicating that non-discriminatory regulatory measures aimed at the protection of public health interests are not illegal expropriation in Annex 9-B of CPTPP. That "except in rare circumstances" shows out the situation in which host countries may exaggerate their pursuits of protecting public health interests and excessively lower economic benefits of investors/in investment, host countries doing so in such situation should constitute illegal expropriation.[81] With the limiting languages in CPTPP, it will allow arbitration tribunals preventing an unjust shift to host countries when weighing economic benefits in IP-related investment against public health interests.

4.1.3 Public health-related rules in exception clauses

Lastly, exception clauses on illegal expropriation of IP-related investment have been established both in the investment chapters of RCEP (Article 10.13.4) and CPTPP (Article 9.8.5). It is said that expropriation-related rules in Article 10.13 of RCEP and Article 9.8 of CPTPP will not be applicable on conditions that some IP-related behaviors, such as the issuance of compulsory license and the revocation, limitation, creation of IP rights, are in accordance with the IP chapters of RCEP and CPTPP as well as the TRIPS Agreement.[82] Once member states of RCEP and CPTPP face expropriation-related disputes submitted by IP investors in the future, they can quote Article 10.13.4 of RCEP and Article 9.8.5 of CPTPP for defensing against claims on illegal expropriation of IP-related investment, while arbitration tribunals may review the consistency between the IP-related behaviors and TRIPS/TRIPS-plus rules (IP chapters of RCEP and CPTPP). However, it should be noted that current scopes of "IP-related behaviors" are defined as the only four types (issuance of compulsory license, revocation, limitation, creation of IP rights), which still need to be expanded.

Given the circumstances above, the terms of "Non-discriminatory regulatory actions" have been mentioned in Annex 9-B of CPTPP and Annex 10B of RCEP. In these articles, "Non-discriminatory regulatory actions" aimed at safeguarding public health interests will not be regarded as illegal expropriation.[83] Obviously "Non-discriminatory regulatory actions" is the indication of a generalized and broad conception, which can not only take in the four types of IP-related behaviors (defined as issuance of compulsory license, revocation, limitation, creation of IP rights), but

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[81] See Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No.ARB (AF)/00/2, Award, paras. 120-2.

[82] See Article 13.4 of RCEP; Article 9.8.5 of CPTPP.

[83] See Annex 9-B(3)(b) of CPTPP; Annex 10B(4) of RCEP.

also contain more, for example the parallel import of trademark goods or patents products. According to "Non-discriminatory regulatory actions" in Annex 9-B of CPTPP and Annex 10B of RCEP, member states of RCEP and CPTPP can implement more generalized and broader types of IP-related behaviors, besides the four behaviors covering issuance of compulsory license, revocation, limitation, creation of IP rights, for protecting public health interests against claims on illegal expropriation of IP-related investment.

Table 1: Basic Information of Public Health-related Rules in RCEP and CPTPP[84]

RCEP		CPTPP	
Main Clauses	Descriptions	Main Clauses	Descriptions
Preamble Clause	…Reaffirming the right of each Party to regulate in pursuit of legitimate public welfare objectives	Preamble Clause	…Recognize their inherent right to regulate… and regulatory priorities, …protect legitimate public welfare objectives, such as public health
Annex 10B Expropriation	3. The determination of… an action…constitutes an expropriation…among other factors:…(c) the character of the government action, including its objective and context	Annex 9-B Expropriation	3.… The determination of whether an action… constitutes an indirect expropriation, among other factors: … (iii) the character of the government action
Annex 10B Expropriation	4.Non-discriminatory regulatory actions by a Party that are …applied to achieve legitimate public welfare objectives, such as the protection of public health, …do not constitute expropriation	Annex 9-B Expropriation	3.…Non-discriminatory regulatory actions by a Party that are …applied to protect…public health, do not constitute indirect expropriations, except in rare circumstances
N/A	N/A	Investment Chapter (Article 9.16)	Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure… considers appropriate to ensure that investment

[84] See Ministry of Commerce of the People's Republic of China, *RCEP*, http://fta.mofcom.gov.cn/rcep/rcep_new.shtml; *CPTPP*, http://sms.mofcom.gov.cn/article/cbw/202101/20210103030014.shtml (accessed on February 7, 2022).

			activity … undertaken in a manner sensitive to environmental, health
Investment Chapter (Article 10.13)	4.This Article does not apply to the issuance of compulsory licenses …or to the revocation, limitation, or creation of IP rights, …that such issuance, revocation, limitation, or creation is consistent with Chapter 11 (IP) and the TRIPS Agreement	Investment Chapter (Article 9.8)	5.This Article shall not apply to the issuance of compulsory licenses …or to the revocation, limitation or creation of IP rights, … that the issuance, revocation, limitation or creation … consistent with Chapter 18 (IP) and the TRIPS Agreement

4.2 Proportionality Principle in RCEP/CPTPP to Weigh Economic Benefits in Investment against Public Health Interests

4.2.1 Proportionality adopted by relevant ISDS arbitration tribunals

In the case of Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, the arbitration tribunal introduced requirements of proportionality to tentatively keeping the balance between the impairment of economic benefits in investment and the realization of public interests. Arbitration tribunals stated it in the decision that a reasonable relationship of proportionality should be presented between the economic benefits derived from foreign investor/investment and the public interests realized by adoption of any investment-related regulatory measure.[85]

And in the cases of LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Argentine Republic, the arbitration tribunal also pointed out that host country taking investment-related regulatory measures would be proportional to the public interest protected thereby and the protection granted to investments, otherwise such regulatory measures would not be accepted and could constitute illegal expropriation especially in the name of disproportion.[86] It has been clear that arbitration tribunals applied requirements of proportionality to weighing economic benefits in investment against public interests when facing expropriation-related investment disputes.[87]

4.2.2 The proportionality-related rules in the investment chapters of RCEP and CPTPP

Furthermore, Annex 9-B of CPTPP has taken "the extent to which the government action interferes with investment-backed expectations" as the necessary factor into considerations for arbitration tribunals determining indirect expropriation of investment, and also Annex 9-B of CPTPP has added that the investment-backed expectations from foreign investors being realized "in appropriate extent" or not

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[85] See Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No.ARB (AF)/00/2, Award, paras. 119, 122.

[86] See LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Argentine Republic, ICSID Case No. ARB /02/1, Decision on Liability, paras. 177, 195.

[87] See supra note 71, at 8.

depend on the nature of government action and the actual extent of government action being implemented.[88] Once member states of CPTPP become respondents in ISDS mechanism, ISDS arbitration tribunals need examining the necessity of governments' investment-related regulatory measures for the realization of public interests where investors can also gain economic benefits appropriate to their investment-backed expectations, according to Annex 9-B of CPTPP. All above are subjects pertinent to requirements of proportionality applied to arbitration tribunals weighing economic benefits in investment against public interests.

In the examination of "character of government action" for determining indirect expropriation of investment, Annex 10B(3)(c) of RCEP has made statement specially for Korea, one of RCEP member states. In the statement, whether the investors have made an excessive sacrifice in deprivation of economic benefits where host countries have taken investment-related regulatory measures to realizing public interests should be considered. If not, foreign investors will bear "disproportionate burden" against their being expected to endure for the public interests in Korea, and Korea's investment-related regulatory measures are very likely to constituting illegal expropriation. In addition, "case-by-case" and "fact-based" inquiries are required to the determinations of indirect expropriations of investments both in Annex 9-B(3)(a) of CPTPP and Annex 10B(3) of RCEP, which can equip ISDS arbitration tribunals applying requirements of proportionality to weighing economic benefits in investment against public interests with more flexibility.

4.2.3 The intended application of proportionality-related rules to judicial pricing on compensation for illegal expropriation of IP-related investment

In ISDS mechanism, that foreign investors alleged host countries taking investment-related regulatory measures to be illegal expropriation are usually along with investors demanding remarkable amounts of monetary compensation from host countries. Once ISDS arbitration tribunals decide host countries taking such regulatory measures constituting illegal expropriation of investment, they will be required responding investors' claims on compensation. In other words, arbitration tribunals should do judicial pricing on compensatory payment towards illegal expropriation of investment.

Actually, it is a relief pattern of "disproportionate burden" investors bearing mentioned above, which can just fill in gaps between investors' excessive deprivation of economic benefits and host countries' public interests. Specially for IP-related investment disputes in ISDS mechanism, arbitration tribunals doing judicial pricing on compensation is to be a legal instrument for bridging the gap between economic benefits in IP-related investment and public health interests. In forms of host countries paying compensation priced by arbitration tribunals to foreign investors, the re-balance between economic benefits of IP investors and public health interests of host countries will continue to be realized and promoted.

Further speaking, it is inevitable that IP-related investment disputes will be likely to happen once more in ISDS mechanism after cases of Philip Morris v. Uruguay and Eli Lily v. Canada. Member states of RCEP and CPTPP, as host countries, are also likely to get involved in such IP-related investment disputes. Thus ISDS arbitration tribunals can apply proportionality-related rules in Annex 9-B of CPTPP and Annex 10B of RCEP to the judicial pricing on compensation towards illegal expropriation of

[88] See Annex 9-B(3)(a) of CPTPP, https://www.dfat.gov.au/trade/agreements/in-force/cptpp/outcomes-documents (accessed on December 12, 2021).

IP-related investment, which are bound to prevent ISDS arbitration tribunals from arbitrarily doing judicial pricing on compensation and to highlight the instrumental existence of proportionality-related rules for arbitration tribunals making a better re-balance between economic benefits in IP-related investment and public health interests.

Table 2: Basic Information of Proportionality-related Rules in RCEP and CPTPP[89]

RECP		CPTPP	
Main Clauses	Descriptions	Main Clauses	Descriptions
Annex 10B Expropriation	3.The determination of whether an action… constitutes an expropriation…requires a case-by-case, fact-based inquiry	Annex 9-B Expropriation	3.…(a)The determination of whether an action… constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry
Annex 10B Expropriation	3.…(c) the character of the government action, including its objective and context. (footnote: For Korea, a relevant consideration could include whether the investor bears a disproportionate burden, such as a special sacrifice that exceeds what the investor or investment should be expected to endure for the public interest)	Annex 9-B Expropriation	3.…(a)The determination of whether an action… constitutes an indirect expropriation,(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;(footnote: … whether an investor's investment-backed expectations…on factors such as … the nature and extent of governmental regulation)

5. Conclusion

Relations in politics and economics among countries are getting closer and closer, which push IP protection breaking through regional barrier toward global stage. Since information technological revolution, with the increasingly development of scientific inventions and technology, foreign investors have been more aware of the importance of capital in the form of IP in foreign direct investment, so is the need of IP-related investment protection.

In this context, many international investment agreements have stipulated those intangible properties are an investment under the definition clauses, which explicitly contains the item of "IP". While some other agreements just only define "intangible property" as one type of investment, they tacitly approve IP laying in the scope of "intangible property". It has reached the consensus that IP belongs to the "investment" mentioned in international investment agreements, where IP has been an object of investment protection articles. IP has been regarded as one type of investment in most BITs and FTAs. In this sense, IP-related investment falls into the scope of protection object of these international investment agreements. Thus, it is turned out that the

[89] See supra note 84.

actual eligibility of IP being an investment has existed both in the international investment agreements and ISDS practice.

Investment disputes related to IP have appeared in recent cases of Philip Morris v. Uruguay and Eli Lily v. Canada. By means of ISDS mechanism, investors in cases of Philip Morris v. Uruguay and Eli Lily v. Canada, can challenge host countries' IP-related regulatory measures, such as tobacco control legislation (in Philip Morris v. Uruguay) and patent granted standards (in Eli Lily v. Canada). In their challenges, investors alleged that host countries taking IP-related regulatory measures had been in a breach of expropriation clauses, which generated the impairment and deprivation of economic benefits in IP-related investment. But host countries argued that IP-related regulatory measures are aimed at safeguarding public health interests. The arbitration tribunals decided that host countries had police power to take investment-related regulatory measures, which would not violate expropriation clauses in relevant BITs and FTAs. However, arbitration tribunals did not clearly weigh economic benefits in IP-related investment against public health interests in the determinations of illegal expropriation of IP-related investment.

It is obvious that ISDS arbitration tribunals should fulfil the task of weighing economic benefits in IP-related investment against public health interests when facing disputes towards determinations of illegal expropriation. Nevertheless, there were no rules directed to balancing between economic benefits in investment and public interests in cases of Philip Morris v. Uruguay and Eli Lily v. Canada, which might contribute to ISDS arbitration tribunals failing in weighing the former against the latter clearly. Most BITs and FTAs had defined IP as one type of investment, which would not be expropriated illegally, standing in the substantive provisions. While these agreements still added general and ambiguous terms, such as "public purpose" or "for reasons of public health", in their preambles and exception clauses.

Usually, substantive provisions are more binding than preambles and exception clauses in international investment treaties, so it is the same with investment-related provisions versus public health-related provisions in the BITs and FTAs. That leads to such backgrounds where imbalances of law enforcement occurred in the protection between economic benefits in investment and public health interests. Thus, foreign investors submitted investment-related disputes to ISDS arbitration tribunals for economic benefits in accordance with substantive provisions, eroding the territory of public health interests which mostly laid in the forms of soft law, such as preambles or general and ambiguous terms, that did trigger the tension between economic benefits in IP-related investment and public health interests. The tension would develop opposite positions of foreign investors and host countries, also would enhance the challenges to reconciling conflicts between claimants and respondents in arbitration tribunals determining illegal expropriation of IP-related investment.

It is the reality that both RCEP and CPTPP have contained public health-related rules as well as proportionality-related rules. These rules in the RCEP and CPTPP which mainly characterized by preambles, expropriation clauses as well as exceptions, are more and more emphasizing equilibrium between host countries and foreign investors. With the opportunity of RCEP and CPTPP taking into effects, contracting parties of RCEP and CPTPP can apply public health-related rules to protecting public health interests against investors' claims on illegal expropriation of IP-related investment, while ISDS arbitration tribunals can learn from proportionality-related rules to weigh economic benefits in IP-related investment against public health interests, especially facing the task of judicial pricing on compensation for illegal expropriation of IP-related investment.

Blockchain Application Risks and Solutions of International Commercial Arbitration in Chinese Mainland

Yuxin Le[1]

Abstract: Blockchain has the advantages of tamper-proof, decentralization. The use of Blockchain technology for arbitration can not only improve the efficiency and security of arbitration, but can even generate rulings and change the arbitration mode. Recently, Blockchain arbitration has been extended to the field of international commercial arbitration. At the same time, there was not much research on the application of Blockchain in international commercial arbitration. However, the use of Blockchain arbitration not only has the risk of decentralization, but also brings technical and legal double risks. The Chinese government also needs to make efforts from both internal and external legitimacy: In terms of internal legitimacy, it grants government super-node privileges from within the Blockchain and sets necessary restrictions on the automated decision-making of the arbitration system; in terms of external legitimacy, according to types of cases build a mechanism for on-chain and off-chain division of labor, and strengthen international dialogue to promote the establishment of a global consensus mechanism. China needs to strengthen research on Blockchain arbitration related standards, actively participate in international dialogues, enhance international discourse power and rule-making power, and promote the development of legislation in the digital age in a more equitable direction. And China must take an inclusive attitude towards international commercial arbitration to increase its ability of international commercial dispute settlement. Furthermore, it is necessary to enact Blockchain legal supervision regulations in accordance with the requirement of "intelligent supervision".

Keywords: Blockchain; International Commercial Arbitration; Application; Risk; Supervision; China

1. Blockchain Arbitration in Chinese Mainland

1.1 Practice of Blockchain Arbitration in Chinese Mainland

At present, there are three main methods for resolving international commercial disputes in Chinese Mainland: litigation, arbitration and mediation. From the perspective of the jurisdiction of filing a case, the parties can agree to choose an arbitration institution or a mediation institution without being bound by the principle of place of actual contact. At the level of enforcement, domestic arbitration awards can be directly applied for court enforcement, and domestic mediation agreements can also be applied for court enforcement after judicial confirmation; while international commercial disputes, especially the cross-border litigation judgments of participating countries along "the Silk Road Economic Belt and the 21st-Century Maritime Silk Road" (hereinafter referred to as B&R) to resolve commercial disputes recognition and enforcement depend on whether there is a judicial assistance treaty between the two countries and the relevant laws and regulations of the destination country; the

[1] Yuxin Le, Ph.D. candidate in Economic Law at East China University of Political Science and Law. She was a judge of the High People's Court of Fujian Province of the People's Republic of China. The author is grateful of the comments and suggestions made by the anonymous reviewers and appreciate editors' generous effort throughout the revision process.

mediation agreement depends on whether it is transformed into an arbitration award or judicially confirmed. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the New York Convention) applies for awards recognition and enforcement, and the judicially confirmed shall be enforced in accordance with the judicial assistance treaty; only international commercial arbitration awards can directly apply for recognition and enforcement in any member state in accordance with the New York Convention.

As the digital economy in Chinese Mainland continues to grow, the Chinese courts are actively applying digital technology to their judicial practice. From online case filing and virtual hearings to establishing Internet courts and using Blockchain to store evidence, the Chinese courts have been actively exploring different means to broaden the scope of digital technology.[2]

The COVID-19 pandemic has fueled this development and prompted the Chinese courts to adopt online litigation as a medium for dispute resolution. According to a recent press conference of the Supreme People's Court of the People's Republic of China, during the period from January 1, 2020, to May 31, 2021, approximately 13 million cases were filed online in Chinese Mainland, amounting to 28.3% of the total number of cases filed in that period, and approximately 1.28 million online hearings were conducted. As for court-referred mediation cases, around 6.51 million of them were mediated online.[3] On September 3, 2018, the Supreme People's Court of the People's Republic of China issued a judicial interpretation on the hearing of cases by the country's newly created internet courts. Taking effect on September 7, 2018, the Provisions on the Hearing of Cases by Internet Courts from the Supreme People's Court of the People's Republic of China allows evidence stored and verified on Blockchain platforms to be used in legal disputes heard by the three internet courts in Hangzhou, Beijing, and Guangzhou.[4]

In September 2018, Nanjing Arbitration Commission's online arbitration platform (https://www.njac.cn) was launched for trial operation. The platform makes use of Blockchain technology to coordinate the depository of electronic data with depository institutions, financial institutions, arbitration institutions, to achieve real-time evidence preservation, electronic delivery, online trial and adjudication. Nanjing Arbitration Commission has formulated special online arbitration rules, clarifying that the time limit for online arbitration cases has been shortened to 30 days; the charging standards for online arbitration cases are also significantly lower than the charging standards for ordinary offline cases.

Another example is that through the application of the arbitration chain, Guangzhou Arbitration Commission efficiently handled 150 financial loan cases during the fight against the COVID-19 pandemic from February 2020 to March 2020, with an average closing time of no more than 3 weeks. According to the official website of Guangzhou Arbitration Commission, through the application of the arbitration chain, the identity information of the parties, whether there is an arbitration agreement, the arbitration application, and the formal review of evidence can all be

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[2] See Jojo Fan, *Rules of Online Litigation of the People's Court of China launched*, https://hsfnotes.com/asiadisputes/2021/07/09/rules-of-online-litigation-of-the-peoples-court-of-china-launched/ (accessed on December 5, 2021).

[3] See the Supreme People's Court of the People's Republic of China, *The SPC Releases the Rules of Online Litigation of People's Court*, http://english.court.gov.cn/2021-06/18/content_37545136.htm (accessed on December 5, 2021).

[4] See the Supreme People's Court of the People's Republic of China, *The Provisions on the Hearing of Cases by Internet Courts from the Supreme People's Court of the People's Republic of China*, http://www.court.gov.cn/zixun-xiangqing-116981.html (accessed on December 7, 2021).

completed through online review. At the same time, when the applicant's online financial loan business occurs, that is, through the docking of the arbitration chain and the Guangzhou City Cloud Arbitration system, the transaction behavior is recorded in real time and the evidence is solidified and cannot be modified. Therefore, the arbitration tribunal can directly verify the evidence and confirm the electronic evidence when reviewing the case materials. The authenticity greatly simplifies the verification of the authenticity of the evidence, allowing the arbitration tribunal to focus on the substantive review of cases, ensuring the efficient rendering of arbitral awards, and also helping to ensure the professionalism of arbitral awards.[5]

With B&R and the construction of the Guangdong-Hong Kong-Macao Greater Bay Area, alternative dispute resolution mechanisms, or non-litigation dispute resolution mechanisms, led by mediation and arbitration, have demonstrated institutional advantages in domestic and foreign commercial dispute resolution. This method of resolving disputes, which is less confrontational but more important than autonomy of will, is both confidential and non-public, has been favored by parties to international commercial disputes, and has effectively eased the pressure of litigation in courts of Chinese Mainland.[6]

China International Commercial Arbitration Annual Report (2020-2021) shows that at the level of arbitration procedures and trial methods, the increase in the number of cases and the obstacles caused by the COVID-19 pandemic have brought challenges to foreign commercial arbitration institutions. In response, the China International Economic and Trade Arbitration Commission and other arbitration institutions in Chinese Mainland have comprehensively applied Internet information technologies such as remote hearings, and quickly introduced a series of measures to ensure the smooth progress of arbitration activities. In 2020, the total number of cases accepted by the 259 arbitration commissions nationwide was 400,711, of which 261,047 were traditional commercial arbitration cases, a decrease of 20,364 cases compared to 2019. In 2020, the total bid value of national arbitration cases reached 718.7 billion RMB, a decrease of 41.1 billion RMB from 2019. Among them, 61 arbitration commissions have accepted a total of 2,180 cases involving foreigners, Chinese Hong Kong, Chinese Macao and Chinese Taiwan. In China International Commercial Arbitration Annual Report (2020-2021), judging from the types of disputes in the previous year, in addition to traditional trading, including mechanical and electrical equipment, equity disputes, and conventional traditional types of cases, there are also new types of Internet-related rights, such as some disputes in the entertainment industry, intellectual property and other fields, which started to happen frequently.[7]

Blockchain and cryptocurrencies (including Bitcoin) have garnered significant attention in legal scholarship over the last few years, mirroring and to some extent anticipating on the public debate over the impact of Blockchain technology on the new world economic landscape and the adequate level of regulatory response to such impact.[8]

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[5] See Guangzhou Arbitration Commission, *Blockchain + Internet Arbitration*, https://www.gzac.org/jtal1/36569.jhtml (accessed on December 5, 2021).

[6] See Jiabei Huang, *Multiple Resolution Mechanisms for International Commercial Disputes in China: Innovation, Impact and Prospects*, 2(4) Commercial Arbitration & Mediation 122, 123 (2021).

[7] See Li Zhang, *International Commercial Arbitration Faces Revolutionary Challenges and Opportunities*, 66(10) China's Foreign Trade 30, 30 (2021).

[8] See Armand Terrien & Alexandra Kerjean, *Blockchain and Cryptocurrencies: The New Frontier of Investment Arbitration?*, http://arbitrationblog.kluwerarbitration.com/2018/10/18/blockchain-and-cryptocurrencies-the-new-frontier-of-investment-arbitration/ (accessed on December 4, 2021).

In recent years, Blockchain technology has been used to resolve cross-border trade disputes, improving the efficiency of international commercial arbitration and ensuring the security of the international arbitration process. For China, as the international economic influence continues to increase, the use of Blockchain technology to enhance the influence of the actual settlement of international commercial disputes is related to China's overseas interests and security strategy. For this reason, paying attention to the application of Blockchain in the field of international commercial arbitration, and at the same time using corresponding regulatory means to effectively promote the operation of Blockchain technology in China has become an issue that needs urgent attention.[9]

When it comes to international commercial arbitration, the literature largely focuses on how the technology is going to change the way disputes are settled, i.e., how it will revolutionize Alternative Dispute Resolution (hereinafter referred to as ADR) rules, either by boosting Online Dispute Resolution or by altogether substituting Smart Contract dispute resolution mechanisms to arbitration as people know and practice it. In other words, what Blockchain can do for international commercial arbitration.[10]

1.2 Research of Blockchain Arbitration in Chinese Mainland

On November 15, 2021, there are more than 20,000 results on China Knowledge Network (the biggest Chinese academic network, https://kns.cnki.net) whose abstracts contain "Blockchain". Meanwhile, there are more than 2,800 results on China Knowledge Network whose abstracts contain "Smart Contract". In these documents, the most important direction of Blockchain technology application is the relationship between Blockchain and the application of evidence, as well as the application of Blockchain in the judicial field (judicial Blockchain).

However, there are few research results on "Blockchain arbitration in mainland China": data shows that there are only 55 Chinese documents whose abstracts contain both "Blockchain" and "arbitration" on China Knowledge Network. Analyzing the content of these documents, there are no more than 10 articles focusing on the application of Blockchain technology to arbitration. Among these limited research results, some scholars agree that Blockchain, as a cutting-edge technology, is of great significance when applied to international commercial arbitration.[11]

In the application of Blockchain as electronic evidence, some judges have already admitted that the technical dependence of traditional electronic evidence has caused it to face the difficulty of authenticity determination in judicial application, and its judicial acceptance is low.[12] Some scholars consider that Blockchain has the

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[9] See Ning Kang, *Blockchain Application and Supervision Path in International Commercial Arbitration*, 34(5) Journal of Beijing University of Aeronautics and Astronautics (Social Sciences Edition) 45, 46 (2021).

[10] See supra note 8.

[11] See Jiabei Huang, *Multiple Resolution Mechanisms for International Commercial Disputes in China: Innovation, Impact and Prospects*, 2(4) Commercial Arbitration & Mediation 122, 122-41 (2021); Li Zhang, *International Commercial Arbitration Faces Revolutionary Challenges and Opportunities*, 66(10) China's Foreign Trade 30, 30-1 (2021); Ning Kang, *Blockchain Application and Supervision Path in International Commercial Arbitration*, 34(5) Journal of Beijing University of Aeronautics and Astronautics (Social Sciences Edition) 45, 45-6 (2021); Huang'an Fu & Xiaofu Li, *Application of Block Chain in International Commercial Arbitration, Related Problems and Solutions*, 21(6) Business Economic Review 86, 86-96 (2020).

[12] See Hongming Jiang & Pingping Wu, *Analysis on Several Issues of Blockchain Evidence Rules in People's Court Online Litigation Rules*, 36(7) Journal of Law Application 150, 150-63 (2021); Liqiong

characteristics of distributed storage and decentralization, which is in line with the system reliability requirements of electronic evidence, and can be used as a suitable carrier of electronic evidence. The Blockchain evidence storage practice of the Internet court in the new era shows that Blockchain storage can alleviate the dilemma of original electronic evidence, overcome the obstacles of easy tampering and difficult identification of data that exist in traditional centralized evidence storage methods, and realize judicial protection of electronic evidence.[13] Others believe that, to make Blockchain deposit evidence popular in judicial practice, it is more necessary to update the rules and judicial concepts. In this regard, the three-dimensional perspective of the space, time and subject of data circulation can be used to construct the judicial application of Blockchain electronic evidence. The alliance chain is used as a storage certificate carrier to distinguish different Blockchain storage time to formulate review rules. For electronic evidence before entering the chain, specific auxiliary identification rules are customized based on different depositors.[14]

A few Chinese scholars consider that judicial Blockchain is a product of "Blockchain + intelligence justice". Judicial Blockchain not only creates the innovation of the evidence law, but also shapes a variety of new institutional possibilities, such as property rights registration, governance of the litigation source, intelligent litigation. However, the compound risk of judicial Blockchain cannot be ignored. This compound risk is not a simple addition of the risks of "smart justice" and Blockchain, but the organic combination of the former institutional risk and the later endogenous risk.[15] Based on the risks, the judicial Blockchain should adopt a two-layer regulatory model in which traditional legal regulation and new code regulation are parallel. On the one hand, improving the external system to deal with the institutional risks; on the other hand, optimizing the internal code design to respond to the endogenous risks. Through the interactive coupling of the two-layer regulation, to cover ex ante-norm and ex post mandatory, the synergy between legal code and technical code is fully realized.[16]

When it comes to the Blockchain application in international arbitration, supporters believe that as a cutting-edge infrastructure technology, Blockchain effectively coordinates with international commercial arbitration in e-commerce, cross-border electronic forensics, online execution, which frees arbitrator of international commercial arbitration from fact finding, increases the efficiency of international commercial arbitration and guarantees the security of international

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Duan & Boya Wu, *Authentication Analysis and Improvement Path of Blockchain Evidence*, 57(31) People's Judicature 9, 9-12 (2020).

[13] See Yu Zhang, *Technical Guarantee and Rules Construction: Application of Electronic Evidence from the Perspective of Blockchain*, 32(10) Nanjing Journal of Social Sciences 93, 93-9 (2021); Wei Li, *The Decentralization Dilemma of Judicial Blockchain and Way Out: A Decentralized Dispute Resolution Mechanism as a Research Object*, 23(3) Journal of Southwest University of Political Science and Law 87, 87-99 (2021).

[14] See Pinxin Liu, *On Blockchain Evidence*, 43(6) Chinese Journal of Law 130, 130-48 (2021); Kang Han, *The Model of Blockchain Deposit*, 29(10) Academic Exploration 47, 47-54 (2021).

[15] See Song Shi & Zhiqiang Kuang, *Application and Development of Judicial Blockchain*, 5(3) China Review of Administration of Justice 35, 35-46 (2021); Aohan Mei & Dexin Chen, *The Development and Improvement of Electronic Delivery from the perspective of Blockchain*, 5(3) Social Scientist 121, 121-7 (2021); Xuzhi Han, *The Compound Risk and Two-Layer Regulation of Judicial Blockchain*, 41(1) Journal of Xi'an Jiaotong University (Social Sciences) 136, 136-44 (2021).

[16] See Xuzhi Han, *The Compound Risk and Two-Layer Regulation of Judicial Blockchain*, 41(1) Journal of Xi'an Jiaotong University (Social Sciences) 136, 136-44 (2021); Sheng Zhang & Ni Li, *"Judicialization" of the Blockchain: Development, Challenges and Solutions*, 41(1) Journal of Xi'an Jiaotong University (Social Sciences) 127, 127-35 (2021).

commercial arbitration.[17] However, Blockchain faces a dilemma in application in international commercial arbitration.[18] Currently, there is no single rule to regulate the judicial application of Blockchain, which causes risks to data security and privacy protection. In addition, difficulties resulted from application of law are also inevitable, and it brings challenge to traditional international commercial arbitration legal systems such as the place of arbitration, the effect of arbitration agreement.[19]

Certain Chinese scholars consider that China must take an inclusive attitude towards international commercial arbitration to increase its ability of international commercial dispute settlement. Furthermore, it is necessary to enact Blockchain legal supervision regulations in accordance with the requirement of "intelligent supervision". At the same time, the application of Blockchain in international commercial arbitration should be put under control to realize a perfect combination between Blockchain technology and international commercial arbitration system.[20] Other Chinese scholar also calls for paying attention to corresponding regulatory means, and suggests that the regulatory goal of Blockchain application in international commercial arbitration is to seek a balance between the autonomy of arbitration and the uniformity of supervision; supervision should focus on the combination of rigid supervision rules and flexible supervision rules.; the regulatory body needs legal and technical expertise; the regulatory means should be realized through indirect means.[21]

One Chinese scholar suggests that in the context of the modernization of the national governance system, the development pattern of the two-way construction of state control and social autonomy requires to explore an institutional civilization that develops together with science and technology, and create a management system that is not only conducive to the healthy development of science and technology, but also conducive to the perfect social norm system. In view of this, on-chain autonomy and off-chain control are not one or the other, but a complementary relationship. It should

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[17] See Michèle Finck, *Blockchain Regulation and Governance in Europe*, Cambridge Press, pp.10-28 (2019); Kaal Wulf A. & Calcaterra Craig, *Crypto Transaction Dispute Resolution*, 73(1) Business Lawyer 109, 109-52 (2018); Christopher Kuner & Fred Cate et al., *Blockchain Versus Data Protection*, 8(2) International Data Privacy Law 103, 103-4 (2018); Avinash Poorooye & Ron´an Feehily, *Confidentiality and Transparency in International Commercial Arbitration: Finding the Right Balance*, 22(1) Harvard Negotiation Law Review 275, 276 (2017); Melanie Swan, *Blockchain: Blueprint for A New Economy*, O'Relly Media Inc., p.97 (2015); Armand Terrien & Alexandra Kerjean, *Blockchain and Cryptocurrencies: The New Frontier of Investment Arbitration?*, http://arbitrationblog.kluwerarbitration.com/2018/10/18/blockchain-and-cryptocurrencies-the-new-frontier-of-investment-arbitration/ (accessed on December 4, 2021); Darshan Bhora & Aisiri Raj, *Blockchain Arbitration – The Future of Dispute Resolution Mechanisms?*, http://cilj.co.uk/2020/12/16/blockchain-arbitration-the-future-of-dispute-resolution-mechanisms/ (accessed on December 4, 2021); Donata Freiin von Enzberg, *Blockchain – A Suitable Tool for Arbitration*, https://iot.taylorwessing.com/blockchain-a-suitable-tool-for-arbitration/ (accessed on December 4, 2021).

[18] See Lise Alm, *What is Blockchain Arbitration and Can it Replace the NY Convention*, https://sccinstitute.com/about-the-scc/news/scc-forecasts/what-is-blockchain-arbitration-and-can-it-replace-the-ny-convention/ (accessed on December 2, 2021).

[19] See Li Zhang, *International Commercial Arbitration Faces Revolutionary Challenges and Opportunities*, 66(10) China's Foreign Trade 30, 30-1 (2021); Ning Kang, *Blockchain Application and Supervision Path in International Commercial Arbitration*, 34(5) Journal of Beijing University of Aeronautics and Astronautics (Social Sciences Edition) 45, 45-6 (2021); Huang'an Fu & Xiaofu Li, *Application of Block Chain in International Commercial Arbitration, Related Problems and Solutions*, 21(6) Business Economic Review 86, 86-96 (2020).

[20] See Jiabei Huang, *Multiple Resolution Mechanisms for International Commercial Disputes in China: Innovation, Impact and Prospects*, 2(4) Commercial Arbitration & Mediation 122, 123 (2021); Huang'an Fu & Xiaofu Li, *Application of Block Chain in International Commercial Arbitration, Related Problems and Solutions*, 21(6) Business Economic Review 86, 91 (2020).

[21] See supra note 9.

consider classifying disputes according to the amount and nature of the case and realize the division of labor between the internal private arbitration system and the national judicial system. Cooperation, the combination of the two is the best way to "judicialize" the Blockchain.[22]

2. Advantages of Blockchain Application in International Commercial Arbitration

2.1 Nature of Blockchain

In an era where technology is at the forefront of development, Blockchain and Smart Contracts are not new concepts to the earth. The integration of these concepts with arbitration, a frequently used fora for dispute resolution, has the potential to restructure the functionalities of a classic dispute resolution mechanism. To decipher this complex integration of Blockchain with Smart Contracts and arbitration, it, therefore, becomes necessary to understand the underlying intricacies of these concepts.[23]

The communication method of human society is the transmission of information. The traditional method of information transmission appears in a tangible way, such as through face-to-face conversations between people or paper-based letters and books. The invention of the telephone and the telegraph allowed people to break through the limitations of space and use electronic means to transmit information, which greatly improved the efficiency of communication. After the advent of computers in the 1940s, human society quickly entered the information age, especially the appearance of the Internet, which completely subverted the original information transmission method. From the perspective of information transmission, the Internet has the following characteristics: one is the function of information transmission, people can transmit information synchronously through the Internet; the other is the function of information sharing, everyone can upload their own information to the Internet, or download the public information on the Internet to his or her own terminal equipment; the third is the information search function, everyone can quickly find the information he or she interested in the Internet through search tools for his or her own use.[24]

The development of Blockchain can be divided into three stages: Blockchain 1.0 is the use of digital currency, Blockchain 2.0 is the use of Smart Contracts, and Blockchain 3.0 refers to the application of general Blockchain, involving finance and government affairs. In the era of Blockchain 3.0, Blockchain will also be used in the judicial field, and the characteristics of arbitration determine that it can be integrated with Blockchain technology. In essence, Blockchain is also an information technology. Compared with Internet technology, the information transmitted by Blockchain technology has the characteristics of authenticity and security. The characteristic of "openness and transparency" is that all data is publicly available on the main chain and can be queried at any time; the characteristic of "strong security" is that if someone tries to modify the data, they must control more than 51% of the nodes in the system at the same time. Attacks on less than 51% of the nodes will not affect the data stored in other pivots. Blockchain is a kind of consensus data that comes from

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[22] See Sheng Zhang & Ni Li, *"Judicialization" of the Blockchain: Development, Challenges and Solutions*, 41(1) Journal of Xi'an Jiaotong University (Social Sciences) 127, 127-35 (2021).

[23] See Darshan Bhora & Aisiri Raj, *Blockchain Arbitration – The Future of Dispute Resolution Mechanisms?*, http://cilj.co.uk/2020/12/16/blockchain-arbitration-the-future-of-dispute-resolution-mechanisms/ (accessed on December 4, 2021).

[24] See Lei Zhao, *How to Regulate Blockchain*, 5(6) China Law Review 177, 178 (2018).

people's quality voting and confirmation. By stamping and agreeing, the voting public stands behind the quality, accuracy, and true value of the data.[25] The question now is: what can society do with such quality data? In other words, as an information tool that exists in virtual space, how can Blockchain technology be applied to the real world?

One of the greatest ever technological inventions gifted to humankind, in the field of finance merged with technology, is the Blockchain. The true genesis of Blockchain technology dates back to the year 1991, when two cryptographers Stuart Haber and Scott Stornetta, originally conceptualized the idea and mathematics behind the crux of the technology. In 2012, a group of anonymous coders under the pseudonym of Satoshi Nakamoto implemented the first-ever version of the Blockchain technology, based solely on the work of Stuart Haber and Scott Stornetta. Blockchain, also known as the timestamping server or the Distributed Ledger System, operates by timestamping the hash of a block. The timestamp can be used as proof to show that the data must have existed at that particular time. Each block contains the data of the previous block, in its hash, thereby forming a chain. The hash algorithm protects the data or value, inside a block, from being replicated, thus making the block impenetrable. The database is open to all for scrutinization, thereby eliminating the need for a central authority. Blockchain technology, because of its transparent nature, acts as a global spreadsheet that can be downloaded on any system, anywhere, and by anybody. Within a few years after the hypothesis of Blockchain was put forth, an American cryptographer, and law graduate, Nick Szabo, theorized the concept of Smart Contracts, keeping in mind the Blockchain technology. Smart Contracts, in plain terms, are construed as digitized contracts, which can efficiently automate the implementation and execution of a contract, and every other element related to a contract.[26]

Blockchain is a technology that allows people to store and trace information on a large number of computers at the same time. It also provides people with a trace of everything that happens in the system. This makes it virtually impossible to hack the system or corrupt the information stored since that would require hacking all computers at the same time. This makes the systems good for storing information about for instance ownership or tracing various types of transactions through updating registries.[27]

The Blockchains are decentralized and often do not have one central data storage or administrator. They are fully transparent in terms of transactions, but the true identity of the users can be anonymized behind a username. Essentially, every user can hide in full daylight.[28]

The values registered on the Blockchain sometimes represent a real-world value, like a real estate registry or intellectual property rights, and sometimes it represents something that only exists on the Blockchain, like a cryptocurrency. As with most digital systems, people can automate actions in the system using various if-then rules. For instance, a payment for a shipment could be described as "If the buyer registers the reception of the goods on the Blockchain, then a value, e.g. Bitcoin, shall be transferred to the seller". This is essentially the description of a "Smart Contract" – i.e. a contract or software that auto-enforces via Blockchain when certain conditions are met.[29]

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[25] See Melanie Swan, *Blockchain: Blueprint for A New Economy*, O'Relly Media Inc., p.97 (2015).
[26] See supra note 23.
[27] See supra note 18.
[28] Ibid.
[29] See supra note 18.

2.2 Blockchain Arbitration Application under the New York Convention

In general, arbitration is a kind of ADR, a way to resolve disputes instead of going to court. Arbitration is also a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.[30]

Arbitration is consensual, i.e., arbitration can only take place if both parties have agreed to it. In the case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract. An existing dispute can be referred to arbitration by means of a submission agreement between the parties. In contrast to mediation, a party cannot unilaterally withdraw from arbitration. Arbitration is also neutral and in addition to their selection of neutrals of appropriate nationality, parties are able to choose such important elements as the applicable law, language and venue of the arbitration. This allows them to ensure that no party enjoys a home court advantage.[31]

Compared with other judicial procedures, arbitration has many advantages. For example, in the choice of an arbitration tribunal, arbitration allows the parties to choose their own arbitration tribunal. This is very advantageous when the dispute involves a high degree of technicality. In terms of efficiency, the design of arbitration procedures is more flexible and therefore often more flexible than other litigation procedures. In terms of security, the private nature of arbitration requires arbitration participants to have the obligation to keep the case information confidential, which makes it more secure; due to the successful practice of the New York Convention, arbitration awards are used in transnational cases since they are easier to be recognized and enforced.[32]

In the Internet age, the advantages of arbitration are difficult to use, and some rules are also under attack. For example, out of the need to safeguard the public interest, the confidentiality of arbitration is required to be balanced with the transparency of arbitration. In the Internet era, electronic data generated based on commercial transactions is virtual and volatile. Arbitration cannot verify the authenticity of evidence. In the face of a large number of disputes arising from the Internet, arbitration cannot meet the efficiency requirements of cases. Therefore, online arbitration using Internet technology resources to provide professional knowledge and arbitration services began to appear. However, online arbitration did not play a great role in resolving disputes in the Internet age.

The topic of Blockchain is on everyone's lips and represents probably one of the most significant changes in the context of digitization. At the same time, for many the meaning of this term is very difficult to grasp. While most people's first association with Blockchain is likely to be Bitcoins and other cryptocurrencies, the concept becomes even more confusing when it is used in other contexts, such as international commercial arbitration.[33]

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[30] See Avinash Poorooye & Ron´an Feehily, *Confidentiality and Transparency in International Commercial Arbitration: Finding the Right Balance*, 22(1) Harvard Negotiation Law Review 275, 276 (2017).

[31] See World Intellectual Property Organization, *What is Arbitration*?, https://www.wipo.int/amc/en/arbitration/what-is-arb.html (accessed on December 5, 2021).

[32] See Lianbin Song, *A Discussion on International Civil and Commercial Communication and the Function of International Private Law*, 5(5) China Law Review 58, 58-62 (2018).

[33] See Donata Freiin von Enzberg, *Blockchain – A Suitable Tool for Arbitration*, https://iot.taylorwessing.com/blockchain-a-suitable-tool-for-arbitration/ (accessed on December 4, 2021).

One reason for this is the commonly used definitions that are too technical and, in particular, too application specific. Financial transactions and cryptocurrencies are merely types of applications built on the Blockchain. The frequently found definition of a Blockchain as "an open, distributed ledger that can record transactions between two parties efficiently and in a verifiable and permanent way that records cryptocurrency transactions" therefore rather describes a specific application, but not the term itself. The (simple) idea of a Blockchain, however, is a decentralized platform that stores and distributes digital data across several networks in a highly secure manner.[34]

100 years ago, arbitration gained ground by promising speed and confidentiality. In 1958, the New York Convention provided the grounds for international commercial arbitration by adding international enforcement and the removal of the need for trust in the other party's national court systems.[35] International awards are enforced by national courts under the New York Convention, which permits them to be set aside only in very limited circumstances. More than 165 States are party to the New York Convention.[36]

The combination of speed, confidentiality, international enforcement and removal of the need of trust in central institutions is the calling card for Blockchain. The enforcement is immediate, which provides both transparency and anonymity. It's by its nature internationally enforceable, and it does not rely on central institutions. The consequences and possibilities are thought provoking.[37]

Blockchain cannot remove the adjudication aspect of international commercial arbitration. Until an Artificial Intelligence judge comes along, a person needs to decide the dispute and render an award. Today, the arbitrator needs to stay within the procedural safeguards provided by the New York Convention and local law to ensure that the award rendered is enforceable.[38]

Article II of the New York Convention provides that arbitration agreements must be, in principle, recognized as binding. If the requirements listed under Article II are met, a court shall refer the parties to arbitration. Article II dictates that the arbitration agreement must be valid, and its subject matter must be arbitrable. Recognition cannot take place if the agreement would be null and void or incapable of enforcement. Yet, the real hurdle to modern day recognition of the arbitration agreement is the "in writing" requirement of Article II (2) of the New York Convention. The agreement meets the "in writing" requirement if the agreement or the clause has been signed by the parties or has been concluded through an exchange of telegrams or telefaxes. The United Nations Commission on International Trade Law (hereinafter referred to as UNCITRAL) Recommendations in 2006 addressed the outdated idea of telegrams. UNCITRAL recommends that this requirement must be read to "include" the electronic means of communication, and this would open the door to using Blockchain to conclude arbitration agreements.[39]

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[34] Ibid.

[35] See supra note 18.

[36] See United Nations Commission on International Trade Law, *New York Convention*, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/zh/new-york-convention-c.pdf (accessed on December 5, 2021).

[37] See supra note 18.

[38] See Christopher Kuner, *Blockchain Vversus Data Protectio*n, 8(2) International Data Privacy Law 103, 104 (2018); Kaal Wulf A. & Calcaterra Craig, *Crypto Transaction Dispute Resolution*, 73(1) Business Lawyer 109, 109-52 (2018).

[39] See Marike R. P. Paulsson, *The Blockchain ADR: Bringing International Arbitration to the New Age*, http://arbitrationblog.kluwerarbitration.com/2018/10/09/blockchain-adr-bringing-international-arbitrati

Keeping this in mind, the potential applications for international commercial arbitration become more apparent. Arbitration is often chosen and valued for confidentiality reasons.[40] Frequently, high-volume and very sensitive disputes are subject to arbitration. However, at the same time, a vast number of documents are exchanged both with the written pleadings and during the document production phase and almost always, all correspondence – at least also – takes place via e-mail. The danger of being hacked and inadvertently granting third parties access to confidential and sensitive documents is a realistic scenario, as highlighted by the case of the official website of the Permanent Court of Arbitration in Hague which was hacked during a hearing in a sensitive maritime border arbitration in 2015.[41]

Blockchain arbitration could also pave the way to a more automatized dispute resolution process, in particular in small, standardized cases based on Smart Contracts. Such contracts are automated contracts that execute when triggered by specific events. The electronic instructions are drafted in computer codes using Blockchain technology as a platform. Smart Contracts are very useful in facilitating transactions where trust in the intermediary is lacking, e.g. where the performance depends on a government official in a foreign country. In addition, they can save costly services like escrow accounting, in particular when the occurrence of a certain predetermined event will automatically trigger the release of funds. The same is conceivable for a variety of other applications, such as insurance contracts where an automatic payment will be made when the insured event occurs. Blockchain technology creates the ideal conditions for Smart Contracts, since their execution and control do not require any human involvement and are not subject to human influence. In case of disputes, e.g. about the algorithm that was used, the arbitration proceedings could also be integrated into this technology. Either the arbitral decision might be registered on a Blockchain permitting a self-executing arbitral decision or the arbitration process would even be integrated within the disputed Smart Contract so that an algorithm could resolve the dispute.[42]

So what is the advantage of Blockchain for international commercial arbitration agreements? The arbitration agreement once concluded cannot be altered on this platform. The original is preserved on the Blockchain. As far as securing those agreements and not losing the data, it is better placed on the Blockchain. Now that UNCITRAL has endorsed the use of electronic communications, parties ought to use a Blockchain format rather than other electronic carriers. The Blockchain provides the users with unique keys with which only they can access the data. This means that the parties to the arbitration have a unique way to access the original arbitration agreement without being able to alter it (or lose it for that matter). Subsequently, the parties can allow the arbitral institution to have a key as well to the data and they can provide that data to any enforcement court that is called upon to refer the parties to arbitration.[43] Article II of the New York Convention with its "in writing" requirement is not simply a matter of evidence as it is under most national arbitration laws.[44]

The step to apply Blockchain on international commercial arbitration instead of contract creation is not far. The judge renders an award on Blockchain, which

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on-new-age/ (accessed on December 4, 2021).

[40] See supra note 31.

[41] See supra note 33.

[42] Ibid.

[43] See supra note 39.

[44] See Wei Shen, *Rethinking the New York Convention: A Law and Economics Approach*, Intersentia, pp.5-15 (2013).

automatically enforces it as soon as it is rendered. I.e., if the award for instance stipulates that the respondent should pay damages to the claimant, the award could be coded to immediately transfer e.g. cryptocurrency on the Blockchain, just like a Smart Contract.[45] The asset could of course also be a real-world asset, like Intellectual Property ownership, where the registered ownership is updated on Blockchain. No further enforcement process would be needed and no need for a national institution to assist in the enforcement with an unwilling loosing party.[46]

Today, according to local rules or regulations, arguably not enough assets are traded on Blockchain for this to be relevant in practice, but this will almost certainly change. Over time, more and more assets will be traceable or tradeable on Blockchain, making Blockchain enforcement more and more relevant.[47] A report from World Trade Organization already in 2017 states that "if the projects that are under development succeed, Blockchain could well become the future of trade infrastructure and the biggest disruptor to the shipping industry and to international trade since the invention of the container."[48]

Of course, this type of dispute resolution raises a lot of questions and many rules do not (yet) fit this new technology. However, this should not prevent legislators and regulators from adapting the rules to the new technical developments and from promoting the benefits of these technologies in favor of more efficient and cost-effective legal advice.[49]

3. Risks of Blockchain Application in International Commercial Arbitration

3.1 Technical Security Risks of Blockchain Application

Blockchain technology is not absolutely neutral, nor is it absolutely "good". Although Blockchain is essentially a database, a computer program, and a ledger, the Blockchain arbitration is a special part of dispute resolution. Combined with the application of artificial intelligence, it will definitely load a certain value and bring a certain amount of risk. It is meaningless to restore Blockchain arbitration to the algorithm/code level to judge that its value is neutral. Just as the human brain is composed of cells, it cannot be concluded that the brain has no thoughts because the cells have no thoughts. Blockchain arbitration will not only load the designer's value orientation, but also generate new risks with its intelligent and automated applications. The so-called "Blockchain for good" is just an advertisement for the Blockchain business model, which is not in line with reality, and does not help identify risks.

As the most successful virtual currency in history, Bitcoin's greatest value is not to become a substitute for the legal currency of various countries, but to contribute its underlying technology-the Blockchain to the world. Extreme fanatics believe that Blockchain technology represents the second network era, which can not only subvert the world's most powerful company, but can even reverse the progress of human civilization. The root cause of this problem is that, whether it is the industry,

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[45] See Romi Kumari & Sharath Mulia, B*lockchain Arbitration: The Future of Dispute Resolutio*n, https://www.lexology.com/library/detail.aspx?g=2a2f2cef-39a5-4551-a7df-4c9e408a5ccc (accessed on December 5, 2021).

[46] See supra note 18.

[47] Ibid.

[48] See Emmanuelle Ganne, *Can Blockchain Revolutionize International Trade?*, https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf (accessed on December 2, 2021).

[49] See supra note 33.

academia, or governments of various countries, there is a lack of a unified understanding and recognized standards about what a Blockchain is. Ordinary people cannot identify the truly valuable Blockchain products. This is helpless. The application of Blockchain technology is chaotic and widespread, and some people even put forward the slogan of "everything is on the chain". These misunderstandings and abuses of Blockchain technology not only damage the legitimate rights and interests of ordinary investors, but are also detrimental to the healthy development of this industry. Therefore, a unified and standardized technical standard is the primary problem that needs to be solved urgently in the development of Blockchain technology. At the same time, "the disruptive technology of the Blockchain cannot be incorporated into any existing traditional regulatory framework, which is a characteristic of the digital age".[50]

The nature of decentralization determines that Blockchain technology is completely open, and anyone can join and participate in a Blockchain system. Bitcoin is the initial application of Blockchain technology and is currently the most successful application scenario. It rewards "mining" behaviors. The workload of participants is directly related to the amount of Bitcoin obtained. This incentive mechanism encourages more many participants to join in. In any decentralized Blockchain system, all participants are based on a consensus on technology and rules, rather than the trust of an organization or individual. There is no trust between people. Under such a mechanism, all information is presumed to be symmetrical, and all behavioral results are predictable, so there is no credit problem. Blockchain can avoid moral hazard and opportunism to the greatest extent by eliminating the interference of human subjective factors. It is not so much that the Blockchain enhances the trust between people, it is better to say that the Blockchain generates people's trust in technology.[51]

The Blockchain technology presented by Bitcoin is called public Blockchain by Scholars. The so-called public Blockchain refers to a completely decentralized Blockchain platform. Anyone on the platform can read and write operations on the platform. It is they are able to provide proof of work for the platform, and a large number of potential users are generated on the platform due to its openness. In addition to Bitcoin, Ethereum is considered the most successful public chain platform. It provides users with a decentralized platform and programming language that helps to run Smart Contracts and allows developers to release distributed applications. The above-mentioned advantages of the public chain are all determined by the great computing power and the participants' abandonment of certain privacy. Blockchain systems require a large amount of computing power to maintain large-scale distributed ledgers. More specifically, in order to reach a consensus, each node in the network must solve a complex and resource-intensive encryption problem to ensure that all information on the Blockchain is information for each block. The openness and information sharing of the Blockchain have led to its system security and privacy protection are also weak.[52]

Therefore, the completely decentralized feature of Blockchain is not completely applicable to some scenarios. Some people think that it is worth giving up some freedom and privacy for the overall safety and efficiency of the system. On the basis of Blockchain technology, private Blockchain and consortium Blockchain have

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[50] See Don Tapscott & Alex Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World*, Penguin Random House LLC, p.290 (2016).

[51] See supra note 24.

[52] See Prove, *Public and Private Blockchain Concepts and Examples*, https://www.prove.com/blog/public-and-private-blockchain-concepts-and-examples (accessed on December 7, 2021).

emerged. The private chain is a relatively closed system, and the write permission is in the hands of an organization. It has the characteristics of high efficiency, closedness, and a high degree of centralization. The write permission of the consortium chain belongs to the authorized or selected participants, and its degree of decentralization is between the private chain and the public chain. Decentralization is the fundamental feature of Blockchain, so in a strict sense, private chains and consortium chains are not complete Blockchains, but just quasi-blockchains developed using Blockchain technology. Of course, the private chain alliance, as a derivative product that meets some of the characteristics of Blockchain technology, can be applied to a specific field and a specific group of people, helping to improve transaction efficiency and ensure transaction security.[53]

Although Blockchain has received a lot of attention in different fields, it also has some problems and challenges in technical security that need to be faced in International commercial arbitration. For example, Bitcoin has encountered many attacks since its emergence. First, Blockchain technology interacts with each other. If a vulnerable node is attacked, the entire Blockchain system may be compromised. When a node of the Blockchain arbitration system is attacked, the entire arbitration process may be compromised, and systemic risks may occur. Second, Blockchain technology is not necessarily neutral, nor is it necessarily "good". The Blockchain arbitration system is developed by enterprises. The code is written under the design and operation of individuals, and the arbitration is easy to be used and manipulated. For example, if Blockchain arbitration is unable to make value judgments on agreed items, it will lead to algorithm discrimination when the programmer's subjective orientation penetrates the code.[54]

In the case of technical security risks, if it is attacked, there is a risk of information leakage, leading to data protection issues. At present, Blockchain technology is still unable to achieve complete anonymity. Instead, data transmission between nodes is realized through a certain address identification. Although the address identification is not associated with identity information, it is located and identified by anti-anonymity technology. According to the European Union's General Data Protection Regulation (hereinafter referred to as GDPR), this encrypted information is only pseudonymous information rather than anonymous information and is subject to personal information protection regulations. Therefore, Blockchain arbitration is difficult to meet European Union data protection requirements. The electronic information recorded in the Blockchain cannot be deleted once it is stored, and the "right to forget" requires that personal information be deleted within a period of time after the use of personal information, so Blockchain arbitration cannot meet the requirements of the data subject's right to forget. In the future, the public part of the Blockchain arbitration needs to access more alliance chains, and the information of the nodes on the chain will be arbitrarily linked with other nodes. This kind of public link cannot block other networks, nor can it be effectively verified. Management will further expand the risk of data leakage.[55]

The trust in the Blockchain stems from the trust in the code, but the code is not more neutral than the regulation, and any code may be subject to monopoly and commercial interests. The current security protection technology is not perfect, and data security and other security threats are still the primary problems facing the

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[53] See supra note 24.

[54] See Huang'an Fu & Xiaofu Li, *Application of Block Chain in International Commercial Arbitration, Related Problems and Solutions*, 21(6) Business Economic Review 86, 91 (2020).

[55] Ibid.

Blockchain. Therefore, when people use the Blockchain technology to arbitrate and enjoy the technical advantages that the Blockchain brings to human society, it still be cautious about its possible impact and security issues.

It seems that the decentralization of Blockchain technology is not easy to achieve. In a non-centralized Blockchain system, participants need to use cryptography principles to form a consensus mechanism that trusts each other, use hash algorithms to keep accounts separately, and record all transaction information on the "chain". This process needs to be completed through complex calculations. This means that the decentralization of Blockchain is inseparable from a large amount of energy consumption. Bitcoin "mining" is a typical example, and its energy consumption exceeds the combined electricity consumption of 159 countries including Ireland and most countries in Africa. How to build a decentralized Blockchain system without consuming a lot of energy is an urgent problem to be solved.[56]

3.2 Legal Security Risks of Blockchain Application

Technological progress is a significant source of power to promote the reshaping of the world's industrial structure. At the technical level, human society will always face an unknown world, and new risks will arise in computer algorithms. When the development speed of technology far exceeds the existing legal framework, whether the legal behavior mode under the background of emerging technology can be applied to the traditional rule system is worthy of thinking.

Blockchain arbitration will negatively conflict with the laws, that is, a legal gap. First of all, in the face of the security risks of Blockchain arbitration, the law has not yet established an effective system to prevent risks. Therefore, the Blockchain is likely to evade legal liability under the cloak of code automated decision-making under the pretext of technological neutrality. Secondly, some legal issues involved in Blockchain arbitration are not regulated. For example, the law does not stipulate the legality of the automatic execution of Smart Contract program code. Whether the nature of the Smart Contract is a contract or not is still a big dispute in many regions now. Although certain scholars in Chinese Mainland believe that Smart Contracts are essentially contracts, some foreign scholars believe that this mechanism is widely referred to as "Smart Contracts" to some extent misleading, because the legal qualifications for obtaining contracts for such transactions are not absolute. It also depends on the form and substantive details of the transaction and the applicable law. Finally, some rights and obligations involved in Blockchain arbitration are also not stipulated. In the data age, among the roles of data originators, derivatives, traders, and users, who is the subject of these data rights, how data rights and obligations are distributed, how to fairly occupy data and restrain data monopoly, and how to use data such as how to remedy the infringement of rights are questions of the times that must be answered. The Blockchain arbitration process will be closely integrated with big data, bringing new data resources. Ownership of data has aroused people's attention, and they demanded that the status quo be renegotiated. It is a hot topic that whether data is owned by arbitration institutions, development institutions, or individuals.[57]

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[56] See Dom Galeon, *Mining Bitcoin Costs More Energy Than What 159 Countries Consume in a Year*, https://futurism.com/mining-bitcoin-costs-more-energy-159-countries-consume-year (accessed on December 8, 2021).

[57] See Pietro Ortolani, *The Impact of Blockchain Technologies and Smart Contracts on Dispute Resolution: Arbitration and Court Litigation at the Crossroads*, 24(2) Uniform Law Review 430, 431-40 (2019).

Meanwhile, it is with the emergence of Bitcoin and its basic technology, the Blockchain network, that Smart Contracts have new possibilities. The 2018 China Blockchain Industry White Paper issued by the Ministry of Industry and Information Technology of the People's Republic of China believes: "Smart Contracts are event-driven, stateful, recognized by multiple parties, running on the Blockchain, and capable of automatically processing assets according to preset conditions. The biggest advantage of Smart Contracts is the use of program algorithms to replace human arbitration and contract execution. In essence, Smart Contracts are a piece of program, and have the characteristics of data transparency, non-tampering, and permanent operation."[58]

In other words, a Smart Contract is a "Smart Contract Code", which is just a code name for this series of unique codes. As long as developers like it, they can use other pronouns to refer to it at any time. At the moment, what people call Smart Contracts are specific computer code contracts that combine Blockchain technology and run on the Blockchain network. It automatically executes instructions by computer code, the computer "reads" (recognizes) the content of the contract, and automatically executes the instructions when the conditions are met-this is the "intelligence" of the contract.[59]

Blockchain technology is the core technology for Smart Contracts. In this sense, Smart Contracts have two technical elements: contract mechanism and Blockchain. The contract mechanism solves the problem of contract execution by eliminating human interference afterwards. In a technical sense, the machine will ensure that the contract is fulfilled without any intervention. However, the machine cannot solve the problem of writing a contract or explaining the contract. This issue requires an independent third party to interpret the contract according to the parties' intentions, and the courts usually try to resolve it. The solution to this problem today is Blockchain technology. In fact, Smart Contracts are not new in many respects, because they must consist of identifiable agreements formed by parties capable of reaching an agreement. Blockchain technology provides a technical platform with security and accuracy required for Smart Contracts. Smart Contracts are designed to work with Blockchain technology to enforce transactions on the Blockchain. In this sense, it can be said that a Smart Contract is an upgraded version of an electronic contract. Smart Contract is a legal act in nature. Legal acts are a tool for the autonomy of private law. Private subjects construct legal relationships with others through legal acts. The purpose of a behavior or a number of internally related behaviors performed by one or more people is to cause some kind of legal consequences in private law, even if the legal relationship between individuals changes.[60]

There are big disputes in both theory and practice as to whether Smart Contracts are legal contracts. Positive scholars believe that in order to facilitate execution, Smart Contracts must meet all the traditional requirements of effective contracts. This view holds that it is necessary to express the "mutual agreement" of the parties to the contract by making a promise or performing a contract. The act of expressing mutual consent is traditionally determined based on the expressions of intention of the parties to the contract and acceptance (offer and acceptance). Regarding the form of mutual agreement, the view is that it can be written or oral, but certain contracts must be

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[58] See The Ministry of Industry and Information Technology of the People's Republic of China, *2018 China Blockchain Industry White Paper*, http://www.xinhuanet.com/fortune/2018-05/21/c_1122861004.htm (accessed on December 8, 2021).

[59] See Jidong Chen, *The Legal Structure of Smart Contract*, 12(3) Oriental Law 18, 20-2 (2019).

[60] Ibid.

tangible. On the contrary, the negative view is that the Smart Contract is only an auxiliary means to promote the performance of the original contract, and it does not have the establishment requirements of the traditional contract in the contract law. This shows that the term contract is inappropriate here, because the creation of a smart contract will not allow any party to do anything or make any expected promises. According to this view, Smart Contracts aim to eliminate the need for parties to request legal enforcement after the fact. Its core feature is that it is unnecessary or impossible to implement the law during the execution process. In other words, since the execution process of Smart Contract is completely automatic and unmodifiable, Smart Contract does not require legal participation in the enforcement process. In this sense, the Smart Contract itself does not support anyone or even legal procedures to forcibly interrupt or suspend the execution of the contract content. This easily leads to the conclusion that even conceptually; Smart Contracts are not real contracts. Scholars who hold this view believe that these agreements seem to be only intended to be implemented, and do not intend to go to courts.[61]

In practice, whether it is the Blockchain white paper issued by the Ministry of Industry and Information Technology of the People's Republic of China or the Ethereum white paper, they have denied that Smart Contracts are legal contracts. For example, Ethereum's white paper states that its contracts "should not be regarded as something that should be 'performed' or 'observed'; on the contrary, they are more like 'autonomous agents' living in the Ethereum execution environment".[62]

Take European Union as an example, Blockchain arbitration is also contrary to some current legal systems, and there are active legal conflicts. In terms of legal application, whether the current laws on arbitration are applicable to the new arbitration model of Blockchain arbitration is full of unknowns. An increase in digitization of transactions introduced the concept of E-contracts, which is rapidly replacing traditional written contracts in Europe. The term "E-Contracts", though not explicitly defined in the European Union Electronic Commerce Directive, has been enunciated, under Article 9, as a contract which may be entered into, by the parties, through an "electronic means". Additionally, under the said provision, E-contracts are to be given legal effect throughout the European Union Member States. Similarly, concerns relating to signatures in an E-contract are guided by the Electronic Signatures Directive.[63] Smart Contracts, which are a series of electronic records that are securely stored by parties with the help of Blockchain, can be interpreted under the purview of "electronic means". Although this can be considered as an alternative interpretation, and in 2019, the Italian government brought in a law to provide formal recognition for Blockchain-based Smart Contracts as a part of Distributed Ledger System, most European Union countries have not legally recognized Smart Contracts.[64]

Another example, according to the Cybersecurity Law of the People's Republic of China, network users need to register with the real-name system (Article 24),[65] but the Blockchain is essentially anonymous, which contradicts the requirements of the real-name system. Regarding the issue of Smart Contracts, even if the Smart Contract

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[61] Ibid.

[62] Ibid.

[63] See European Union, *Directive on Electronic Commerce*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0031 (accessed on December 5, 2021).

[64] See supra note 23.

[65] See Cyberspace Administration of China, *The Cybersecurity Law of the People's Republic of China*, http://www.cac.gov.cn/2016-11/07/c_1119867116_2.htm (accessed on December 5, 2021).

is recognized as a contract, its essence is a program that defines the terms of the contract with code and executes it automatically. When the preset conditions are met, the contract will be automatically executed. This kind of contract that does not need to be enforced by law is similar to a "complete contract" and is contrary to the "incomplete contract theory" of traditional contract law. The application of contract law theory remains to be further demonstrated.

In addition, although some studies believe that Blockchain arbitration can effectively protect the security of personal information through the combination of anonymity and key, the data protection problem of Blockchain arbitration is still more significant. Kuner et al. believe that Blockchain is difficult to meet the requirements of GDPR. The hash-encrypted information on the Blockchain is only pseudonymous information rather than anonymous information. There is still a risk of being identified and is subject to personal information protection regulations. Satoshi Nakamoto, the father of Bitcoin, once stated that the IP address information written in the Blockchain may identify specific users. However, due to the decentralized structure, especially in the public chain, all nodes may be data controllers. In addition, due to the non-tamperable nature of the distributed ledger of the entire chain, it is difficult to be compatible with the principle of data minimization, and it is difficult to protect the data subject's right to delete data and the right to be forgotten. In the final analysis, the structure of the Blockchain naturally conflicts with the personal data control rights of the data subject.[66]

In international commercial arbitration, the place of arbitration is an important factor, which determines the nationality of the arbitration award, the application of law in the arbitration procedure, recognition and enforcement, and judicial supervision. Blockchain arbitration makes it difficult for arbitration activities to be localized. Traditional theory of place of arbitration is also difficult to apply.[67]

The mutual influence between law and technology has become increasingly obvious. With technology empowerment, technology will marginalize the influence of public power. Blockchain, as an innovative technology programmed by code and running on the Internet, is considered a "legal technology", that is, a technology that can replace legal functions. With the further development of Blockchain arbitration, arbitration is carried out among the nodes of the Blockchain. The legal function is facing the possibility of being increasingly marginalized. In the face of the impact of new technologies, if the relationship between law and technology cannot be correctly handled, the Blockchain arbitration may cause confusion in the function of legal adjudication.

3.3 Supervision Model Risks of Blockchain Application

As the initial application of Blockchain technology, the motivation of Bitcoin is to create a payment tool that excludes state intervention and can be applied to virtual spaces. Decentralization is its fundamental feature. The emergence of Bitcoin is deeply influenced by the idea of denationalization of currency, which naturally excludes government supervision and any third-party intervention. In other words, rejection of supervision is a natural attribute of Blockchain technology. Once the Blockchain technology is widely applied to various social scenarios, it will inevitably involve the interests of investors, participants, ordinary consumers, and the country,

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[66] See Christopher Kuner, *Blockchain Versus Data Protectio*n, 8(2) International Data Privacy Law 103, 104 (2018).

[67] See supra note 54.

and cause many social problems. Therefore, governments of various countries are highly vigilant about the rapid development of Blockchain technology and try to regulate or supervise it.

Blockchain is a machine that creates trust. The technical characteristics of Blockchain make it unnecessary for an authoritative central authority to maintain trust. This means that the use of Blockchain can replace a new type of government-led system of private law. The emergence of this is an innovation of great significance, because for liberals, this kind of decentralized innovation can not only be free from the control of regulatory agencies but can also destroy deep-rooted rights. The Blockchain is a kind of programming code. In the future, code is not only the greatest hope for realizing the ideals of freedom and liberalism, but also its possible threat. Decentralization means the lack of authority. The formation of a contracted society in the development of human society is enough to prove that this society needs authority.[68]

The legal relationship that is judged and enforced by a neutral regulatory agency and judicial system is the basis for the effective operation of modern society.[69] Blockchain arbitration is a technology-based private referee activity that links individuals in the arbitration procedure through the Blockchain and turns them into a node on the Internet, forming humans and machines, humans and data, and humans. The new structure of the law dilutes the function of intermediary agencies. Although it is conducive to the efficient and effective implementation of arbitration, if the platform organizer only has considerable rule-making power, violation punishment power, and dispute resolution power, it lacks an authoritative organization. The supervision of the platform will bring new unfairness. Because the decentralization of the Blockchain is actually a recentralization with a decentralized appearance, it may prompt the Blockchain platform to generate new virtual powers, which in turn will lead to the re-centralization of the real political economy and the formation of a new monopoly. Although on the surface it seems that each node in the Blockchain arbitration is fairly participated by all participants, it creates a new aggregation of power, which is not supervised by a third-party agency, and its deceptive and concealed nature stronger.[70]

According to the principle of territorial jurisdiction, a state has jurisdiction over activities that occur within its territorial boundaries. There is a complicated relationship between the exercise of state power and the development of judicial administrative infrastructure. The former is both a prerequisite and a driving force for the latter. From the first point of view, state control is a necessary condition for the establishment of jurisdiction. If there is no ability to ensure compliance with the law through coercive means, it is impossible for the state to establish a court structure system for resolving disputes; from the second point of view, The exercise of state power provides a basis for the judicial system to independently enforce laws in accordance with the law, and provides a guarantee for maintaining judicial justice and improving judicial authority.[71]

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[68] See Yann Aouidef et al., *Decentralized Justice: A Comparative Analysis of Blockchain Online Dispute Resolution Projects*, https://www.frontiersin.org/articles/10.3389/fbloc.2021.564551/full (accessed on March 16, 2021).

[69] See Aaron Wright & Primavera De Filippi, *Decentralized Blockchain Technology and the Rise of Lex Cryptographi*a, Social Science Electronic Publishing, pp.5-15 (2015).

[70] See supra note 68.

[71] See supra note 22.

However, in the context of the "judicialization" of the Blockchain, Blockchain technology can independently and decentrally manage more and more assets and resources without relying on state support. With the development of the transnational adjudication system, the trial functions of national courts are facing an increasingly "marginalized" situation. In reality, some "chain customers" and on-chain platforms have declared that digital jurisdiction based on Blockchain technology can operate completely independent of national jurisdiction. For example, Enterprise Operation System (hereinafter referred to as EOS), the core arbitration institution, that is, in EOS, the core arbitration institution is set up in accordance with the articles of association, and the "on-chain arbitrators" adjudicate disputes, resolve disputes, and submit the final ruling to the voting nodes for direct execution. For example, the Aragon Project built a binding "constitutional system" in advance, stipulated various ready-made regulations, laws, and declared that the built-in "online decentralized court system" can effectively resolve online disputes. The Aragon Project has become the first digital jurisdiction to operate on the Ethereum platform in the form of a distributed autonomous organization. Its goal is to break free from the shackles of territorial jurisdiction, form an online digital jurisdiction, and establish a border that is not bounded by national territories. The digital court, which can not only hear disputes between parties on the trading platform due to the performance of Smart Contracts, but also directly enforce the rulings made by the court. In general, when the rights and obligations of the parties in the Blockchain are made into Smart Contracts through encryption, the Aragon project becomes a dispute arbitration system similar to the actual judicial system. This system exhibits the characteristics of "quasi-judicial attributes", thereby precluding the exclusive jurisdiction of sovereign states. On-chain program designers use an internal private arbitration system to supervise the transaction behavior and transaction disputes of both parties. The scope of supervision is significantly transnational, which erodes the territorial principle of jurisdiction and makes the court's level and territorial jurisdiction fail, which has a huge impact on the existing dispute resolution mechanism.[72]

Each dispute settlement mechanism faces the problem of non-performance by the parties in terms of structure, and is also seeking a structural path to solve this problem. Regarding the non-performance of the contract by the parties, "enforcement" is needed to ensure that the award is complied with, and the right of enforcement depends on the assistance of the state. This applies not only to court decisions, but also to arbitration awards. Traditionally, arbitration awards can have legal effect in a specific country's legal system only after they have been recognized. The state has ensured the right to control the effectiveness of arbitration awards through recognition and enforcement procedures and cancellation procedures. For example, in terms of international arbitration, Article 5 of the New York Convention provides for the refusal to recognize and enforce foreign arbitration awards; in terms of domestic arbitration, Article 58 of the Arbitration Law of the People's Republic of China stipulates six situations in which an arbitration award can be revoked.[73] It can be seen that in terms of revocation, recognition and enforcement of arbitral awards, the court review procedure is the minimum but necessary check and balance of arbitral awards, and the balance between party autonomy and public power control. Its purpose is to

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[72] See Xuzhi Han, *The Compound Risk and Two-Layer Regulation of Judicial Blockchain*, 41(1) Journal of Xi'an Jiaotong University (Social Sciences) 136, 137 (2021).

[73] See National People's Congress of the People's Republic of China, *The Arbitration Law of the People's Republic of China*, http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4624.htm (accessed on December 7, 2021).

prevent those obviously unfair awards from producing practical results. It is a tool of national public power to prevent the legal effect of arbitral awards that violate procedural justice or social public order.[74]

In contrast, the construction of the Blockchain's internal arbitration system, while opening up a new path for arbitration, also makes the recognition and enforcement procedures and cancellation procedures of existing arbitration awards a "furnishing". In the Blockchain-based internal private arbitration system, the issuance and enforcement of awards overlap, that is, once the award is issued, it is immediately enforced, and it does not rely on the state's recognition of the award to make the award binding. The parties can make the award enforceable without requesting support from the state. The arbitrator directly compulsorily allocates the disputed assets to the winning party, and the state's right to review this part of the case is shelved. Therefore, the automatic execution of the internal private arbitration system ignores the mandatory provisions of arbitration awards that must not violate public policies, breaks the balance between autonomy and control, violates the mandatory requirements for arbitration awards to obtain legal effect, and ignores the state's "check and balance tool". The functional role of Blockchain has emptied the national judicial review.[75]

Generally, when an award is enforced, a certain balance needs to be struck between ensuring the legal rights of the creditor and protecting the basic rights of the debtor. This is not only because instantaneous execution is not feasible in practice in some cases, but more importantly because the execution procedure is operated according to a balance between different rights and needs. However, the execution of the award in the Blockchain's internal arbitration mechanism does not follow the logic of balancing the rights and interests between the parties. Because the process of distributing the disputed property to the winning party through technical means is instantaneous, without considering the balance factor at all. The most important thing is that the instantaneous nature of automatic decision-making eliminates the link of listening to opinions and explaining the reasons. It violates the rules of due process and can easily cause violations of the basic rights of the debtor. For example, in the case of a house lease with a Smart Contract, once the landlord triggers an eviction situation through the program code set in the previous period, the use of a smart door lock managed by Blockchain technology may immediately prevent the tenant from opening the door. In this case, automatic enforcement may lead to violations of the tenant's basic rights. It can be seen that the logic of implementing automated decision-making is a kind of technical automation. In some cases, the meaning of reasonable discretion is not considered, and it is difficult to coordinate with the traditional balance model.[76]

4. Regulatory Path and Suggestions of Blockchain Arbitration in Chinese Mainland

4.1 Technical Uniform Standards for Blockchain Arbitration

Blockchain, as a science and technology in the field of computers, big data and the Internet, is a static and objective existence. It does not bring any harm to the society by itself. Only when the technology is applied to specific scenarios can it be

[74] See supra note 22.
[75] Ibid.
[76] See supra note 72

involved social interest or public interest. Therefore, it is neither necessary nor feasible to simply supervise Blockchain technology. It needs to be discussed in combination with specific application scenarios according to different types of Blockchains.[77]

Bitcoin, which carries Blockchain technology, has been gradually recognized since its creation in 2009, especially after 2012 and 2013. The Hot issues of social concern happened in 2016 and 2017, and new applications such as Ethereum and Litecoin were derived based on Blockchain technology. It is recognized that Bitcoin is the 1.0 version of Blockchain technology. On this basis, Ethereum has added Smart Contracts, which is regarded as the 2.0 version of Blockchain technology. The implementation and application of Blockchain technology in life is regarded as Blockchain version 3.0. The 3.0 era has completely surpassed the era of digital tokens and is also known as the Internet of Value. The technical advantages of Blockchain, especially the concept of decentralization, make its applications have unlimited imagination. This has aroused great enthusiasm in the investment community. With the crazy influx of capital, Blockchain has become one of the most popular investment fields. However, in this process, there is a lack of a unified understanding of what is a Blockchain, what are the technical requirements of a standard Blockchain, and these most basic issues.[78]

Standards are the key to ensuring the progress of the Blockchain and the benchmark for consumer protection and performance. According to statistics from the Global Blockchain Business Council and the World Economic Forum, there are currently 185 jurisdictions, 379 industry groups, and more than 30 Blockchain technology standard setting entities. However, due to the lack of coordination, these standards have overlapping and blank fragmentation, which will hinder the development of Blockchain arbitration. Uniform standards can avoid technical confusion and provide a consistent Blockchain policy environment. Therefore, in the construction of Blockchain arbitration platforms, it must pay attention to the construction of standards, unify arbitration-related Blockchain standards, and realize the standardization of Blockchain arbitration.[79]

The formulation of a unified Blockchain technology standard will help the industry, the public and relevant regulatory authorities to accurately identify, remove fakes and preserve the truth, reduce chaos in the industry, combat illegal crimes, and protect the legitimate rights and interests of investors. The unification of Blockchain technology standards is not only a national issue, but also an international issue worldwide. The establishment of a unified international standard for Blockchain technology is conducive to its innovative development. Blockchain application companies can only be accepted by the international market if they follow international standards. The International Organization for Standardization (hereinafter referred to as ISO) has begun to formulate international standards (ISO/TC307) for Blockchain and distributed ledger technology several years ago. There are currently about 50 participating members including China, the United States, France, the United Kingdom, Germany, Japan, India. There are 13 observers including South Africa, Argentina, and the secretariat is located in Australia. It is worth mentioning that the reason why the secretariat is located in Australia is that its

[77] See supra note 24.
[78] See supra note 72.
[79] See supra note 54.

standardization agency Standards Australia first proposed to the ISO in April 2016 that it should set global standards for Blockchain technology.[80]

China is a major participant in the international standards of Blockchain technology. This not only shows that China can contribute more to the application of global Blockchain technology, but also means that China can transform some of its recognized standards into internationally accepted standards. From a global perspective, the countries with the most Blockchain patents mainly include China, the United States, South Korea, and Japan. China has the fastest growth. More than half of the world's Blockchain patents are in China. In China's intellectual property big data and smart service system, 1,893 patent documents can be retrieved using Blockchain as a key word, including 68 Chinese invention authorizations, 1,681 Chinese invention applications, and 61 WO international invention applications. The deeper the Chinese government's participation in formulating international standards for Blockchains, the greater the market value of China's Blockchain patents. Among the 10 international standards that have been established, China has undertaken the editing of taxonomy and ontology and the co-editing of reference architecture respectively. Relevant institutions in Chinese Mainland can benchmark the content of international standards, first formulate national standards for Blockchain technology, and gradually improve them according to the applicable effects, and provide relevant content to the ISO for reference.[81]

4.2 Legal Regulation and Risk Assessment

As a vital means of dispute resolution, arbitration is of great significance for maintaining social fairness and justice. Therefore, Blockchain arbitration needs to comply with the provisions of the law, and legal boundaries need to be set for Blockchain arbitration. In order to standardize the use of Blockchain arbitration, in the future, it will be necessary to strengthen the legal system for regulating Blockchain arbitration on issues such as reviewing Blockchain algorithms, information infrastructure construction, data protection, and Smart Contracts through legislation, amendments, and judicial interpretations.[82]

The operation of the Blockchain arbitration must first comply with the rule of law principles. It not only needs to respond to the application of law in the operation of the Blockchain arbitration, but also needs to build a system around the characteristics of the Blockchain arbitration, and set the legal boundary for the Blockchain arbitration and application space.

Firstly, follow arbitration principles attributes to achieve digital justice. On one hand, it is necessary to clarify the tool attributes of the Blockchain arbitration and respect the subject status of arbitrators. The discretion of the arbitrator cannot be rationalized by any logical tool or calculation framework. Blockchain arbitration cannot make factual or legal judgments on behalf of arbitrators in any form. On the other hand, even from the perspective of source governance, the Blockchain arbitration must remain passive and neutral. Strict control should also be imposed on the market entities that access it, and in interest-related cases, the market entities themselves or on-chain evidence that participates in the control should be excluded. Last but not the least, in the dimension of application, a forbidden zone should be designated for smart arbitration. In particular, the Blockchain arbitration system,

[80] See International Organization for Standardization, *Participation*, https://www.iso.org/committee/6266604.html?view=participation (accessed on December 7, 2021).
[81] See supra note 24.
[82] See supra note 54.

which is widely applicable to International commercial cases, shall not be arbitrarily extended to the criminal field, and Blockchain arbitration shall not be allowed to actively influence the system rules of criminal cases.[83]

Second, introduce algorithm interpretation power and algorithm audit system to strengthen the construction of Blockchain arbitration system. According to the principle of arbitration transparency, the Blockchain arbitration should introduce algorithm interpretation power. Learning from European Union regulations, the right to interpret the algorithm does not need to disclose the algorithm itself. It only needs to give an explanation of "If it is not A, there will be no B" in a concise and easy-to-understand form. The publication of Blockchain arbitration construction standards can meet this transparency requirement. In addition, relevant authorities should conduct risk assessment and algorithm audits on Blockchain arbitration algorithms in accordance with relevant construction standards. If the recommended national standard "General Technical Requirements for Distributed Block Storage Systems" is applied, audits are conducted for data security and system security. At the same time, the construction of Blockchain arbitration should be strengthened, and the availability of Blockchain arbitration resources should be continuously improved.

Third, establish the authentication rules of electronic evidence suitable for Blockchain. As mentioned earlier, according to the latest clauses of the Several Provisions on Evidence in Civil Litigation of the People's Republic of China, the Blockchain deposit evidence should be the original. At the same time, it must be clear that proof of existence is by no means equal to proof of authenticity. The existence proof itself should also be judged by combining the source and integrity of the data, data security and system reliability, the technical conditions of the computer system, and electronic signature technology. At the same time, the relevance of the data and the case should be examined, and the content of the data and the legality of its formation should be examined, and the use of illegal evidence should be excluded.[84]

Fourth, clarify the application of the data protection system. First of all, it must be clear that although the Blockchain technology using cryptographic methods can indeed play a role in data protection, it has not achieved the anonymity of personal information, and IP address data is generally recorded. The European Court of Justice clearly stated in multiple cases that IP address information is personal information. In terms of specific application methods, nodes or data subjects in the Blockchain arbitrators should not be regarded as data controllers. The node just assumes the role of the information processor and assumes the obligations of the information processor. It must be clear that the processing of personal information carries the interests of data subjects, data users, and social public interests, and the control of personal information must not be absolute. In the Blockchain arbitration, system security and confidentiality should be used as tools to achieve the minimum and accurate data requirements, and the problem of data control and deletion should be solved through code design.[85]

Fifth, clarify the status of the key information infrastructure of the Blockchain arbitration and strengthen the protection of important data in Blockchain arbitration. The Beijing Internet Court's Management Regulations for the Application and Access of the Balance Chain more clearly stipulates the relevant specifications of public key

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[83] See Qingli Zhang, *The Illegal Risk of Blockchain Application and Criminal Law Response*, 12(3) Oriental Law 72, 73 (2019).

[84] See Mingzhou Shi, *Civil Judicature under the Era of Blockchain*, 12(3) Oriental Law 110, 112-5 (2019).

[85] See supra note 72.

infrastructure. Judging from the institutional impact of the Blockchain arbitration, it is related to national security, national economy, people's livelihood, and public interest, and it fully complies with the key information infrastructure category of the Article 31 of the Cybersecurity Law of the People's Republic of China. At the same time, due to the special nature of the Blockchain arbitration construction, it is also necessary to protect the key information infrastructure of the Blockchain arbitration through public-private partnership governance. Correspondingly, Blockchain arbitration also stores important data closely related to national security, economic security, social stability, and public health and safety. In this regard, special regulations for important data management also need to be applied.[86]

Sixth, the Blockchain arbitration Smart Contract cannot be regarded as special contract, and its application needs to comply with the principle of proportionality. First of all, the Smart Contract itself is just a code now. The establishment and effectiveness of the contract must have elements of traditional contract law such as the true and legal meaning, equal rights and obligations, and non-violation of legal prohibitions. The Smart Contract under Blockchain arbitration is only an automated application of the way of fulfilling legal obligations. Pay attention to the legal limits in this kind of automation application. Automated physical control of property mechanically can lead to unacceptable results. The court of Arkansas in the United States ruled that creditors can adopt a monthly authorization method. Locking the device would violate the law due to the principle of non-proportionality. It can be seen that the value of Smart Contract of Blockchain arbitration must be measured during the design, and it must be fully examined whether there is an alternative method for less damage.[87]

Seventh, strengthen the design of personal information protection in Blockchain arbitration. In order to achieve the personal information protection requirements, it is necessary to adopt self-designed protection of privacy and default settings for privacy protection in Blockchain arbitration architecture. The design of personal information protection in the technical code is an inevitable result of the application of the data protection system in the legal code. It is precise because of the clarification of the applicable space of the data protection system in Blockchain arbitration that the personal information protection design has been introduced. Judging from the experience of extraterritorial legislation, the design of personal information protection is also one of the key points in the upgrading of the personal information protection system in the artificial intelligence era. Self-designed to protect privacy will actively integrate privacy protection into code design, and advocate end-to-end security centered on user privacy. Privacy protection default settings emphasize the design of the default settings that is most conducive to privacy protection. This is clearly stipulated in Article 25 of GDPR. Specifically, it is possible to improve the encryption method to make the information meet the requirement of anonymous information in Article 42(1) of the Cybersecurity Law of the People's Republic of China, which "cannot identify a specific individual after processing and cannot be recovered". If anonymity requirements cannot be met, technical solutions can be adopted to strengthen information protection. At present, the more common technical processing methods include homomorphic encryption, restricted classification storage, zero-knowledge proof, hybrid technology, fuzzy information on the chain, ring/group signature, side chain and so on.[88]

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[86] See Qingfeng Xia, *Smart Contract and Its Application*, 12(3) Oriental Law 30, 32-5 (2019).
[87] See supra note 72.
[88] See supra note 84.

Eighth, adopt the mentally handicapped contract and "super node" design. In order to solve the problem that "strong Smart Contracts" cannot be revoked and modified; "weak Smart Contracts" can be adopted in Blockchain arbitration to allow revisions under certain conditions. At the same time, the self-destruct function of the mentally handicapped contract can also be used to delete data. It can be seen that Blockchain arbitration should be an editable Blockchain to a certain extent. The design of "weak Smart Contracts" and "super nodes" in the technical code is inherently related to the regulatory model of Smart Contracts in the legal code. On the one hand, because the Smart Contract of Blockchain arbitration is not a contract now, the change of information on the chain through technology is only a change to the recorded information or the automatic performance method, and there is no legal obstacle. On the other hand, these technologies serve the restrictive application of Smart Contracts of Blockchain arbitration, respond to the legal requirements of data deletion rights in data protection and the principle of proportionality in the application of Smart Contracts, and further strengthen judicial authorities' arbitration of Blockchain control. The judicial authority has become the "super node" among them, which controls certain information on the chain, and adopts a consensus mechanism for verification and change, and keeps relevant records for future review and interpretation. At this time, the status of the judiciary has surpassed the "monitoring and observation nodes" in the general private/licensed Blockchain, allowing the judiciary to make substantial changes to the information on the chain through the relevant application interface.[89]

The application of Blockchain in arbitration is still in the experimental stage. At present, some soft law rules can be used to regulate technical risks, and at the same time, they can leave relatively loose space for its development. In fact, in the Internet platform, some e-commerce platforms have set some transaction rules and dispute resolution regulations in transactions. These soft law rules can provide regulatory testing, case samples and experience accumulation for national legislative and judicial authorities in handling disputes. Blockchain arbitration posed some major challenges and triggered the need for transnational legislation, especially the need to balance conflicting needs during the implementation phase. Therefore, in this respect, international cooperation can also be strengthened through soft law rules to reduce the possibility of legal conflicts.[90]

Risk Assessment is to quantify the possible extent of the impact or loss of an event or thing by assessing the risk when the government wants to make regulations. To reduce the risk in Blockchain arbitration, both government and users can learn from the method of risk assessment. A qualified and authoritative third-party organization will face the risks of each node on the arbitration chain and each link of the arbitration process, as well as the results of the arbitration. The likelihood of impact is assessed. For example, in terms of personal data protection, it can learn from GDPR on Data Protection Impact Assessment method of automatic algorithm decision-making, and carry out pre-assessment of the impact of automated arbitration on individual rights.[91]

Risk assessment can be divided into risk identification and risk evaluation. In terms of risk identification, the focus of traditional information system identification is on the core server. Unlike traditional information system identification, Blockchain

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[89] See supra note 86.

[90] See Carla Reyes, *Moving Beyond Bitcoin to an Endogenous Theory of Decentralized Ledger Technology Regulation: An Initial Proposal*, 61(1) Villanova Law Review 191, 195-220 (2016).

[91] See supra note 54.

arbitration involves many nodes and scattered information. Therefore, each node needs to be identified to distinguish between existing technical and legal risks. After the risk identification is completed, a risk evaluation should be formed, which should include the risks and their potential consequences found in the risk identification, and compare the consequences with standards through analysis to determine whether the existing risks are acceptable or tolerable. The design of the Blockchain arbitration risk assessment mechanism should adhere to the principle of combining encouragement of innovation with prevention of risks and pay attention to the balance of needs. Decentralization has advantages and disadvantages, so it must seek a balance between the advantages and risks of decentralization. Meanwhile, the risk assessment of Blockchain arbitration should also pay attention to clarifying the legal boundaries of automatic arbitration, setting necessary restrictions on automatic decision-making in the arbitration system, and not damaging public interests and public order and good customs.[92]

The establishment of the risk assessment mechanism for Blockchain arbitration is based on the autonomy of the parties. The principle of autonomy of will is a basic principle in the field of arbitration. Based on the nature of autonomy of will, the parties can independently choose a private dispute resolution method through an arbitration agreement. Therefore, before deciding on Blockchain arbitration, the parties can rely on the prior risk assessment mechanism to fully weigh the pros and cons, use the prior risk assessment mechanism to allow the supervision of judicial institutions to withdraw from the arbitration process, transfer the risk of arbitration to the pre-arbitration, transform technical trust into legal conviction, maximize the effect of private law autonomy, and achieve fairness and arbitration efficiency.[93]

The significance of Blockchain arbitration is to achieve a certain degree of autonomy. In some cases, excessive external regulation will cause harm to its development. Therefore, it is necessary to strengthen internal governance in Blockchain arbitration and achieve risks through internal governance for the purpose of prevention. For example, technical governance measures such as firewalls and data encryption can be used to prevent the risks of Blockchain technology itself, so as to minimize the risk of Blockchain arbitration technically. Although Blockchain is an open technology, in fact the public chain is a highly concentrated activity, and about 200 people control most of the public chain. Therefore, it is necessary to strengthen the governance of the public chain in the technical governance of Blockchain, and the development of the public chain should meet the requirements of technological neutrality.[94]

If transaction disputes can be resolved through Blockchain arbitration, and the Blockchain system itself has a good internal governance mechanism, then other external governance methods are not needed. At present, technology enthusiasts are pursuing the development of Blockchain with a perfect governance mechanism, in an attempt to completely prevent risks through the on-chain governance mechanism, thereby getting rid of the supervision of a third-party authority.

However, it is hard to achieve complete on-chain governance nowadays. The biggest problem is that the basic rules of the Blockchain governance mechanism are difficult to change. If Blockchain system has a complete mechanism, it can consider consensus rules and other technical attributes. And adjustment, this system is not decentralized in nature. Therefore, Blockchain technology can only be used as a

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[92] Ibid.
[93] Ibid.
[94] See supra note 90.

means of assisting arbitration, and cannot completely replace the law to achieve autonomy. What people have to do is to continuously improve the Blockchain's on-chain governance mechanism technically and make it governed by law. The mechanism is close to combining technological governance and legal governance, and jointly playing the role of both in promoting efficiency and risk demeanor.

4.3 Regulatory Path and Suggestions of Blockchain Arbitration in Chinese Mainland

As a product of the Internet, Blockchain has the attributes of globalization. On the Blockchain platform, the use of digital currency for transactions automatically crosses territorial boundaries, so the internal private arbitration system set up to resolve online transactions is naturally transnational. In principle, countries can supervise Smart Contracts on their own and reasonably limit the scope of autonomy, thereby prohibiting certain enforcement actions. However, in the absence of any multilateral treaties, different countries may adopt kinds of methods to supervise Blockchain technology, causing the technology to be subject to different rules, resulting in varying degrees of protection for all parties engaged in the same type of transaction, increased the cost of compliance. In addition, as a new technological form of Blockchain, the development level of its internal private arbitration mechanism is not even in the world. All countries cannot participate equally in the discussion of Blockchain jurisdiction and supervision. Countries around the world are still not ready to reach a multilateral agreement to solve the Blockchain regulatory issues. Just as the response to climate change requires global cooperation, the Blockchain platform, as an international environment, also requires internationally-oriented solutions to its regulatory issues. From a practical point of view, international dialogue is still an effective way to solve this problem. Blockchain jurisdiction disputes are fundamentally about the construction of international development frameworks and standards. These frameworks and standards will shape the common ideals of all countries in the digital era in the future. Therefore, only by strengthening international cooperation, clarifying the scope of application of the "legalization" of the Blockchain development space, and formulating a new balanced framework and multilateral treaties, can it promote the sustainable development of the digital economy and maintain the openness and legitimacy of the Blockchain.[95]

Blockchain is a brand-new social credibility and consensus system, and its internal automatically generated transaction specifications and autonomous groups have to some extent downplayed the role of the central regulatory agency. By establishing a self-enforcing private arbitration system through the Blockchain, Blockchain arbitration will marginalize the public power of the government. Under the leadership of technology, while Blockchain arbitration improves the efficiency of dispute resolution, it also brings issues such as information security and platform monopoly. Therefore, based on the objective requirements of arbitration security and fairness, the supervision of Blockchain arbitration must achieve breakthroughs, not only to improve the old system, but it must also focus on the construction of the new system.

When supervising Blockchain arbitration, it must pay special attention to promoting the balance between innovation and risk prevention, so as to achieve a pluralistic "smart supervision". Smart supervision attempts to strike a balance between risk prevention, innovation promotion, and consumer protection and other

[95] See supra note 22.

value pursuits. This concept was proposed in 1998 and refers to a diversified mode of supervision, through flexibility, imaginativeness and innovation. Social supervision by means of force. The supervision of Blockchain arbitration is different from traditional arbitration in terms of organization and business form. Therefore, it challenges traditional supervision in terms of supervision concept, supervision subject and supervision method.

Smart supervision of Blockchain arbitration should expand the scope of supervision entities. The government, courts, arbitration institutions, enterprises, industry associations and other multiple entities should jointly participate in the formulation of relevant supervision policies; various supervision methods should be used. Non-single policy tools, such as the use of a combination of self-regulation and joint supervision; a gradual approach to the supervision path, from loose to strict, to punitive measures. Smart supervision of Blockchain arbitration requires not only to prevent the risks of using Blockchain, but also to promote the innovation and development of arbitration, and to reserve space for arbitration innovation in improving efficiency.

The application of Blockchain in international commercial arbitration is undoubtedly in line with the development trend of the current era. However, as leading companies in the Internet and Blockchain technology are mainly concentrated in Western countries such as the United States and European Union, the application platforms for Blockchain international commercial arbitration are also concentrated in Singapore, Berlin, London, New York and other places. The pioneer countries in international commercial arbitration on Blockchain may affect the formulation of relevant international rules through the application of Blockchain in international commercial arbitration, and realize long-arm jurisdiction on trade data issues in disguise.[96] It can be seen that the application of Blockchain in international commercial arbitration places higher requirements on China's regulatory framework.[97]

First of all, the regulatory goal of Blockchain international commercial arbitration is to seek a balance between the autonomy of arbitration and the unity of supervision. Currently, Chinese government needs to encourage and guide the application of Blockchain in international commercial arbitration, but one of the foundations of international commercial arbitration is autonomy. This autonomy allows users of Blockchain arbitration to freely choose the applicable law for their transactions, and at the same time freely choose the location of the arbitration, which has the characteristics of "deregulation" or "weak supervision". For regulators, if a standard clause is imposed on the entire Blockchain, it will hurt the autonomy of transactions on the Blockchain.[98] On the contrary, allowing all parties to freely choose arbitration, laws and contract texts may lead to the same cause of action in different regions, and then multiple arbitration processes, which is also not desirable. The way for regulators to find a balance between autonomy and unity is to set options in advance through the arbitration mechanism of the Blockchain for users on the block chain to choose, giving limited flexibility. For example, it can list several different institutions, and the participating subjects can choose jointly according to

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[96] See Wei shen, *The Appearance and Formation of American "Small Multilateralism" under the Background of Anti-globalization*, 22(3) Cross-strait Legal Science 38, 40-5 (2020).

[97] See supra note 9.

[98] See Sarah Chaplin, *Blockchain and the future of dispute resolution*, https://www.financierworldwide.com/blockchain-and-the-future-of-dispute-resolution#.YazY0PFByZ8 (accessed on December 5, 2021).

their convenience. The goal of the implementation of supervision of Blockchain international arbitration should strike a balance between granting autonomy in commercial arbitration and uniformity in dispute resolution.[99]

Secondly, supervision should focus on the combination of rigid supervision rules and flexible supervision rules. At present, China's current legislative system does not yet have relevant provisions on Blockchain international commercial arbitration. It is only in the Personal Information Protection Law of the People's Republic of China, Data Security Law of the People's Republic of China and other clauses involving cross-border data circulation that provide for automated decision-making and cross-border provision of personal information. Information and data exit security and other related content are covered.[100] This reflects the need to improve regulatory rules at two levels: one is the institutional framework, that is, to absorb the current practice of Blockchain international commercial arbitration in the formulation of specific rules, and to set the zone based on the operational status of Blockchain arbitration. The content of the Blockchain arbitration rules, including the technical and legal constraints on the Blockchain arbitration mechanism, so that it conforms to the security and privacy provisions of the current Blockchain domestic legislation and technical standards; the second is to respect and integrate the current international commercial arbitration common habits, because the application of Blockchain in international commercial arbitration is not yet mature, the use of flexible and flexible mechanisms can effectively regulate technical risks on the one hand, and leave relatively loose development space on the other hand. Compared with the two, the former is a "rigid" institutional regulation, while the latter is a "legible" adjustment method. In fact, international commercial arbitration, as a way of resolving transnational disputes, has significant supranational attributes.[101] The application of Blockchain in international commercial arbitration breaks the regional restrictions. At this stage, more institutional frameworks are set up based on traditional international commercial arbitration, which will impose many institutional costs on Blockchain international commercial arbitration. This urges domestic Blockchain n supervision to extend and cooperate in the international space.[102] It is necessary to formulate unified legal rules to regulate the use of Blockchain in international commercial arbitration, and to set principled and directional content, which is the block space reserved for the development of chain international commercial arbitration. In 2019, Cyberspace Administration of China formulated the Regulations on the Management of Blockchain Information Services to provide an effective legal basis for the provision, use, and management of China's domestic Blockchain information services.[103] On this basis, in accordance with the specific issues in the application of Blockchain international commercial arbitration, further integration into the framework of international cooperation conventions and the formulation of relevant international standards will become one of the development directions of Blockchain regulatory rules in Chinese Mainland.[104]

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[99] See supra note 9.
[100] See supra note 22.
[101] See Orna Rabinovich-Einy & Ethan Katsch, *Blockchain and the Inevitability of Disputes: The Role for Online Dispute Resolution*, 2(2) Journal of Dispute Resolution 47, 47-50 (2019).
[102] See supra note 98.
[103] See Cyberspace Administration of China, *Regulations on the Management of Blockchain Information Service*s, http://www.cac.gov.cn/2019-01/10/c_1123971138.htm (accessed on December 5, 2021).
[104] See supra note 9.

Third, the regulatory body needs legal and technical expertise. In modern times, the international commercial arbitration mechanism has been based on professional regulatory bodies and has successively included six important mechanisms: one is the judging mechanism stipulated in important international treaties; the other is the judging mechanism of inter-state non-governmental organizations; and the third is the implementation of specialized chambers of commerce in various countries. The fourth is the judgment of multinational industry organizations; the fifth is the court or institution selected by the commercial entity in the form of the articles of the charter; the sixth is the other judges jointly determined when the commercial agreement is reached or the dispute arises.[105] The main body of international commercial arbitration supervision based on Blockchain needs to be established urgently and will become a new mechanism in addition to the above six mechanisms. The regulatory body under this mechanism is bound to combine the two fields of technology and law, and it also puts forward requirements for the organizational structure and functional positioning of the regulator. To this end, Cyberspace Administration of China, as the main body of supervision of Blockchain information service technology in Chinese Mainland, can set up a special mechanism for technology approval and filing permits, and play a supervisory role in both technical application professionalism and judicial application professionalism. This effective model for optimizing the structure of the regulatory body can learn from the Beijing Internet Court's Management Regulations for the Application and Access of the Balance Chain, set up the node secretariat, technical committee and other management rules for the international commercial arbitration Blockchain to further integrate the regulatory power and improve regulatory effectiveness.[106]

Finally, the regulatory means should be realized through indirect means. At this stage, it should mainly adopt a combination of special rectification and normalized supervision for the supervision of network technology applications in Chinese Mainland. The regulatory measures are relatively strict, and the color of administrative intervention and administrative orders is strong.[107] This kind of supervision inevitably has disadvantages such as backward concepts, single subject, and traditional methods. Especially in the field of cross-border technology application of Blockchain, it may cause discomfort for international commercial entities on the chain.[108] In view of the characteristics of both autonomy and uniformity of Blockchain international commercial arbitration, it is recommended to promote the transformation of administrative order supervision to indirect supervision means. Supervision means focusing on principled and framework supervision of risk warning, rather than direct intervention and punitive supervision. To this end, it is possible to explore the application of the on-chain "supervisory sandbox" in the field of commercial arbitration. The focus of supervision is to create an "environment" or "atmosphere" for Blockchain international commercial arbitration and promote the development of Blockchain technology in the field of international commercial arbitration operation effectiveness.[109]

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[105] See supra note 101.
[106] See supra note 66.
[107] See Alexandra Miller, *Blockchain: A new Frontier for Dispute Resolution?*, https://kennedyslaw com/thought-leadership/article/blockchain-a-new-frontier-for-dispute-resolution/ (accessed on December 4, 2021).
[108] See supra note 101.
[109] See supra note 9.

In view of the natural transnational nature of Blockchain transactions, when the jurisdiction of disputes is not clear, it is possible to consider establishing an arbitration institution that specializes in dealing with Blockchain-related issues. The arbitrators of the arbitration institution are cryptographic experts, computer experts, and jurists. Formed to jointly coordinate and handle transaction dispute cases on the chain. Since Blockchain technology involves many professional issues in the computer field, for these professional issues, the parties can specify in the agreement that the arbitration institution can provide arbitration services at the request of both parties to the dispute. There have been such attempts. For example, in November 2018, the Russian Industrialists and Entrepreneurs Union announced the establishment of an arbitration institution, which aims to handle cases related to Blockchain technology, initial token issuance projects, and Smart Contracts, and is responsible for resolving disputes and differences between participants in the digital economy, the committee stated: "From 2020 to 2025, the number of such cases will increase by 40 times." Therefore, only by strengthening international cooperation and jointly promoting the construction of relevant standards and frameworks for the "judicialization" of the Blockchain can the maximum utility of Blockchain technology be brought into play and the sustainable development of the digital economy can be realized.[110]

5. Conclusion

The current buzzword- Blockchain has advanced from being a theoretical concept to reaching the sphere of technology where it is shaping today's society and the legal profession. Utilizing the characteristics of Blockchain anonymity, transparency, and decentralization, Blockchain arbitration can make up for the shortcomings of online arbitration and exert tremendous advantages. In the collection of evidence and the determination of facts, Blockchain arbitration can free arbitrators from massive amounts of factual data, improve the efficiency of arbitration, and ensure the safety of arbitration. During execution, Blockchain can guarantee the security of the execution process and may realize a new mode of arbitration that does not rely on third-party execution. These self-executing, new generation contracts are geared towards the realization of predetermined conditions. With the help of Smart Contracts, Blockchain arbitration can facilitate storing and verification of rules and automated execution (upon a particular event constituting a breach of the agreement) by invoking the arbitration clause incorporated in the Smart Contract. However, it is yet to be seen how Smart Contracts shall interact with data protection and privacy laws, intricacies of dispute resolution, and obligations and rights of the parties involved.[111]

Machine algorithms have become more and more complex, and the law has always faced the question: For increasingly independent and truly autonomous decision-makers, who should bear the responsibility? From Internet technology to Blockchain technology, from the first online signature to the emergence of Smart Contracts, the development of technology is constantly subverting people's lives and the legal system. Arbitration can only actively respond to this trend. Only by properly handling the relationship between technology and law can people improve their ability to resolve disputes in the digital age.[112]

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[110] See supra note 22.
[111] See supra note 45.
[112] See Michèle Finck, *Blockchain Regulation and Governance in Europe*, Cambridge Press, pp.10-28 (2019).

The current international competition centered on the high-tech industry is becoming increasingly fierce. As a cutting-edge technology, the influence of Blockchain has penetrated the field of dispute settlement. As the largest developing country in the world, Chinese government should actively embrace the innovative development of Blockchain arbitration, maintain a balance between technological changes and traditional legal systems, seize opportunities for technological development, and push China to become theoretical in the field of international commercial arbitration, and then occupy the commanding heights of innovation. At present, the application of Blockchain arbitration is still in its infancy. Only by strengthening research in related fields of Blockchain technology can China enhance its international voice and rule-making power when participating in the reform of the global governance system. At the same time, as a responsible major country, China should actively encourage the international community to conduct consultations and dialogues on Blockchain arbitration related theories and technologies, promote the establishment of a consensus mechanism for interests, and guide the development of the digital age in a more equitable direction.

Cultivating Global Governance Talents through Integrating the SDGs into Education in the Post-COVID World

Xirong Liu[1]

Abstract: The outbreak of COVID-19 has engendered tremendous impacts on the world, putting current global governance system into question in the global context of re-globalization. Fair and square international economic rules, robust universal healthcare, social protection systems and closer multilateral cooperation are needed to improve global governance capabilities for a sustainable future which requires actions and operations from all levels, globally, regionally, nationally, locally and personally. As the youth are an important driving force to shape the future world, educators should play their roles in cultivating future global governance talents. One effective way of nurturing prospective global governance leaders is to integrate the United Nations sustainable development goals (SDGs) into curricula to improve youngsters' sense of global citizenship, foster their sustainability competencies, and motivate them to take actions to create a better tomorrow with more possibilities. The SDGs seek to achieve sustainable development in economic, social and environmental dimensions. The COVID-19 pandemic has retarded the progress of SDGs, and yet demonstrated precisely the necessities of sustainability or sustainable development in all aspects for present and future generations. To make SDGs a reality, every individual must have access to quality education as it is not only an end in itself but also a pathway to sustainability. Solid achievements have been made to integrate the SDGs into curricula. However, there are still many difficulties needed to be resolved. Some possible strategies are proposed to address the challenges, namely, following a pathway of "objectives alignment—system design of content—innovative pedagogies application—monitoring and evaluation" with "faculty capacity building" and "whole institution support". Moreover, a case study of *A History of Western Civilization and SDGs* is presented to show how to systematically and scientifically embed the SDGs into curricula and help nurture future global governance leaders.

Keywords: Post-COVID; Globalization; Global Governance; SDGs; Education

1. Introduction

The COVID-19 outbreak has engendered tremendous impacts on people's daily life, international finance, trade and politics. By the time of this writing, there have been 104,370,550 confirmed cases of COVID-19, including 2,271,180 deaths globally reported to World Health Organization.[2] The stock market's confidence sapped to the degree that it fused four times in a single month in 2020. The total merchandise exports of the first three quarters in 2020 are 12,476,159 Million USD, decreasing by 10.81% compared with the same period in 2019.[3] The global real Gross Domestic Product (hereinafter referred to as GDP) has contracted by 3.5% in 2020.[4] While

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[1] Xirong Liu, Ph.D., Assistant Professor of School of Foreign Studies at East China University of Political Science and Law. This article is sponsored by Shanghai Young University Teachers Training and Sponsoring Program in 2021.

[2] See WHO, *WHO Coronavirus Disease (COVID-19) Dashboard*, https://covid19.who.int/ (accessed on February 6, 2021).

[3] See WTO, *WTO Metadata*, https://data.wto.org/en (accessed on February 6, 2021).

[4] See International Monetary Fond, *2021 World Economic Outlook*, https://www.imf.org/en/Publi

China takes quick and effective actions to make the virus under control and goes back to the normal track of life and development, the confirmed cases of COVID-19 are still increasing rapidly in other countries, notably in the United States. The pandemic has disrupted the global supply chain, dragging the world economy and trade into deep mires, putting the current global governance system into question. The coronavirus also provides an excuse for trade protectionism, unilateralism and deglobalization.[5] As globalization increases mobility among countries and regions, it is held as the direct culprit for the outbreak and widespread of the pandemic.[6] The destructive pandemic has been said to be the last straw of terminating globalization. So, what is the global context or trend in the post-coronavirus era? Is it heading to deglobalization or reglobalization? What lessons can humans learn from the pandemic? What actions can be taken to improve global governance capabilities? As the younger generation is the shaping power of the future world, what can educators do to cultivate future global governance talents for a sustainable world?

This article proposes that multilateral cooperation is needed to improve global governance in the context of reglobalization after the pandemic and educators can integrate the United Nations sustainable development goals (hereinafter referred to as SDGs) into curricula to cultivate future global governance talents by improving youngsters' sense of global citizenship, fostering their sustainability competencies, and motivating them to take actions to create a sustainable future. The article is composed of sixth parts. The first part is a literature review of global governance and global education governance, pointing out the academic and realistic necessities of rethinking global governance and education in the Post-COVID era. The second part looks into the global context after the pandemic, pointing out that multilateral collaboration is needed to improve global governance capabilities in the wave of reglobalization. The third part focuses on the necessities of integrating the SDGs into education through an analysis of the origins, development and difficulties of the SDGs, education as a fundamental human right, and education as a catalyst for sustainable development goals. The fourth part examines the difficulties and challenges in practicing the SDGs in classes in the process of course reorientation. The fifth part explores the possible strategies to better integrate the SDGs into curricula, suggesting to follow a pathway of "objectives alignment—system design of content — innovative pedagogies application — monitoring and evaluation" with "faculty capacity building" and "whole institution support". The sixth part is a case study of the course of *A History of Western Civilization and the SDGs*. This article

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cations/WEO/Issues/2021/01/26/2021-world-economic-outlook-update (assessed on February 6, 20 21).

[5] See Hag-Min Kim & Ping Li et al., *Observations of Deglobalization Against Globalization and Impacts on Global Business*, 4(2) International Trade, Politics and Development 83, 103 (2020). Kim and her peers quote Bello Walden's *Deglobalization: Ideas for a New World Economy* (2004) to illustrate the 14 features of deglobalization: (1) production for the domestic market; (2) subsidies at the national level; (3) strong trade policy; (4) industrial policy including subsidies, tariffs and trade to strengthen the manufacturing sector; (5) long postponed measures of equitable income redistribution; (6) deemphasizing growth but emphasizing upgrading the quality of life; (7) power and transportation systems transformed into decentralized systems based on renewable sources; (8) healthy balance maintained between the country's carrying capacity and the size of its population; (9) environmentally congenial technology; (10) a gender lens to ensure gender equity; (11) strategic economic decisions to the market or to technocrats; (12) civil society monitoring and supervising the private sector and the state and a process that should be institutionalized; (13) the property complex transformed into a mixed economy; and (14) centralized global institutions replaced with regional institutions.

[6] See Yunling Zhang, *COVID-19 Accelerates the Fourth Wave of Globalization*, 142(3) Beijing Cultural Review 45, 52 (2020).

can serve as an example to promote students' global citizenship, develop sustainability capabilities and nurture future global governance leaders to better cope with the uncertainties and ambiguities in the Post-COVID world.

2. A Literature Review of Global Governance and Global Education Governance

Tracing back the history of "global governance", it is a concept born with the economic globalization after the Cold War in the 1990s, adapting to the trend of multi polarization in the world and the need to have a common governance rule for international affairs. Since the publication of the first volume of Global Governance in 1995, global governance, as a theoretical concept as well as a realistic practice, has become a "floating signifier in international relations" and a "theory in the making",[7] a much-discussed multi-disciplinary research theme in the fields of international relations, economics, management, sociology, political science. At the macro level, scholars at home and abroad have discussed the conceptual definitions, institutional systems, lessons and challenges of global governance, putting forward various global governance theories and trying to construct the discipline of global governance reform and global studies. Moreover, Chinese scholars pay particular attention to the "Chinese Approach to Global Governance", discussing China's responsibilities, roles and plans under the needs of new global governance. At the micro level, scholars pay special attention to the effects, difficulties, and paths of global governance in economics, finance, climate, environment, and public health.

Regarding the macro aspects of global governance, scholars have been focusing on the definitions and characteristics, the working mechanisms and the difficulties and possibilities of it. James N. Rosenau, the scholar who makes the term popular worldwide, points out that global governance is to search for order in disorder, for coherence in contradiction, and for the continuity in change; it is the sum of myriad control mechanisms driven by different histories, goals, structures, and processes; its steering mechanisms are spurred into existence through the sponsorship of states, actors other than states at the transnational or subnational levels, or other types of actors jointly sponsored; it is not a constant but may lead to many directions.[8] Lawrence S. Finkelstein proposes global governance is governing without sovereign authority and transcends national frontiers.[9] Thomas G. Weiss and Rorden Wilkinson emphasize the "complexity" of global governance.[10] Coming to the first decade of the 21st century and facing the problems of rising multi-polarity, institutional inertia and institutional fragmentation in the process of global governance, David Held suggests five pathways to effective global governance: civil society coalitions with reformist governments; autonomous and adaptive international institutions; plurality and diversity of actors and agencies around common goals and norms; interventions to alter the preferences of states over time; and threats to major powers' core interests.[11] Robert O. Keohane emphasizes to democratize governance through three ways: work

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[7] See Tom Pegram & Michele Acuto, *The Blank Areas of Global Governance*, 5(5) Foreign Theoretical Trends 94, 101 (2016).

[8] See James N. Rosenau, *Governance in the Twenty-first Century*, 1(1) Global Governance 13, 43 (1995).

[9] See Lawrence S. Finkelstein, *What Is Global Governance?* 1(3) Global Governance 367, 372 (1995).

[10] See Thomas G. Weiss & Rorden Wilkinson, *Rethinking Global Governance? Complexity, Authority, Power, Change*, 58(1) International Studies Quarterly 207, 215 (2014).

[11] See David Held, *Elements of a Theory of Global Governance*, 42(9) Philosophy & Social Criticism 837, 846 (2016).

to develop legal structures that reduce arbitrariness and increase fairness; encourage, monitor, and criticize our current leaders; and continue to build transnational networks, which are not democratic but can provide some social infrastructure on which democracy could eventually rely.[12] Jochen Prantl proposes that global governance requires effective multilateral cooperation theory to more accurately identify the differences between key drivers and mechanisms in different regions in collective action and a new cooperative theory usually contains four elements: (1) underlying principles of global governance (rules of the game); (2) regional differences in cooperation; (3) conditions for collective action; (4) formal-informal evolution of collective action process.[13] Zhicheng Wu holds that "common security" and "common development" should become the strategic consensus and policy actions around the world.[14] Zhongying Pang proposes there are four generations of global governance with the European Concerts before World War I, the functions of international organizations such as United Nations, International Trade Organization and Bretton Woods System after 1945, the working mechanism of institutions like World Trade Organization, and new global governance in the new era.[15] As the world is driven into the pandemic crisis in 2019, Pang suggests a global governance research agenda heading towards sustainable complex global concerts/conferences of actors and stakeholders to innovate the study of global governance in 21st century.[16] Changhe Su proposes that the coordination and the expansion of international cooperation with the maintenance of sovereignty systems is the direction of building a new type of international relations and global governance.[17]

In addition, Chinese scholars have been focusing on China's contributions, roles, responsibilities and approaches in global governance. The world is undergoing great changes unseen in a century, China proposes to adopt a governing principle of "extensive consultation, joint contribution and shared benefits" with the "Belt and Road Initiative", heading towards a "shared future with a common destiny". Yaqing Qin, Ling Wei, Hongsong Liu, Xiangyang Chen and many other scholars have affirmed China's effective contributions in global governance. Zhengliang Yu believes that China must grasp the trend of "decentralization", "European strategic independence", "regionalization" and actively participate in global governance.[18] Zhongying Pang suggests that China should take the roles of a participator, reformer, constructor, coordinator and designer in the process of new global governance.[19]

As for the micro facades of global governance, scholars have exerted many efforts on the studies of global governance in the fields of economics, finance, climate, environment, and public health as Roger A. Coate and Craig N. Myrphy, the editors of *Global Governance*, clarifies in the inaugural issue that the journal will confront

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[12] See Robert O. Keohane, *Nominal Democracy? Prospects for Democratic Global Governance*, 13(2) Icon-International Journal of Constitutional Law 343, 353 (2015).

[13] See Jochen Prantl, *Effective Multilateralism and Global Governance*, 6(6) World Economics and Politics 142, 152 (2010).

[14] See Zhicheng Wu & Tianyun Wang, *New Challenges to Global Governance in the Context of* Globalization, 48(2) Journal of Nanjing University (Philosophy, Humanities and Social Sciences) 43, 49 (2011).

[15] See Zhongying Pang, *China's Role in Global Governance*, People's Publishing House, p.8 (2016).

[16] See Zhongying Pang, *The Future of Global Governance Research: Comparison and Reflection*, 52(12) Academic Monthly 57, 67 (2020).

[17] See Changhe Su, *Global Governance Reform against Profound Changes Unseen in a Century: Challenges and Prospects*, 42(7) Contemporary World 57, 61 (2021).

[18] See Zhengliang Yu & Yaqing Qin et al., *Research Focuses and Pathways of Global Governance System Reform*, 10(3) International Review 1, 19 (2021).

[19] See supra note 15, at 10.

the entire range of global problems economic development, peace and security, human rights, the protection of the environment as well as the multi-lateral processes designed to solve them.[20]

Regarding global economic and finance governance, scholars have been exploring the roles of international organizations such as G20 and BRICS as well as the problems and reform of global economic governance. Wei Shen explores the role of G20 in global finance governance, pointing out that it is the primary mechanism in international economic and finance governance.[21] Bas Hooijmaaijers examines how and why China and the BRICS are reshaping global economic governance, and to what degree the BRICS and BRICS institutions represent anything new.[22] Orfeo Fioretos and Eugenia Heldt discuss lessons from past crises in and reforms to the Bretton Woods system, and their implications for understanding recent challenges to global economic cooperation.[23] Scholars are concerned with the challenges and future of global economic governance. Kurt Bayer discerns the deterioration in the multilateral system of economic cooperation and suggests plurilateral will be the most likely organizing principle in the foreseeable future.[24] Weiguang Chen proposes the pathways for the reform of the global economic governance system lies in transcending state-centrism, maintaining the order of the multilateral system, and promoting common global development.[25] Falin Zhang pays attention to the agenda setting of global financial governance and China's international discourse power, decomposes the international agenda-setting process into issue formation, communication, and institutionalization.[26] In addition, Chantal Thomas considers race as a technology of global economic governance.[27]

In global climate and environment governance, Thomas Hickmann shows that the international climate regime is not the only location where the problem of climate change is addressed, while it highlights the persistent authority of state-based forms of regulation.[28] Hongsong Liu and Dan Xie believe that the European Union can play a leading role if it can establish a cooperative leadership relationship with China and the United States.[29] Emilie Dupuits examines the strategies mobilised by transnational grassroots networks ahead, during and beyond COP21 considered as a critical moment in global climate governance.[30] Hongyuan Liu points out that climate change

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[20] See Roger A. Coate & Craig N. Murphy, *Editor's Note*, 1(1) Global Governance 1, 1 (1995).

[21] See Wei Shen, *Reshaping the International Economic Governance System after the Global Financial Crisis and G20*, Law Press, p.2 (2019).

[22] See Bas Hooijmaaijers, *China, the BRICS, and the Limitations of Reshaping Global Economic Governance*, 34(1) The Pacific Review 29, 55 (2019).

[23] See Orfeo Fioretos & Eugenia C. Heldt, *Legacies and Innovations in Global Economic Governance since Bretton Woods*, 26(6) Review of International Political Economy 1089, 1111 (2019).

[24] See Kurt Bayer, *Disruption in Global Economic Governance*, 10(1) Global Journal of Emerging Market Economies 25, 38 (2018).

[25] See Weiguang Chen & Bin Liu, *The Dilemmas and Pathways of Global Economic Governance: Based on the Analysis of Building a Human Community with a Shared Future*, 39(2) Tianjin Social Sciences 74, 80 (2019).

[26] See Falin Zhang, *Agenda-Setting in Global Financial Governance and China's International Discursive Power*, 34(6) World Economics and Politics 106, 131 (2020).

[27] See Chantal Thomas, *Race as a Technology of Global Economic Governance*, 67(6) UCLA Law Review 1860, 1895 (2021).

[28] See Thomas Hickmann, *The Reconfiguration of Authority in Global Climate Governance*, 19(3) International Studies Review 430, 451 (2017).

[29] See Hongsong Liu & Dan Xie, *Rethinking EU's Leadership in Global Climate Governance*, 10(4) International Studies 94, 116 (2019).

[30] See Emilie Dupuits, *Reversing Climatisation: Transnational Grassroots Networks and Territorial Security Discourse in a Fragmented Global Climate Governance*, 58(4) International Politics 563, 581

security promotes the institutionalization of global governance, raises the need for diversified and multi-level governance, and triggers the gathering and divergence of international political resources.[31] Jing Lu proposes it is necessary to adhere to the core values of justice, strengthen the construction of the environmental system through the power of the government, the market and the society, and enhance the awareness of environmental responsibility.[32] Hayley Stevenson proposes reforms to the climate regime's accountability arrangements to enhance the integrity in global climate governance.[33]

In terms of global health governance, Lawrence O. Gostin and his peers note the impact that nationalist governments and the COVID-19 pandemic have had on health governance.[34] Jan Gresil Kahambing highlights the need for governing some gradual ruptures from the past to achieve a sense of new normalcy in public health during the COVID-19.[35] David Held and his peers draw on the concept of gridlock and adaptive governance to conceptualize how global health governance has been able to adapt despite increasingly difficult conditions in the multilateral order.[36] Na Yang proposes that it can be improved in terms of coordination and integration of multi-level health governance bodies, the close connection of multiple governance links, strengthening of South-South and North-South cooperation in the health field, and learning from regional governance experience.[37] Bei Tang suggests that China can take leadership in global health governance through multi-level planning and get involved in more diverse actors in building a human health community.[38]

Regional governance is another research theme for scholars. Arjan H Schakel argues that the concept of multilevel governance is key for understanding developments within a three-tiered European Union polity because it directs scholarly attention to the incentives for regions to be involved in European Union affairs and for national governments and European Union institutions to share their authority with regions.[39] Jacob Salder discusses regional governance and the relationship between spaces of economic governance and notions of regional economy, and argues that periodization occurs not in punctuated forms but as a dynamic and historically founded relationship influencing reform, appropriating policy, and selectively interpreting structure for organizational interest.[40] Zhicheng Wu and Na Yang believe that East Asia is playing an increasingly important role in promoting the practice

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[31] See Hongyuan Yu, *Climate Change and Global Governance: A Survey Report*, 24(6) World Economics and Politics 19, 32 (2010).

[32] See Jing Lu, *On Problems in Global Environment Governance*, 38(8) Teaching and Research 73, 80 (2010).

[33] See Hayley Stevenson, *Reforming Global Climate Governance in an Age of Bullshit*, 18(1) Globalizations 86, 102 (2021).

[34] See Lawrence O. Gostin & Suerie Moon et al., *Reimagining Global Health Governance in the Age of COVID-19*, 110(11) American Journal of Public Health 1615, 1619 (2020).

[35] See Jan Gresil Kahambing, *Global Health Governance and Disaster Recovery for Rebel Returnees during COVID-19*, 58(6) Journal of Public Health 207, 285 (2021).

[36] See David Held & Ilona Kickbusch et al., *Gridlock, Innovation and Resilience in Global Health Governance*, 10(2) Global Policy 161, 177 (2019).

[37] See Na Yang, *Global Public Health Challenges and Their Governance Pathways*, 10(6) Contemporary International Relations 11, 18 (2020).

[38] See Bei Tang, *Institutional Pathways and Future Choices of China's Participation in Global Health Governance*, 40(5) Contemporary World 18, 23 (2020).

[39] See Arjan H. Schakel, *Multi-level Governance in a "Europe with the Regions"*, 22(4) British Journal of Politics & International Relations 767, 775 (2020).

[40] See Jacob Salder, *Spaces of Regional Governance: A Periodisation Approach*, 38(6) Environment and Planning C: Politics and Space 1036, 1054 (2020).

process and concept construction of global governance.[41] Jing Lu holds that the development of regionalism and successful regional governance practice provides a possible choice for global governance which is now in difficulty.[42] Xianwu Zheng proposes three regional pathways in global governance: regional governance in global governance, global governance in regional governance and governance between different regions.[43] Yun Zhang points out that regional connection, regional establishment and regional powers are the three basic variables and regional coordination, regional management and regional monitoring are three basic mechanisms in regional governance.[44] Shengjun Zhang believes that "Southeasternism" or governance practices in BRICS and other southern countries provides a new modal in global governance, opposing "depoliticization" or "depowerization" and recognizing the important role of power in global governance.[45] Besides, scholars have also explored the effectiveness of international soft laws in Global Governance,[46] the roles of religious groups in global governance,[47] and the governance of humans.[48]

Education is an important part of global governance. The global governance of education has begun since the establishment of United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as UNESCO) after World War II. Many international organizations such as the World Bank and Organization for Economic Co-operation and Development (hereinafter referred to as OECD) have paid attention to the development of education in various countries, regarding education as an important way to develop the economy and cultivate talents.

Scholars have been concerned with the roles of international institutions such OECD, World Bank and UNESCO in global education governance. Mike Zapp stresses the increasing importance of scientific research and policy-relevant knowledge and its strategic production, dissemination and transfer by OECD, UNESCO and World Bank in global education governance.[49] Gang Zhu and his peers summarize the main policy effects arising from the OECD's global education governance: economization of education, datafication, verification, totally pedagogized society, and educational homogenization among different schooling systems.[50] Sam Sellar and Bob Lingard argue that Program for International Student Assessment (hereinafter referred to as PISA) and the OECD's education work have facilitated new epistemological and infrastructural modes of global governance for the

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[41] See Zhicheng Wu & Na Yang, *An East Asian Perspective on Global Governance*, 10(10) Foreign Theoretical Trends 17, 23 (2012).

[42] See supra note 32.

[43] See Xianwu Zheng, *Regional Approaches to Global Governance*, 10(3) Exploration and Free Views 50, 60 (2020).

[44] See Yun Zhang, *Regional Governance in International Relations: Theoretical Construction and Comparative Analysis*, 7(7) Social Sciences in China 186, 203 (2019).

[45] See Shengjun Zhang, A *New Paradigm of "South-Easternism" in Global Governance*, 31(5) World Economics and Politics 4, 20 (2017).

[46] See Zhipeng He & Tianjiao Shen, *Study on the Effectiveness of International Soft Law in Global Governance*, 53(1) Academic Monthly 103, 116 (2021).

[47] See Feng Li, *International Religious NGOs in Global Governance*, 8(8) Seeker 96, 98 (2006).

[48] See Liang Dong, *Human Security and Governance under 2030 Agenda of Sustainable Development Goals*, 30(4) Journal of International Security Studies 64, 81 (2018).

[49] See Mike Zapp, *The Authority of Science and the Legitimacy of International Organizations: OECD, UNESCO and World Bank in Global Education Governance*, 51(7) A Journal of Comparative and International Education 1022, 1041 (2021).

[50] See Gang Zhu &, Guoxing Xu et al., *Typology of OECD's Global Educational Governance and Its Policy Effect*, 64(3) Comparative Education Review 525, 542 (2020).

OECD in education.[51] Clara Morgan and Riyad A. Shahjahan propose that the OECD deploys three mechanisms of educational governance: building on past OECD successes; assembling knowledge capacity; and deploying bureaucratic resources.[52] Beryl A. Radin points out that education is usually counted as an important sector in assessing the performance of international organizations such as the World Bank.[53] Qian Tang reaffirms the positive roles of UNESCO in the global governance of education.[54] Karen Mundy and Antoni Verger focus on three dynamics of the World Bank on education: the political opportunities created by geo-political and ideological shifts among the most powerful member governments; the international organizations' relationships with borrowing countries; and finally the internal dynamics and organizational culture of the international organizations' own bureaucracy as it aims to reproduce itself and manage shifts in the previous two dynamics.[55]

Scholars are also concerned with the future of global education governance. Leon Tikly considers the future of Education for All (EFA) understood as a global regime of educational governance.[56] Yaqing Qin holds that global governance requires more open, inclusive and accessible education.[57] Yue Kan believes that humanism and economism are the realistic paths for the development of global education governance.[58]

After UNESCO restored China's legal seat, China has actively participated in global education governance activities. Since the "Belt and Road" initiative, China has gradually played an increasingly important role in global education governance. Minyuan Gu suggests that China should participate in the rulemaking of educational concepts in the international community and promote transnational cooperation and cultural exchanges with other countries.[59]

Moreover, Francine Menashy calls into question the effectiveness of the Global Partnership for Education.[60] Karen Mundy argues the importance of engaging with the most directly critical conceptualizations of the role played by education and educational multilateralism while maintaining a focus on the potential for positive forms of educational governance at the global level.[61] Ian Austin and Glen A. Jones in their Governance of Higher Education: Global Perspectives, Theories, and

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[51] See Sam Sellar & Bob Lingard, *The OECD and the Expansion of PISA: New Global Modes of Governance in Education*, 40(6) British Educational Research Journal 917, 936 (2014).

[52] See Clara Morgan & Riyad A. Shahjahan, *The Legitimation of OECD & Global Educational Governance: Examining PISA and AHELO Test Production*, 50(2) Comparative Education 192, 205 (2014).

[53] See Beryl A. Radin. *Performance Measurement and Global Governance: The Experience of the World Bank*, 13(1) Global Governance 25, 33 (2007).

[54] See Qian Tang, *UNESCO and Global Education Governance*, 42(4) Tsinghua Journal of Education 3, 4 (2021).

[55] See Karen Mundy & Antoni Verger, *The World Bank and the Global Governance of Education in a Changing World Order*, 40(1) International Journal of Educational Development 9, 18 (2015).

[56] See Leon Tikly, *The Future of Education for All as a Global Regime of Educational Governance*, 61(1) Comparative Education Review 22, 57 (2017).

[57] See Yaqing Qin, *The Educational Responsibilities in Global Governance*, 42(4) Tsinghua Journal of Education 5, 6 (2021).

[58] See Yue Kan, *Rethinking the Triple Motive Force and Two-Dimensional Paths of the Development of Global Education Governance*, 42(4) Tsinghua Journal of Education 11, 14 (2021).

[59] See Mingyuan Gu, *Global Education Governance*, 42(4) Tsinghua Journal of Education 1, 2 (2021).

[60] See Francine Menashy, *The Limits of Multistakeholder Governance: The Case of the Global Partnership for Education and Private Schooling*, 61(2) Comparative Education Review 240, 268 (2017).

[61] See Karen Mundy, *Global Governance, Educational Change*, 43(3) Comparative Education 339, 357 (2007).

Practices elaborate on the connection between the spread of neoliberalism as a political-economic global force and governance of higher education.[62]

Scholars at home and abroad have done substantial research on global governance and noticed the importance of education in global governance. However, there is quite rare research on the theories or practices of global education governance. Moreover, the outbreak of the coronavirus in 2019 has brought unprecedented challenges to the world, exposed the ineffectiveness of current global governance system and disrupted the educational progress worldwide. In the post-epidemic era, where is the world heading? How to improve global governance capabilities? How can education play its role in improving global governance and help cultivate talents for a sustainable future? These are worthy questions for deeper discussion and exploration.

3. Multilateral Cooperation Needed to Facilitate Global Governance in the Context of Reglobalization

Since the international financial crisis in 2008, populism, regionalism and protectionism are gaining more support in western countries as they are facing trade imbalance, high unemployment rate, immigrant disputes internally,[63] accelerating the processes of dedollarization and deglobalization.[64] With untethered American foreign policy,[65] Trumpism and Brexits in the 2010s,[66] deglobalization is raging ever more violently. The outbreak of the coronavirus in 2019 put many countries into a "pandemic depression",[67] triggering more divarication on the prediction of the global trend heading to deglobalization or reglobalization after the coronavirus. In contrast with the turbulent promotion of deglobalization, some experts believe that a retreat into it will reduce the incomes of both the poor and the rich and poverty headcounts will be increased.[68] The emergent forms of both right- and left-wing "deglobalization" do not provide meaningful routes out of the crisis of decaying neoliberalism.[69] The COVID-19 shock represents the dénouement of a long period of neoliberal decay and

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[62] See Mike Potter, *Governance of Higher Education: Global Perspectives, Theories, and Practices by Ian Austin and Glen A. Jones (review)*, 41(1) The Review of Higher Education 141, 143 (2017).

[63] See Shamita Garg & Sushil, *Determinants of Deglobalization: A Hierarchical Model to Explore Their Interrelations as a Conduit to Policy*, 43(2) Journal of Policy Modeling 433, 447 (2021). Garg and Sushil observe that import diminishes the employment generation rate and causes more trade deficit year by year. Technological development is accountable for the rise of wage inequality and the reduction of the employment generation rate. Similarly, migration is expediting cultural imperialism and wage inequality.

[64] See Viacheslav M. Shavshukov & Natalia A. Zhuravleva, *Global Economy: New Risks and Leadership Problems*, 8(1) Financial Study 1, 17 (2020).

[65] See Martin Gilman, *Divergent Performance and Shifting Alliances in a Deglobalizing World*, 13(2) International Organisations Research Journal 7, 15 (2018).

[66] See Mervyn Martin, *Keeping it Real: Debunking the Deglobalization Myth, Brexit and Trump: "Lessons" on Integration*, 17(1) Journal of International Trade Law and Policy 62, 68 (2018). Martin points out that the vote for Britain to exit the European Union and the election of Donald Trump as the President of the USA has been described as events that bring an end to globalization and indeed seen as a reversal of the globalization process.

[67] See Carmen Reinhart & Vincent Reinhart, *The Pandemic Depression*, 99(5) Foreign Affairs 83, 95 (2020).

[68] See Evan E. Hillebrand, *Deglobalization Scenarios: Who Wins? Who Loses?*, 10(2) Global Economy Journal 1, 19 (2010).

[69] See Matthew Louis Bishop & Anthony Payne, *The Political Economies of Different Globalizations: Theorizing Reglobalization*, 18(1) Globalizations 1, 21 (2021).

the emergence of different approaches to globalization.[70] This article believes that reglobalization will be the global trend as it is testified by the history and mechanism of globalization as well as its crisis and dilemma after the pandemic. In the context of reglobalization, multilateral collaboration is needed to improve global governance abilities. Countries and regions need to take collaborative actions to overcome the common challenges and uncertainties in the Post-COVID world and shape a sustainable future.

Probing into its history and mechanism, globalization is a historical trend that cannot be reversed. Globalization can be understood as a process of increasing interdependence and integration toward a world society and global economy marked by free trade, free flow of capital, and the tapping of cheaper foreign labor markets.[71] Though globalization is a modern concept, the globalized activities can be traced back to 1600-1500 BCE. There are six waves of globalization in human history as it is subject to cycles.[72] The first one happened during the 17th and 18th dynasties of ancient Egypt as King Ahmose and his successors expanded their territory and formed a trade center on the eastern Mediterranean with regional division of labor. With the Romans taking control of the Mediterranean area and forming an empire across Europe, Asia and Africa, the second wave of globalization was happening. The Mediterranean trade area came into another period with textile industry flourished in Flanders in the 13th century. With the great geographical discoveries in the late 15th century, a worldwide delivery and transport network connecting Europe, Asia, Africa and the New World of America came into shape. The Glorious Revolution and industrial revolution in the 17th century empowered the British Empire to make further colonization overseas and promote the fifth wave of globalization. The two world wars ended British lead and control in globalization while the United States succeeded as the only superpower in 1991,[73] and played a dominant role in the sixth wave of hyper-globalization characterized by liberalism and multinationalism.[74] Tracing human history and activities, the scope of globalization is ever enlarging and expanding. Therefore, globalization is a historical trend that cannot be reversed.

The historical inevitability of globalization also lies in its working mechanism. Weidong Liu proposes that the expansion of capital, the time-space compression of technology and the degree of openness of nations are the three major powers promoting globalization.[75] The pursuit of higher profits is the nature of capital and the driving force of development. The endless expansion and motion of capital around the world is the pathway to gain more interests, which can be testified by the various financial derivatives, offshore finance and international financial institutions across the world. Marketization has become the major economic development mode around the world as multinational corporations are outsourcing to save costs and to occupy a larger market share. The expansion of capital needs to overcome the obstacle of time and space. With the advancement of technology, time and space are compressed to

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[70] See Matthew Louis Bishop & Anthony Payne, *Steering Towards Reglobalization: Can a Reformed G20 Rise to the Occasion?*, 18(1) Globalizations 120, 140 (2021).

[71] See Save Word, *Globalization, Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/globalization (accessed on February 7, 2021).

[72] See Maurice Obstfeld, *Globalization Cycles*, 6(1) Italian Economic Journal 1, 12 (2020).

[73] See Chunzhi Ou & Kang Jia, *What's the Fate of Globalization After the Pandemic*, 47(4) Seeking Truth 11, 21 (2020).

[74] See Xuetong Yan, *The COVID-19 Makes the Deglobalization Reasonable*, 5(3) Quarterly Journal of International Politics I0003, I0006 (2020).

[75] See Weidong Liu, *The Influence of COVID-19 on Economic Globalization*, 39(7) Geographical Research 1439, 1449 (2020).

lower the cost of communication and transportation, promoting the free flow of capital across the world. The openness of countries and regions greatly influences the depth and width of globalization. In the time of the Cold War, countries adopted policies of closing doors, resulting in limited globalization. The openness of countries during the past thirty years accelerated the happening of hyper-globalization. The pandemic may impact the degree of openness in some countries in short term, but the profit-seeking nature and the tendency of time-space compression led by technologies are not reversible. Moreover, the announcements of COVID-19 vaccines have boosted market sentiment and paved the way for global economic recovery. Industries such as airlines, hospitality, and consumer services rebounded in late 2020.[76] The global economy is projected to grow 5.5 percent in 2021 and 4.2 percent in 2022, global trade volumes are forecast to grow about 8 percent in 2021 and 6 percent in 2022.[77] These economic data have projected recovery of globalization. Therefore, globalization is an irreversible trend with historical and logical inevitability.

On one hand, globalization optimizes the allocation of resources among countries, deepens the international labor division, and promotes economic development and growth. On the other hand, it brings some negative effects such as employment imbalance, uneven distribution of resources, the gap between rich and poor. One major crisis led by globalization is the polarization of society. As transnational corporations taking the market share, small enterprises are left with little room to survive. The Gross National Income per capita is 45353.22 USD in high-income countries while it is only 819.729 USD in low-income countries in 2019 as per World Bank.[78] The pandemic has put nearly 71 million people into extreme poverty and 680 million people back into poverty as per the United Nations.[79] This polarity is proven by the uneven distribution and order of vaccines between advanced economies and emerging and developing markets.[80] The globalization deepens the interdependence among nations. However, when the supply chain was interrupted during the coronavirus and countries had to depend on others' supply of medical equipment, they began to reconsider the danger of global supply chain and suggests reallocating the manufacturing factories. Globalization also brings side effects such as climate warming, terrorism, transnational crime, marine pollution and species extinction. Moreover, countries and regions need to take collaborative actions to overcome the common challenges and uncertainties in the Post-COVID world and shape a sustainable future. All these crises and challenges considered, globalization will undergo a period of slow development and will need adjustments in terms of methods and forms, namely, slowbalization and reglobalization.

Moreover, the coronavirus has revealed the weaknesses of the existing global governance system which has been dominated by the United States since the Cold War. The first problem is the inequality among different countries and regions with developed countries enjoying the most say in dealing with international issues, excluding developing and underdeveloped countries in decision making, and undermining the benefits of the poor countries and weak nations. The second one is

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[76] See International Monetary Fund, *2021 Global Financial Stability Update*, https://www.imf.org/en/Publications/GFSR/Issues/2021/01/27/global-financial-stability-report-january-2021-update (accessed on February 6, 2021).

[77] See supra note 4.

[78] See World Bank, *Income-level*, https://data.worldbank.org/income-level/ (accessed February 7, 2021).

[79] See United Nations, *UN/DESA Policy Brief #86: The Long-term Impact of COVID-19 on Poverty*, https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-86-the-long-term-impact-of-covid-19-on-poverty/ (accessed on February 8, 2021).

[80] See supra note 76.

the low binding force of international rules. Many countries run after their interests greedily on the sacrifice of public and international benefits, neglecting agreed obligations and quitting many agreements irresponsibly. And thirdly, the incoordination among different parties.[81] Many nations are reluctant to make frank and candid dialogues with others, resulting in the misunderstanding of some critical international issues such as the outbreak of the COVID-19.

In the global context of reglobalization, multilateral cooperation is needed to facilitate global governance capabilities, preparing to address the current crisis and future challenges. Countries and regions can take the following collaborative actions. The first one is to make fair and square international economic rules. Advanced economies used to be international rule-makers, have more discourse power in global governance, prioritize their interests at the cost of many other countries. As emerging and developing economies are making more contributions to the global economic growth, more justified international standards are needed to ensure more countries' rights and let them have more says and make more contributions in global governance. The international community needs to change its mindset, reject double standards, and achieve coordinated progress in combating the epidemic and economic recovery.[82] Second, a robust universal healthcare and social protection systems are needed to ensure "people-oriented globalization".[83] The current healthcare system proves to be extremely vulnerable and fragile under the attack of COVID-19. The authority of international organizations has been challenged by major powers, and their coordination and organization capacity and binding force have been weakened, leaving them helpless in the face of global problems.[84] Though the World Health Organization plays an important and active role in reporting and updating the pandemic information as well as taking precautions and suggestions, its lack of authority and discourse power makes it difficult to coordinate different actions by various countries. A regulated international health safeguard and accountability mechanism is needed to be formed to promote further cooperation and ensure liabilities among countries. Scholars suggest devising a pandemic vulnerability index by creating a quantitative measure of the potential global health.[85] Third, closer, opener and franker multilateral efforts are needed to address the virus legacies, traditional problems and economic issues. Slow productivity growth, rising inequality, higher absolute numbers of people in poverty, higher debt, and a setback in human capital accumulation is the direct legacies of the pandemic which require collaborative action. Traditional problems such as climate warming, pollution and species extinction also call for more regional cooperation. Synchronized public investments are needed to enhance the effectiveness of individual actions and boost cross-border spillovers through trade linkages. Moreover, the closer partnership will be needed to resolve economic issues underlying trade and technology tensions as well as gaps in the rules-based multilateral trading system.[86] Countries need to adopt

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[81] See Zhicheng Wu & Peidong Liu, *Promoting Multilateralism and Global Governance from China's Respect*, 34(9) World Economics and Politics 23, 44 (2020).

[82] See Liang Zong & Chen Liang et al., *Where is Economic Globalization Going in the Post-COVID Era?*, 6(6) Wuhan Finance Monthly 11, 16 (2020).

[83] See Yingchen Zhao, *The Reshaping of Globalization in the Post-epidemic Era*, 47(4) Journal of Shanxi Normal University (Social Science Edition) 89, 94 (2020).

[84] See Yuze Luo, *Globalization after the Pandemic and China's Countermeasures*, 29(6) China Opening Journal 46, 52 (2020).

[85] See Nistha Shrestha & Muhammad Yousaf Shad et al., *The Impact of COVID-19 on Globalization*, 11(1) One Health 100180, 100189 (2020).

[86] See supra note 4.

constructive multilateral approaches that navigate the key dilemmas while addressing the very real domestic problems.[87] Regions need to play their roles in building a multi-center industrial chain to address the risk of global value chain decoupling.[88] Therefore, multilateral cooperation is needed to ensure better global governance and a sustainable future for human beings.

Though the pandemic has been said to be the last straw of globalization, the history and mechanism of globalization prove that it will not be reversed or terminated. Instead, globalization has substantially enhanced national strength, including the ability to fight COVID-19.[89] However, the challenges and threats to globalization are various and severe, the forms, scopes and methods of globalization are bound to be adjusted after the pandemic. The outbreak and rapid transmission of the pandemic also exposed the weaknesses of the current global governance system which had been led by the United States with its promotion of "American First".[90] In the global trend of reglobalization, multilateral cooperation is needed to improve global governance abilities for a sustainable future through setting fair and justified international rules, building regulated and normalized health systems, and taking opener and closer collaborative actions among countries and regions.

4. Necessities of Integrating SDGs into Education

As youngsters are future world leaders, educators need to take action to help cultivate future global governance talents. One good way is to integrate the SDGs into education to foster their global citizenship, improve sustainability capabilities and inspire them to act. An introduction of the SDGs, an account of education as a fundamental human right, and an analysis of education as a catalyst for sustainability are presented in this part to illustrate the necessities of integrating the SDGs into education.

As globalization is a historical and logical inevitability, what kind of a globalized future do we want to have? Are there any specific goals we need to achieve if we want a rosy tomorrow? The United Nations suggests a blueprint of future for human beings, namely, the Sustainable Development Goals. The continued pursuit of these universal goals is critical to build back better in the Post-COVID-19 recovery, to prepare for future pandemics and other shocks, to keep countries and regions focused not only on economic growth, but also on inclusion, equity and sustainability, and to build a healthier, more resilient and more sustainable world.[91] An overview of the history, contents, development before the pandemic and implication after the COVID-19 is needed to better understand the significance of the SDGs.

The 2030 Agenda for Sustainable Development was launched in 2015 to end poverty and set the world on a path of peace, prosperity and opportunity for all on a healthy planet. The Agenda includes 17 SDGs which demands nothing short of a

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[87] See Chunzhi Ou & Kang Jia, *What's the Fate of Globalization After the Pandemic*, 47(4) Seeking Truth 11, 21 (2020); Xuetong Yan, *The COVID-19 Makes the Deglobalization Reasonable*, 5(3) Quarterly Journal of International Politics 3, 6 (2020).

[88] See Yang Li & Libo Che, *Changes of Economic Globalization and China's Response in the Post-epidemic Era*, 41(5) Inner Mongolia Social Sciences (Chinese Version) 113, 120 (2020).

[89] See Feixia Ling, *Effective Globalization and Inefficient Global Governance: Western Scholars' Opinions in the Context of COVID-19*, 29(5) East Asia Forum 63, 75 (2020).

[90] See Sanyuan Zhang, *The Governance of Chinese and the Chinese Solution of Global Governance*, 26(9) Studies on Marxism 42, 53 (2020).

[91] See United Nations, *Impact of COVID-19 on SDG Progress: A Statistical Perspective*, https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-81-impact-of-covid-19-on-sdg-progress-a-statistical-perspective/ (accessed on February 8, 2021).

transformation of the financial, economic and political systems that govern our societies today to guarantee the human rights of all. The SDGs were built on decades of work by countries and the UN. In June 1992, at the Earth Summit in Rio de Janeiro, Brazil, more than 178 countries adopted Agenda 21 to build a global partnership for sustainable development to improve human lives and protect the environment. In September 2000, eight Millennium Development Goals (hereinafter referred to as MDGs) were elaborated to reduce extreme poverty by 2015 at United Nations Headquarters in New York. The Johannesburg Declaration on Sustainable Development and the Plan of Implementation were adopted to reaffirm the global community's commitments to poverty eradication and the environment in South Africa in 2002. At the United Nations Conference on Sustainable Development in June 2012, Member States adopted the outcome document "The Future We Want" to launch a process to develop a set of SDGs to build upon the MDGs. In 2013, the General Assembly set up a 30-member Open Working Group to develop a proposal on the SDGs. In January 2015, the General Assembly began the negotiation process on the post-2015 development agenda. The process culminated in the subsequent adoption of the 2030 Agenda for Sustainable Development, with 17 SDGs at its core, at the United Nations Sustainable Development Summit in September 2015.[92] The Agenda includes 17 Sustainable Development Goals and 169 targets which are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.[93]

One-third of the way into the SDG journey, the world is not on track to achieve the SDGs by 2030. The Sustainable Development Goals Report 2020 presents an overview of progress towards the SDGs before the coronavirus started, as well as recognizes some of the devastating impacts of COVID-19 on specific goals. Before the COVID-19 pandemic, progress remained uneven, but some gains were visible: the share of children and youth out of school had fallen; the incidence of many communicable diseases was in decline; access to safely managed drinking water had improved; and women representation in leadership roles was increasing. Now, due to COVID-19, an unprecedented health, economic and social crisis is threatening lives and livelihoods, achieving goals even more challenging. Take Goal 1 as an example, the share of the world's population living in extreme poverty declined from 15.7 percent in 2010 to 10.0 per cent in 2015. However, the pandemic is reversing the trend of poverty reduction as the global extreme poverty rate is projected to be 8.4 to 8.8 per cent in 2020, which is close to its level in 2017.[94] Regarding Goal 4 before the coronavirus crisis, the proportion of children and youth out of primary and secondary school had declined from 26 per cent in 2000 to 19 per cent in 2010 and 17 per cent in 2018. [95] As the COVID-19 spreads across the globe, more than 190 countries have implemented nationwide school closures and about 90% of students (1.57 billion) were out of school.[96] For Goal 5, international commitments to advance gender equality have brought about improvements in some areas: child marriage and female genital mutilation have declined in recent years, and women's representation

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[92] See United Nations Educational, Scientific and Cultural Organization, *History*, https://sdgs.un.org/goals (accessed on February 8, 2021).
[93] See United Nations Educational, Scientific and Cultural Organization, *Transforming our World: the 2030 Agenda for Sustainable Development*, https://sdgs.un.org/2030agenda (accessed on February 8, 2021).
[94] See United Nations, *The Sustainable Development Goals Report 2020*, https://unstats.un.org/sdgs/report/2020/The-Sustainable-Development-Goals-Report-2020.pdf (accessed on February 8, 2021).
[95] Ibid.
[96] Ibid.

in the political arena is higher than ever before.[97] The COVID-19 crisis is creating circumstances that have already contributed to a surge in reports of violence against women and girls. To name just a few. There is no doubt that the COVID-19 pandemic has shaken the 2030 Agenda for Sustainable Development to its very core. However, far from undermining the case for the SDGs, the root causes and uneven impacts of COVID-19 demonstrate precisely why we need the SDGs.

Transformative pathways must be taken to prepare for possible pandemics and crises in the future. A sustainable future will be shaped only through global, regional, national and personal efforts jointly. As the younger generation is the driving force toward the future, it is high time that educators implement the SDGs into curricula and facilitate the youth with global citizenship and sustainability capabilities to cope with the uncertainties and challenges in the Post-COVID world and create a rosy and sustainable future.

Irina Bokovam, the Director General of UNESCO, notes that education saves and transforms lives and it is the bedrock of sustainability.[98] To make the Sustainable Development Goals a reality, every individual must be empowered with access to quality education and lifelong learning. The crucial role of education in achieving sustainable development has long been noted. Education is not only an end in itself but also a pathway to promote and realize the proposed SDGs. In this era of uncertainties and ambiguities intensified by the COVID-19, it is ever more urgent to integrate the SDGs into education, aiming particularly to foster younger generation's global citizenship and sustainability competencies as the future lie in our hands but also lies in the younger people who pass the torch to a future generation.

Education as a fundamental human right has been recognized by the international communities for more than a half century. In 2000, it agreed to the MDGs, which acknowledged education as an indispensable means for people to realize their capabilities, and prioritized the completion of a primary school cycle. In 2002, the World Summit on Sustainable Development reaffirmed to achieve universal primary education by 2015 and to eliminate gender disparity in primary and secondary education by 2005 and at all levels of education by 2015. In 2005, UNESCO launched the "United Nations Decade of Education for Sustainable Development" which emphasized the key role of education in shaping values that are supportive of sustainable development, and in consolidating sustainable societies. In 2015, the Open Working Group of the United Nations General Assembly developed SDGs which proposed Goal 4 and includes a set of associated targets.[99] In a word, there is a long-noted and ever-growing recognition of education as an integral part and a key enabler for sustainable development.

Education is not only a basic human right that needs to be guaranteed or a goal that needs to be achieved, but also a catalyst that accelerates progress towards the other proposed sustainable development goals. Education enables individuals, especially women, to live and aspire to healthy, meaningful, creative and resilient lives. It strengthens their voices in the community, national and global affairs. It opens up new work opportunities and sources of social mobility. The following statistics support that education enables sustainable development: on average, one

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[97] Ibid.

[98] See United Nations Educational, Scientific and Cultural Organization, *SDG Begins with Education*, https://sdgs.un.org/sites/default/files/publications/2275sdbeginswitheducation.pdf (accessed on February 8, 2021).

[99] See United Nations Educational, Scientific and Cultural Organization, *Education*, https://sdgs.un.org/taxonomy/term/1172 (accessed on February 8, 2021).

year of education is associated with a 10% increase in wage earnings. Between 1994 and 2009, for example, rural households where the household head had completed primary education were 16% less likely to be chronically poor. In Bangladesh, when both parents had some secondary education, diversity in the family diet was 10% greater than when neither parent had any education. In Mexico, while 39% of women with primary education are employed, the proportion rises to 48% of those with secondary education. In India, young women with at least secondary education are 30 percentage points more likely to have a say over their choice of spouse than women with no education. An increase in the average educational attainment of a country's population by one year increases annual per capita GDP growth from 2% to 2.5%. In Central and Eastern Europe, those who had completed secondary education were 16% less likely to express such intolerance towards immigrants than those who had not. If the male secondary school enrolment ratio were 10 percentage points higher than average, the risk of war would decline by a quarter.[100] In short, education engenders significant influences on the other SDGs and deserves to be a prominent cornerstone for the sustainable development agenda.

The COVID-19 has caused the biggest education eruption, slowed down the progress of SDGs and made it more challenging to address problems of poverty, gender inequality, economic inequity, climate change and many more. To regenerate vitality in economic, social and environmental sectors, education is an important part as well as a pathway to rebuild the sustainable world we want. This is a time when education can and must play a vital role in enabling present and future global governance leaders with knowledge, values and skills to find solutions to overcome the pandemic crisis and to address the global challenges with global citizenship and sustainability competencies.

5. Difficulties of Practicing SDGs in Curricula

Since the mid-1990s, schools and institutions of formal education, organizations of non-formal education, individuals, NGOs and the private sectors have been embedding the concept of sustainability into their teaching and learning activities especially after the UN General Assembly adopted a Decade of Education for Sustainable Development in 2005. SDGs offer a new framework for the educational sectors to engage in and advance towards a broader and deeper understanding and practice of sustainability through nourishment of future world leaders.

Curriculum is one of the most important pathways and forms that promote learning for sustainable development in many countries from early childhood learning through to private sector training. Curricula focused solely on sustainability and curricula that integrated with SDGs are offered to advance sustainable development. A considerable progress and achievements have been acknowledged in the field. However, there are still some aspects that require attention and improvement in curricula reorientation and innovation while integrating the SDGs, namely "learning goals", "teaching content", "pedagogical approaches", "monitoring and evaluation", "teachers" as well as "policy and institutional assurance" regarding the process of curricula design and implementation.

The first challenge of curricula reorientation is how to match the learning goals of SDGs with the original course objectives. The learning objectives of the SDGs include cognitive, socio-emotional and behavioral domains as specified respectively as following: i) knowledge & thinking skills necessary to better understand the SDGs

[100] See supra note 98.

& the challenges in achieving them; ii) social skills that enable learners to collaborate, negotiate and communicate to promote the SDGs as well as self-reflection skills, values, attitudes and motivations that enable learners to develop themselves; iii) action competences.[101] Each discipline, major, course and section of class has its own learning goals. There are overlaps and repetitions when different disciplines and subjects are focusing on the same SDGs. Within the same discipline, a problem is how to differentiate the SDGs as per different levels of learning. Another question is how to align the SDGs with the goals of the specific courses. There is also a difficulty in creating a logical and systematic thread of the goals throughout the course.

Teaching content is at the core of any curriculum. To embed the SDGs into the curricula is not a simple add-on or to prioritize SDGs while degrading the course content. It is to integrate the principles, requirements and contents of sustainable development implicitly into the course design, implementation, evaluation and other processes. It is also to dig into the sustainable elements in the course and to better understand the course concepts within the framework of SDGs. The selection of teaching materials should be systematic and succinct as per different learners. However, there is a problem of random selection and integration of SDGs into courses. Many educators fail to design the course systematically, resulting in ineffective propagandizing, switching abruptly, and repetition. If the teachers do not fully understand the SDGs, they might just expound the ideas of SDGs to the students and make empty talks. Without careful design, they might just expose students to various SDGs concepts abruptly. There might be repetitions of the same content in different classes, making it difficult for students to form a systemic understanding of the curricula and SDGs. The integration of SDGs into courses requires scientific and systematic design. It is to embed the values of the SDGs into the classes genetically. The following questions must be considered while designing the course: How to coordinate the contents of SDGs with the curriculum? How to find the sustainable elements in the course? How to make systematic curriculum reorientation as per

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[101] See James H. Williams, *The Role of Teachers Students and Schools in Achieving the Sustainable Development Goals*, https://live.polyv.cn/watch/2099347 (accessed on February 12, 2021). To be more specific, the learning objectives of SDGs are as following: (1) Conceptions of health, hygiene and well-being and can critically reflect on them, including an understanding of the importance of gender in health and well-being. Facts and figures about the most severe communicable and non-communicable diseases, and the most vulnerable groups and regions concerning illness, disease and premature death. Socio-political-economic dimensions of health and well-being and knows about the effects of advertising and about strategies to promote health and well-being. Importance of mental health. The learner understands the negative impacts of behaviors like xenophobia, discrimination and bullying on mental health and emotional well-being and how addictions to alcohol tobacco or other drugs cause harm to health and well-being. Relevant prevention strategies to foster positive physical and mental health and well-being, including sexual and reproductive health and information as well as early warning and risk reduction. (2) Interact with people suffering from illnesses and feel empathy for their situation and feelings. Communicate about issues of health, including sexual and reproductive health, and well-being, especially to argue in favor of prevention strategies to promote health and well-being. Encourage others to decide and act in favor of promoting health and well-being for all. Create a holistic understanding of a life of health and well-being, and to clarify related values, beliefs and attitudes. Develop a personal commitment to promoting health and well-being for themselves, their family and others, including considering volunteer or professional work in health and social care. (3) Include health promoting behaviors in their daily routines. Plan, implement, evaluate and replicate strategies that promote health, including sexual and reproductive health, and well-being for themselves, their families and others. Perceive when others need help and to seek help for themselves and others. Publicly demand and support the development of policies promoting health and well-being. Propose ways to address possible conflicts between the public interest in offering medicine at affordable prices and private interests within the pharmaceutical industry.

different disciples, majors, and learners? How to coordinate the courses if they are focusing on the same sustainable goals?

To help learners to ask questions, think critically, collaborate with others and develop other sustainable capacities to address the global challenges, innovative pedagogies and advancing approaches are needed in classes. While reorienting the curricula towards sustainability, there are two extremes with teaching approaches. On one hand, some teachers may still stick to traditional teaching approaches which are teacher-centered, content-focused and textbook-directed. Teachers begin, deliver and end instruction. They lead, control and manage classroom learning with standard approaches. Students are supposed to look for the right answers in fixed content and authoritative textbooks which results in low participation and consumption in the classes.[102] On the other hand, some educators may misuse or use the learner-centered approaches ineffectively. To foster learners' critical thinking, willingness to cooperate, problem-solving and other sustainable abilities, learner-centered approaches are proving particularly conducive. Different from traditional pedagogies, learner-centered approaches regard students as active constructors with individuality and personality. Teachers are to assess students' knowledge, address issues identified by group, adopt new ideas according to the needs, the culture of students, help students discover answers, encourage good questions, and keep a more equal relationship with students based on trust and respect.[103] Approaches like project-based learning, problem-based learning, flipped classroom, case study, group work are all good learner-centered methods that have earned much favor from teachers and students. However, things may go to another extreme. Some educators may use these approaches superficially to attract students' attention or just to apply these innovative methods as an end. Some teachers fail to systematically integrate the approaches with the teaching content, resulting in formalism rather than effectiveness and efficiency.

The monitoring and evaluation of the quality of the course reorientation, the extent of curricula sustainability implementation and learning outcomes are needed to secure evidence for continued exploration and spearhead educational improvement in integrating SDGs into classes. Well-designed testing and assessment tools can facilitate good teaching and learning. For example, if a test measures reasoning, analysis and solving real-life problems, then teachers are more likely to teach students to reason, analyze and solve problems. On the contrary, if a test focuses on factual knowledge, then teachers will teach factual knowledge. However, there has been limited use of monitoring and evaluating tools to assess students' learning outcomes, receive feedback, and evaluate the effectiveness of integration of SDGs. Many educators conceive SDGs as factual knowledge to be transmitted to students, neglecting to trace students' emotional and behavioral changes during and after classes. Educators need to redesign tests to measure students' deep-level understanding, higher-order thinking and application of learning to real life situations.[104]Moreover, there should be indicators and rubrics to assess the effectiveness of the course reorientation towards sustainability.

Teachers are key change agents in integrating the SDGs into education, they have the potential to bring about change that will shape future generations and their

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[102] See James H. Williams, *Improvement of Teaching and Learning through Project Based Learning Model*, https://live.polyv.cn/watch/2099347 (accessed on February 12, 2021).
[103] Ibid.
[104] See James H. Williams, *Testing and Assessment, Monitoring and Evaluation*, https://live.polyv.cn/watch/2099347 (accessed on February 12, 2021).

abilities to create a more sustainable world. Teachers' knowledge, skills and competencies are essential to orient education towards SDGs. In practice, some teachers are not fully aware of or do not understand the contents of SDGs, making the curricula sustainability an empty talk. For those who know the SDGs, they might be lack of pedagogical skills to facilitate students towards sustainable goals. More significantly, teachers haven't developed competencies for sustainable development and global citizenship, making it hard to impress and encourage students to foster sustainability capabilities which include "systems thinking, future thinking (or anticipatory), value thinking (or normative), strategic thinking (or action-oriented), collaboration (or interpersonal), critical thinking, self-awareness, integrated problem-solving abilities, and action orientation".[105] In particular, collaboration among the same faculty and interdisciplinary cooperation between different departments are needed to make the curricula design more systematic.

One prerequisite for solid progress and full implementation of SDGs in education is the support at departmental and/or institutional level. It has been demonstrated that the major obstacles to implementing SDGs in schools include a lack of support from administration and management operation, a lack of interest in or concern with sustainability issues and a lack of structural units such as committees. There are barriers that prevent schools from incorporating sustainable development into their institutional systems. The resistances to change include a lack of information, psychological and emotional reactions towards change, unwillingness to co-operate to make changes, procrastination and power struggle issues.[106] Moving from creating the enabling environment to actual changes in curriculum and educator practice at all levels has been slow to respond in most areas of education. Systemic change will require the following actions: i) ongoing efforts to deepen the understanding of quality education to include relevance, purpose and values for sustainability; ii) an institutionalization of SDGs, including the investment of staff and financial resources that moves beyond the efforts of individual leaders and champions, and that will maintain continued efforts when faced with political changes, and changes in priorities and personnel.[107]

The course reorientation towards sustainable development is never policy propaganda. It is to endow younger generation a sense of global citizenship by helping them recognize the current obstacles and future crisis the world is and will be facing such as public health, global warming, species extinctions and gender inequality. It is to cultivate students' sustainability competencies such as critical thinking, systemic thinking, futures thinking, values thinking and collaborative spirits. It is to inspire future global governance leaders to take action to build a sustainable world after the pandemic. In general, solid progress and achievements have been made to integrate the SDGs into curricula. However, educators need to recognize that there are still many difficulties and challenges needed to be resolved and tackled in curricula reorientation towards sustainability. The first problem is the discordance

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[105] See James H. Williams, *The Role of Teachers Students and Schools in Achieving the Sustainable Development Goals*, https://live.polyv.cn/watch/2099347 (accessed on February 12, 2021); D. Brent Edwards & Manca Sustarsic et al., *Achieving and Monitoring Education for Sustainable Development and Global Citizenship: A Systematic Review of the Literature,* 12(4) Sustainability 1383, 1389 (2020).

[106] Ya-Ching Chang & Hsing-Lung Lien, *Mapping Course Sustainability by Embedding the SDGs Inventory into the University Curriculum: A Case Study from National University of Kaohsiung in Taiwan*, 12(10) Sustainability 1, 21 (2020).

[107] See United Nations Educational, Scientific and Cultural Organization, *Shaping the Future We Want*, https://sdgs.un.org/sites/default/files/publications/1682Shaping%20the%20future%20we%20want.pdf (accessed on February 8, 2021).

between the learning goals of the original courses and the SDGs. The second one is the random, illogical and unsystematic design of the teaching content. Thirdly, learner-centered pedagogies are not effectively applied in classes. In addition, students' learning outcomes and feedback are not well monitored and evaluated during or after classes. Moreover, some educators are not well acknowledged about the SDGs themselves. Some others have not acquired the sustainable teaching competencies such as system and integrative thinking, inclusivity and dealing with complexities. Lastly, many institutions are not supportive enough to provide policy and institutional assurances to promote the integration of SDGs into all aspects of the learning environment.

6. Some Possible Strategies and Pathways to Integrate SDGs into Classes

To address the difficulties and challenges in embedding the SDGs into curricula, educators can adopt a pathway of "objectives alignment－system design of content－innovative pedagogies application － monitoring and evaluation" with "faculty capacity building" and "whole institution support" to better cultivate future global governance leaders. To be specific, educators need to: i) align the learning objectives of the sustainable development with the curricula; ii) select, organize and design the teaching materials more logically and systematically; iii) better apply innovative pedagogies and advancing approaches in teaching and learning; iv) develop effective monitoring and evaluation tools to assess students' learning outcomes and reorient the course for improvement; v) improve educators' awareness, conception, knowledge, skills and competencies in order to facilitate students' learning; vi) apply whole-institution approaches to encompass sustainability into all aspects and all levels of education.

Systematic planning of the learning objectives can well address the problems of overlapping and repetition of the same sustainable goals among different disciplines and courses. The system design of the objectives requires collective efforts from SDG experts, leaders from different disciplines and teachers responsible for specific courses. Firstly, they need to define the sustainable elements and components in different disciplines and make a framework or structure of the sustainability learning objectives for each discipline or major. Secondly, they need to specify a logical and systematic sustainability learning objectives for each course including the cognitive, emotional and behavioral domains. The sustainable learning goals should be based on the content of each class or each chapter. These goals should be organized logically. If different chapters are focusing on the same goal, levels and angles of the goal should be differentiated. Thirdly, specified goals for each course should be aligned with the ones of the disciple or major, creating a teaching plan for curricula sustainability. During the process of implementation, these learning goals can be adjusted as per students' feedback.

The integration of SDGs into curricula requires scientific and systematic design of the teaching content. The infusion of sustainability into teaching content is not an add-on but to dig into the sustainable elements in teaching materials, to be "deeply rooted in the internal requirements of curriculum itself",[108] to better illustrate the concepts of the course, to embed the values of the SDGs into the classes genetically. Firstly, educators can find out the sustainable components from perspectives of the

[108] See Jianjun Liu, *Ideological and Political Education: Connotation, Characteristics and Pathways*, 41(9) Educational Research 28, 33 (2020).

development, history, current situation and future of the discipline, the latest findings of the major, the role models in the field, and the application of the discipline in reality, the professional competence and requirements, and international and domestic events. Secondly, educators need to analyze and classify the sustainable elements and form a logical knowledge system. The far-fetched components should be eliminated. The repetition of the same sustainable goals should be coordinated as per different levels, angles and dimensions. Thirdly, the reorientation of the teaching content should be aligned with the working logic and mechanism of the discipline organically. The sustainable framework is to help students better understand the logic of the discipline and the concepts of the course, to enable them with system thinking, to facilitate them to act as global citizens, and to shape a sustainable future.

Innovative approaches to learning are contributing to changes in knowledge and understanding among learners that will support sustainable development in the future.[109] The teaching and learning approaches should be chosen as per the teaching content and learning goals. If the class is focusing on some basic concepts and knowledge, the flipped classroom can be used to encourage students to collect materials and find connections with reality. Students are to perform as lecturers to share their findings, improving their abilities to collect data, organizing and public speaking. Teachers are supposed to help students clarify some difficult points in class and guide them towards a better understanding of the knowledge and concepts. If the course goal is to improve socio-emotional and action competencies, then second classroom, project-based learning, problem-based learning will be constructive ways to affect students. For example, foreign language learners can improve their oral ability by participating in debates, speeches, Model United Nations Conference, international meetings and sports events. Through these activities, they can be inclusive to cultural diversities and better understand the people, culture and values of different countries and regions. Take another example, students of environmental majors can initiate a project on how data reduce families' impact on environment. Students can form groups with three to four people in one group. Each group is to focus on one resource such as water, garbage, food waster, electricity and car gas use. They can collect data about the amount of water per minute of the number of miles per gallon used by a family car. Then, they are to conduct home inventories of their family's use of these resources for one week. They are to keep a record of the length of showers, the weight and volume of garbage, or the number of watt hours used by key household devices. Then, they are to set goals for reducing resource use by a given fraction, identify strategies to help their families achieve these goals, communicate the strategies and goals to their family members in the informative or explanatory letter, and measure and graph changes in families' resource use as they implement action plan for one week.[110] Information technology teaching methods such as MOOC, micro-course, cloud class and other teaching modes combined with artificial intelligence, big data, cloud computing and VR/AR can also be applied to create a more lively and realistic learning situation. Dialogues, seminars and round table discussions can also be used to help students analyze and solve problems, recognize the underlying logic and values, and take actions to be sustainable. Lastly, innovative teaching and learning methods are to be coordinated with the teaching content and SDGs so as to be effective to develop students' greater awareness of and responsibility for the world around them.

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[109] See supra note 107.
[110] See supra note 102.

To improve teaching and learning, monitoring and evaluation over the whole process of curricula is vital and urgent. First, diagnostic assessment should be implemented so as to understand students' characteristics, former knowledge structure, strengths, weaknesses and skills. Educators should have effective interaction with students before the classes. Students need to be informed of what sustainability topics will be covered during the class. Teachers need to collect students' feedback on the pre-reading materials and revise the teaching plan accordingly to meet students' interests and levels of learning. Secondly, there should be formative assessment to evaluate student's performance during instruction. Monitoring and evaluation should be based on the development of students, take process evaluation as the main part, and value qualitative and descriptive evaluation.[111] Educators need to observe students' emotional and value changes over the course of interaction. Teachers need to listen to students' voices and understand their opinions towards specific sustainable goals. Teachers should also be prepared towards ideas and values that are deviating or even contrary to the SDGs and intervene to lead students to positive thinking. Methods of classroom observation, reflective journal, progress report, group discussion, informal conversations and questionnaires can be used during the process. Thirdly, educators should implement summative assessment to measure students' achievement at the end of instruction. Examinations, essays, reflective paper, project report, self-assessment, and peer assessment can be effective strategies to serve as the basis for feedback to evaluate students' learning outcomes which are necessary to achieve the SDGs. Moreover, educators can make further improvement as per the evaluation results. Lastly, evaluation on the effectiveness of the integration of sustainability into curricula should be based not only on students' feedback. Experts and administrative assessment are also needed to monitor teachers' curricula reorientation and give useful suggestion for improvement.

Teachers are essential in promoting the curricula towards sustainability. The development and capacity building of the teachers is the basic work and guarantee of quality education.[112] Teacher training programs and lifelong education are important to improve educators' competence. Teacher education should be mandatory and cover three areas: i) basic knowledge of the SDGs; ii) pedagogical theories and application; iii) sustainability capabilities. Educators should first improve their own awareness of the importance of integrating SDGs into curricula. They should have an overview of the history, development and current situation of SDGs. They also need to know the global challenges after the COVID-19 and understand the key role of education in enabling a sustainable future. Educators should recognize the future world requires younger generation to foster sustainability competencies to cope with future uncertainties, ambiguities and threats. They need to be initiated in finding the sustainable elements in the courses, better illustrating the course concepts and knowledge in the sustainable framework, and embedding the sustainability genetically and implicitly into curricula. It is necessary to integrate knowledge impartation, ability training and thought leading into the teaching and embody the function of educating in every course.[113] Secondly, teachers need to improve their pedagogical theoretical knowledge such as the roles and skills of teachers, design of curriculum,

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[111] See Daokun Lu, *On the Teaching Design and Implementation of Ideological and Political Education*, 36(10) Ideological & Theoretical Education 16, 22 (2020).

[112] See Guowen Huang, *An Analysis of English Teaching Materials from the Ideological-Political Perspective*, 17(5) Foreign Languages in China 21, 25 (2020).

[113] See Weiguang Qiu, *The Value Implication and Generative Path of Ideological and Political Education*, 33(7) Ideological & Theoretical Education 10, 14 (2017).

the concept of learning outcomes, teaching unit planning, teaching and learning methodology, monitoring student work and assessment, communication skills, presentation techniques, self-evaluation and many more. In addition, teachers should be trained in the implementation of key pedagogical approaches which include a learner-centered approach, action-oriented and transformative learning.[114] Lastly, teachers should improve sustainable skills. They are to foster critical and system thinking ability so that they can have a systematic and logical design of the curricula. "Division of labour cooperation" should be practiced among teachers.[115] They need to learn to cooperate with other faculty members, embracing insights from different disciplines, cultures and world views. Working collectively to improve the efficiency and quality of integration of SDGs into curricula. They need to foster positive normative thinking, being open-minded towards different values. They need to have anticipatory skills, predicting the students' possible reactions in curricula design as well as in seeing the future possibilities for human beings. They need to acquire problem-solving abilities, be open to students' questions and being able to guide them to address the problems by themselves. Moreover, educators' teaching should be action oriented. Their action and words in daily life are living examples for students to follow towards a sustainable way of life.

The support of school administrators has been a key condition to the successful adoption and implementation of SDGs. Whole-institution approaches should be promoted to integrate sustainability into all aspects of the learning environment such as the curricula and learning processes, facilities and operations, and the surrounding community. Firstly, administrators need to provide policy and institutional support for the incorporation of sustainability into education. School administrators can initiate research project and teaching competitions to involve more teachers in curricula reorientation towards SDGs and make more course innovation. They can invite experts on sustainability to share their experience of implementation and provide training programs to improve teachers' skills. They can organize interdisciplinary communications among different faculty members and facilitate collaboration within different disciplines. They can devise incentive and motivation systems to fully realize teachers' creativity and initiative in curricula reorientation towards sustainability.[116] Secondly, institutions should make commitments to sustainable development by starting with the campus itself, serving as examples of sustainable development in practice, and reinforcing what students would learn in their course work and research. Addressing sustainability in campus operations includes instituting policies and systems for waste and water management, hazardous chemical management, purchasing, healthy food on campus, transportation and fleet management and energy needs.[117] Thirdly, schools need to enhance cooperation with communities and enterprises, providing opportunities for students to engage more in addressing social, economic and environmental issues in reality. Students can better improve their sustainability competencies by practicing what they have learned in the curricula and taking action to make a contribution to a sustainable future.

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[114] See Marija Maruna, *Toward the Integration of SDGs in Higher Planning Education: Insights from Integrated Urbanism Study Program in Belgrade*, 11(17) Sustainability 1, 17 (2019).
[115] See Shoujin Yang & Jiachun Xia, *Some Key Issues in Ideological and Political Education*, 35(5) Ideological and Political Education Research 98, 101 (2019).
[116] See Chi Zhang & Lai Song, *The Three-Dimensional Upgrading and Deepening of Ideological and Political Education*, 2(2) Studies in Ideological Education 93, 98 (2020).
[117] See supra note 107.

Curricula reorientation towards SDGs is a systematic engineering. Educators need to adhere to the scientific concept, uphold the systematic thinking, and promote it with the help of detailed planning and effective design practice during the process.[118] In the ways described above, namely, learning goals alignment, teaching content design, pedagogical approaches application, monitoring and evaluation, teacher capacity development, and whole-institution support, educators can work together to cultivate future global governance talents for a future in which the world is characterized by sustainable development, sustainable lifestyles, protection of human rights, gender equality, a culture of non-violence, global citizenship and appreciation of cultural diversity.

7. A Case Study of a History of Western Civilization and SDGs

So far, countries across the globe have been practicing SDGs into education and there have been some case studies regarding the embedment of SDGs into curricula. The case studies can be divided into three types.

The first one is focusing on the faculty training about the sustainability. Leslie Mahe Collazo Expósito and Jesús Granados-Sánchez introduce the training course on professional education for sustainable development skills for teachers in the University Jaume I of Castellon.[119]

Secondly, most of the case studies introduce the curricula related to SDGs offered by institutions, regarding the course design, teaching pedagogies and evaluation methods. Notably, D. Brent Edwards presents a systematic review of literature related to SDG4.7, aiming to inform pedagogical approaches and design evaluation tools for the SDGs.[120] Georgina Gough and James Longhurst identify the baseline status of sustainability in the curricula of UWE Bristol.[121] Ya-Ching Chang and Hsing-Lung Lien analyze the sustainability status of the course offerings in pursuing the SDGs at NUK.[122] Grace Wang introduces the three courses on SDGs in Western Washington University.[123] Marija Maruna focuses on the compatibility of higher planning education in relation to the skills for sustainable development.[124] Riley J Petillion introduces their integration of SDGs for the first-year chemistry instruction.[125] Michele J. Upvall and Geraldine Luzincourt propose the process of integrating the SDGs into the nursing curriculum.[126] M. Teresa Fuertes-Camacho and her peers

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[118] See Daokun Lu, *Some Key Problems and Solutions in Ideological and Political Education*, 34(3) Ideological & Theoretical Education 64, 69 (2018).

[119] See Leslie Mahe Collazo Expósito & Jesús Granados-Sánchez, *Implementation of SDGs in University Teaching: A Course for Professional Development of Teachers in Education for Sustainability for a Transformative Action*, 12(19) Sustainability 271, 192 (2020).

[120] See D. Brent Edwards & Manca Sustarsic et al., *Achieving and Monitoring Education for Sustainable Development and Global Citizenship: A Systematic Review of the Literature*, 12(4) Sustainability 1, 57 (2020).

[121] See Georgina Gough & James Longhurst, *Monitoring Progress Towards Implementing Sustainability and Representing the UN Sustainable Development Goals (SDGs) in the Curriculum at UWE Brist*ol, 10(1) Sustainability 279, 289 (2018).

[122] See Ya-Ching Chang & Hsing-Lung Lien, *Mapping Course Sustainability by Embedding the SDGs Inventory into the University Curriculum: A Case Study from National University of Kaohsiung in Taiwan*, 12(2) Sustainability 1, 21 (2020).

[123] See Grace Wang, *Viewing the UN SDGs through Core Curriculum in Higher Education*, 12(2) Sustainability 77, 78 (2019).

[124] See supra note 114.

[125] See Riley J. Petillion & Tamara K. Freeman et al., *United Nations Sustainable Development Goals as a Thematic Framework for an Introductory Chemistry Curriculum*, 96(12) Journal of Chemical Education 2845, 2851 (2019).

[126] See Michele J. Upvall & Geraldine Luzincourt, *Global Citizens, Healthy Communities: Integrating*

check whether SDGs education helps to develop and encourage sustainable actions among the third year students in Early Childhood Education.[127] Marian Buil-Fabrega suggests that flipped classroom is a possible alternative for the pedagogic renovation in sustainable curricula.[128] Alison Glover and her peers develop a baselining tool for sustainable development and global citizenship in Welsh higher education.[129]

The third one focuses on people's learning and practice of SDGs in real life situation. Carolin V. Zorell finds that citizens from all social backgrounds practice sustainable citizenship in different forms.[130] Ralph Horn is concerned with urban sustainability in cities.[131] Kim Polistina investigates the barriers of neoliberalist and adult bullying behaviours on social change for sustainability.[132] Beau Bradley Beza and Jaime Hernández-Garcia explore the placemaking and sustainability citizenship relationship in Bogota's informal settlements.[133] Debashish Munshi and Priya A. Kurian build on a framework of sustainable organizing in stakeholder engagement.[134] Shaaliny Jaufar looks at the lived experiences of some active young people in Kulhudhuffushi, Maldives and Hamilton, and New Zealand to examine the contexts and conditions that lead to sustainable citizenship.[135]

These case studies have shed light on the current status of curriculum reorientation towards sustainability. However, most of the studies focus on the general introduction of the course design and its effects rather than giving a detailed analysis of systematic and scientific design of the course objectives, teaching contents, teaching pedagogies and evaluations within the framework of the SDGs. Therefore, a case study of A History of Western Civilization and SDGs is presented to see how to align the learning objectives of the course and SDGs, to find the sustainable elements in the teaching content, to use the pedagogical approaches effectively, to implement monitoring and evaluation methods for course improvement, thus cultivating future global governance talents for a sustainable world.

Firstly, why this course or topic is important in the global context? Or why this course will be positive and helpful in cultivating future global governors? Global

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the Sustainable Development Goals into the Nursing Curriculum, 67(6) Nursing Outlook 649, 657 (2019).

[127] See M. Teresa Fuertes-Camacho & Mariona Graell-Martin et al., *Integrating Sustainability into Higher Education Curricula through the Project Method, a Global Learning Strategy*, 11(3) Sustainability 767, 282 (2019).

[128] See Marian Buil-Fabrega & Matilde Martínez Casanovas et al., *Flipped Classroom as an Active Learning Methodology in Sustainable Development Curricula*, 11(17) Sustainability 4577, 4582 (2019).

[129] See Alison Glover et al., *Developing and Piloting a Baselining Tool for Education for Sustainable Development and Global Citizenship (ESDGC) in Welsh Higher Education*, 38(1) Innovative Higher Education 75, 86 (2013).

[130] See Carolin V. Zorell & Mundo Yang, *Real-World Sustainable Citizenship between Political Consumerism and Material Practices*, 8(11) Social Sciences 1, 22 (2019).

[131] See Nicole Cook, *Sustainability Citizenship in Cities: Theory and Practice*, 35(2) Urban Policy and Research 231, 233 (2017).

[132] See Kim Polistina, *Are Neoliberalist Behaviors Reflective of Bullying? New perspectives on Influences on Sustainability and Global Citizenship*, 20(1) Environment, Development & Sustainability 175, 175-96 (2018).

[133] See Beau Bradley Beza & Jaime Hernández-Garcia, *From Placemaking to Sustainability Citizenship: An Evolution in the Understanding of Community Realized Public Spaces in Bogota's Informal Settlements*, 11(2) Journal of Place Management and Development 192, 207 (2018).

[134] See Debashish Munshi & Priya A. Kurian, *Imagining Organizational Communication as Sustainable Citizenship*, 29(1) Management Communication Quarterly 153, 159 (2015).

[135] See Shaaliny Jaufar, *Shaping of Sustainable Citizenship Among Young People of Kulhudhuffushi, Maldives and Hamilton, New Zealand: Context, Conditions and Experiences*, 4(1) Sustainable Earth 1, 12 (2021).

governance is the concert of different parties to ease, control and solve global problems in this complex and multi-centered world.[136] In order to achieve better and more effective concert and collaboration in this ever-deeper globalized and interrelated age, different parties need to recognize there is a shared future for humankind, which is even more so after the outbreak of COVID-19. Moreover, future global leaders should understand that we need to learn from history in order to create a bright future.[137] On January 18, 2017, Chinese President Jinping Xi delivered a speech at the United Nations Headquarters in Geneva. In which, he clearly defines "a community with a shared future" as "building a world of lasting peace, universal security, common prosperity, openness, inclusiveness, clean and beautiful world".[138] An open and inclusive world is inseparable from the mutual exchange, understanding, and mutual learning among civilizations. Therefore, future global talents need to respect the diversity of world civilizations, transcend barriers, conflicts and superiority through cultural exchanges, mutual learning and coexistence of civilizations. A History of Western Civilization is a compulsory course for English undergraduates offered by the School of Foreign Studies. The course combines individual assessments and feedback profiles with presentations, interactive exercises and discussion to help participants understand the development of western civilization, remember the major achievements and thinking in different periods of western civilization, foster an objective judgment on the western culture and traditions, "strengthen the understanding of Chinese culture, and foster more vitality of Chinese spirit, Chinese values, and Chinese power",[139] learn to collect materials related to the course, consider the pros and cons of civilization, be open-minded to different thinking and cultures. More importantly, it provides future world leaders examples through which they might contemplate opportunities and challenges that face humanity as a whole in the current world and take actions to end poverty, build economic growth and address a range of social needs such as education, health, social protection, job opportunities, and environmental protection, achieving a better and more sustainable future for all. Therefore, it is an integral part to cultivate "foreign language talents with a sense of national and international vision",[140] an important way in "strengthening the understanding and exchanges between people around the world",[141] and an effective pathway to build a "community with a shared future" in the Post-COVID world.

Then, how to align the SDGs with the learning goals? The learning objectives of the course are as follows: students can i) understand the development of western civilization; ii) remember the major achievements and thinking in different periods of

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[136] See Zhongying Pang, *The Future of the Study of Global Governance: A Comparative and Reflective Perspective*, 52(12) Academic Monthly 57, 57-67 (2020).

[137] See Jinping Xi, *Speech at the Ceremony of Presenting the July One Medal*, https://article.xuexi.cn/articles/index.html?art_id=6862341979273057491&item_id=6862341979273057491&study_style_id=feeds_default&t=1625318039906&showmenu=false&ref_read_id=627e4f85-b55f-48b8-a493-eb9b9041e055_1629099425340&pid=&ptype=-1&source=share&share_to=copylink (accessed on August 16, 2021).

[138] See Jinping Xi, *On Building a Human Community with a Shared Future*, Central Party Literature Press, p.414 (2018).

[139] See Wenhong Xia & Fang He, *The Responsibility of English Language Teaching and Learning in Ideological and Political Education*, 28(30) People's Tribune 108, 109 (2019).

[140] See Guoxin Cui, Thoughts and *Exploration on the Construction of Curriculum-based Ideological and Political Education in Foreign Languages Major in Colleges*,34(10) Journal of National Academy of Education Administration 37, 77 (2020).

[141] See Jincai Yang, *"Curricula of Integrated Ideology and Politics" in Foreign Language Education*, 172(4) Foreign Language Learning Theory and Practice 48, 51 (2020).

western civilization; iii) foster an objective judgment on the western culture and traditions; iv) learn to collect materials related to the course; v) consider the pros and cons of civilization; vi) be open-minded to different thinking and cultures; vii) contemplate opportunities and challenges that face humanity as a whole; viii) be aspired to become global governance leaders and take action to shape a better and more sustainable future for all. There are many convergences of the course goals and SDGs objectives as history provides students with many examples through which they might be aspired to make cognitive, emotional and behavioral changes towards sustainable lifestyles and actions.

Thirdly, how to embed sustainability into the teaching materials of each module? The course will trace the political, religious, economic, philosophical, cultural developments, achievements and influences of western civilization in Mesopotamia, ancient Egypt, ancient Israel, Greek Period, Roman Period, Middle Ages, Italian Renaissance, Modern Europe, Enlightenment Period, and contemporary period. In each module of the course, related sustainable goals are integrated in the instruction while analyzing major concepts and terms. For example, when analyzing the geographical conditions of Mesopotamia and ancient Egypt, the importance of the Euphrates, the Tigris and the Nile is underscored and it is related to SDG 6 about clean water. When illustrating the chronology of humans and cosmos, biodiversity is emphasized and connected to SDG 13, 14 and 15 about the protection of the planet, the life below water and on land. When discussing the social structure of ancient Egypt, social justice is stressed and connected to SDG Goal 16 about peace and justice. Table 1 shows the sustainable elements in each module of the course. In each section of the curriculum, youngsters will be inspired to explore ancestors' wisdom and legacies, connect the past with the present, reflect on the challenges of current global problems, and ponder over the pathways to better global governance in this age of great disruption and transformation.

Table 1: The SDGs in the Course of A History of Western Civilization

Module	Topics
1	Orientation and the First Civilizations (SDG 1,2,5,10, 16,17)
2	Greek Period (SDG 5,11,16,17)
3	Roman Period (SDG 3,16,17)
4	Classical Period (SDG 4)
5	Middle Ages (SDG 4,16,17)
6	The Italian Renaissance (SDG 4,11)
7	The Reform of Religion (SDG 8,10)
8	The Period of Modern Europe (SDG 16)
9	The Enlightenment, French Revolution and Napoleonic Era (SDG 16,17)
10	Europe in the Nineteenth Century (SDG 7,8,9,14,15,)
11	World War I, World War II, Cold War to the Present (SDG3, 12,13,16,17)
12	Conclusion, Q&A (SDG 1-17)

Note: Table 1 is made by the author of this article.

To empower future global leaders with inclusive and open concepts, ideas and knowledge are important, it's equally significant to adopt effective and innovative educational approaches to cultivate their capacities and competencies. Then, how to

choose appropriate teaching methods and approaches as per the teaching materials? Different pedagogical approaches will be used as per different teaching content and learning goals. If it is related to the basic facts about the western civilization such as the history of the Hebrew and the chronological order of events, flipped classroom is used to ask students to collect and understand the content before class. If it is related to values and cultural differences such as the concept of covenant in the Holy Bible, the instructor will first illustrate the Bible stories related to the covenant and initiate a discussion about the differences of integrity in the West and the East. Multimedia will be used to present some western arts, paintings, sculptures and music. Students are also encouraged to visit museums and attend exhibitions to better understand western civilization. Learners are to form groups and do a project related to any topic of the course and give a 15-20 minute presentation. In a word, curriculum activities will be student-oriented to facilitate their cognitive, emotional and behavioral changes in becoming qualified future governors who will take actions to help create a sustainable and ordered world.

Moreover, monitoring and evaluation will be emphasized during the whole process of students' learning just as supervision and assessment is necessary in global governing.[142] Before the class, an on-line questionnaire will be conducted among the prospected students, aiming to understand their former knowledge about the western civilization, the SDGs, their class expectation on the content and pedagogical methods. During the curricula implementation, students' reactions towards the curricula will be observed through group presentation, classroom discussion and informal dialogues. At the end of the curricula, students are asked to do an on-line survey to air their voices on the course for further improvement. In a word, monitoring and appraisal will be conducted to evaluate whether youngsters are directed towards the learning targets and whether they are empowered with sustainable capacities for a better governed world.

In general, the educator is to introduce a brief history of western civilization in the framework of SDGS through miscellaneous interactive pedagogical approaches. Students are guided, encouraged and aspired to explore the legacy of western civilization including the inherited political social institutions, the cultural forms, the religious and philosophical traditions. From this, students are inspired to imagine and shape the framework within which the future must be created. While digging into the successes and failures of the past, students will be aspired to become sustainable citizens and take actions to create a better world which is with no poverty, zero hunger, good health and well-being, quality education, gender equality, clean water and sanitation, affordable and clean energy, decent work and economic growth, good industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, nice environment, biodiversity, peace, justice, and strong institutions, and partnership for the sustainable development goals. Students will have a better understanding of other cultures, foster better people-people communication skills, have more competitive edges in job hunting, value the inter-fusing and co-rising relationship among everything, be compassionate and kind towards all beings, learn to live in a world with many uncertainties and ambiguities, take roles as global governance leaders, and help create a sustainable future with more possibilities.

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[142] See Jianfei Liu & Sha Yuan, *Thoughts on the Limping of Global Governance: Dilemmas and Strategies*, 23(2) Journal of the CCPS 86, 92 (2019). Liu and Yuan believe that the appraisal and analysis of governance process and result is helpful to find the root cause of global problems and oversee the effectiveness of problem solving.

8. Conclusion

Global governance is about the concert and coordination of all parties to find solutions for common global problems and challenges. In the Post-COVID era, the world is undergoing great transformations and changes unseen in a century and facing serious and critical global governance dilemmas and deficits with challenges such as multi-polarity, populism, and anti-establishment behaviors in international communities. However, the world is ever more inter-related and interdependent since the outbreak of the coronavirus. There is a common destiny shared by all countries. To create an ordered, peaceful, and sustainable future, all parties need to improve global governance capacities and address common global issues. Moreover, better global governance depends on the cultivation and nurturing of qualified global leaders. Therefore, education and educators should play their parts in global governance.

This article intends to prove that multilateral collaboration is indispensable to facilitate global governance in the context of reglobalization after the COVID-19 and educators can integrate SDGs into curricula to foster students' sustainable competencies with global citizenship and cultivate future global talents for a better tomorrow as the youth are important driving force and power to shape the future world. In the process of curricula reorientation towards sustainability, educators can adopt a pathway of "objectives alignment — system design of content — innovative pedagogies application — monitoring and evaluation" with "faculty capacity building" and "whole institution support" to address the obstacles and difficulties they may encounter. By following the above strategies to scientific and systematic course reorientation towards SDGs, educators can help cultivate future global leaders' sense of global citizenship, foster their sustainability competencies, and inspire them to act as future global governance leaders, and create a healthier, more resilient and sustainable world characterized by sustainable lifestyles, protection of human rights, gender equality, a culture of non-violence and appreciation of cultural diversity.

The sustainable future with improved global governance capabilities will require actions and operations from all levels, globally, regionally, nationally, locally and personally. Across many countries, a strong trend can now be seen to make education more relevant to the social, environmental, and economic challenges that the world faces today and in the future. SDGs provide a renewed vision and purpose for educational policy and practice to cultivate future world leaders. Significantly, more and more countries are incorporating education strategies, tools and targets into national sustainable development strategies.[143] In China, the Ministry of Education organized the First Innovation & Practice Programme for the Cultivation of High-level Internationalized Talents in January 2021. There were 3,653 teachers and educators from 28 universities who attended the training. Twelve high-quality lectures were given by administrators, experts and professors across the world such as Mr. Du Hewei, the director from the China Center for International People-to-People Exchange, Mr. Song Yunfu, former United Nations Coordinator for Reform and Partnership, Prof. Gearon from the University of Oxford and many more. At the core of the programme, it is to foster educators' capabilities to integrate the sustainability into curricula. It signifies a future orientation of incorporating the SDGs into school philosophy, curriculum development, capacity-building of educators, and all sectors of education in China to nurture global governance talents for a sustainable world.

[143] See supra note 107.

Discursive Approach to China's Role in Global Public Health Governance: News Values Constructed in the News Discourse of COVID-19 of 2020

Ranran Zhang & Tianyu Huang[1]

Abstract: A discursive approach to China's role in global or international affairs has still been under-explored despite its significance in international relations and international communications. This article, based on a corpus of news discourse, examines how China's role in dealing with the global public health crisis is pictured in the news values constructed through the news discourse. The corpus comprises the news reports of COVID-19 in 2020 (from January to December) in The Economist, containing more than 0.2 million words. Two important concordance lines for the study are extracted with corpus tools for a detailed attitude analysis within the framework of appraisal. Patterns of attitude choices are interpreted through the lens of news values constructed through discourse. It is found that the global crisis COVID-19 is construed as a news event with significant effects and consequences (the value of impact), especially in the economic field through the frequent attitudinal choices of appreciation, the categories of reaction and valuation in particular. For China's performance (including its elite and non-elite) in this global crisis, while the value of positivity established through the positive capacity and tenacity in the discourse indicates it is somehow praised, some aspects especially concerning its elite are still doubted or even criticized, as observed from the value of negativity construed through the repeated attitudinal choices of negative propriety and veracity as well as the negative affect. By figuring out the hidden stance or ideology in western media as well as the possible reasons, the investigation of China's role to news values informs a comprehensive understanding of China in the eyes of others. Moreover, this article provides new insights into the optimization of China's international communication strategies including the external publicity of its role or model in global governance.

Keywords: China's Role in Global Governance; COVID-19; News Values; Corpus-based Study; Appraisal System

1. Introduction

The problemata of global governance may be simply stated: The evolution of institutions of international governance has lagged behind the rapid emergence of collective problems with on-border and cross-border dimensions, especially those that are global in scope or potentially so.[2] In globalization, there is a growing number of global issues that cannot be settled by a single county and need political cooperation among different countries or regions. Then global governance, defined as "the complex of formal and informal institutions, mechanisms, relationships, and processes

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[1] The first author: Ranran Zhang, Ph.D., Assistant Professor of School of Foreign Studies at East China University of Political Science and Law; the second author: Tianyu Huang, master candidate in School of Journalism at Fudan University. This article is supported by National Social Science Fund of China & Research Program of East China University of Political Science and Law named "A Diachronic Study on the Discursive Reconstruction of Procedural Justice in Criminal Trials in China" (NO.19CYY015 & NO.19HZK024).

[2] See Ramesh Thakur & Luk Van Langenhove, *Enhancing Global Governance through Regional Integration*, 12(3) Global Governance 233, 233-40 (2006).

between and among states, markets, citizens and organizations, both inter-and non-governmental, through which collective interests on the global plane are articulated, rights and obligations are established, and differences are mediated",[3] becomes a recurring theme around the world. Academically, global governance has been greatly discussed in the field of government law, public administration and international relations (Table 1). Research concerns include security,[4] environment,[5] legitimacy,[6] and so on.

Table 1: Top 10 Fields of the Research Articles Related to Global Governance-based WOS (Core Collection) (2017-2021)[7]

Rank	Research Areas	Record Count
1	Government Law	562
2	Public Administration	414
3	International Relations	411
4	Business Economics	213
5	Environmental Sciences Ecology	213
6	Geography	166
7	Social Sciences Other Topics	132
8	Sociology	121
9	Health Care Sciences Services	63
10	Public Environmental Occupational Health	52

With China's rapid rise, a great deal of research on China and global governance appears domestically.[8] A brief review of foreign literature on global governance (Table 2) reveals that although there are studies on China and global governance,[9]

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[3] Ibid.

[4] See Christian Bueger & Timothy Edmunds, *Pragmatic ordering: Informality, Experimentation, and the Maritime Security Agenda*, 47(2) Review of International Studies 1, 1-21 (2021); Andrea M. Collins, *Empowerment, Rights, and Global Food Governance: Gender in the UN Committee for World Food Security*, https://doi.org/10.1080/14747731.2021.1877006 (accessed on December 28, 2021); Rita Abrahamsen & Michael C. Williams, *Security Beyond the State: Global Security Assemblages in International Politics*, 3(1) International Political Sociology 1, 1-17 (2009).

[5] See Frank Biermann & Ingrid Boas, *Preparing for A Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10(1) Global Environmental Politics 60, 60-88 (2010); Vicor Galaz & Beatrice Crona et al., *Polycentric Systems and Interacting Planetary Boundaries-Emerging Governance of Climate Change-ocean Acidification-marine Biodiversity*, 81(3) Ecological Economics 21, 21-32 (2012).

[6] See Steven Bernstein & Benjamin Cashore, *Can Non-state Global Governance be Legitimate? An Analytical Framework*, 1(4) Regulation & Governance 347, 347-71 (2007).

[7] The retrieval results were got with "global governance" as the retrieve theme. See https://www.webofscience.com/wos/alldb/analyze-results/70070f79-de09-4674-98e3-70a6862e3af1-064db4fb (accessed on August 31, 2021).

[8] See Xiaoming Wu, *Is the "Chinese Solution" Opening up A New Type of Civilization in Global Governance?*, 18(10) Social Sciences in China 5, 5-16 (2017); Mengzi Fu & Yang Chen, *Thoughts on China's Participation in Global Ocean Governance under the Centennial Change*, 41(4)Contemporary International Relations 1, 1-9 (2021); Lixin Hao & Kanglin Zhou, *Building a Community with A Shared Future for Mankind: China's Solution to Global Governanc*e, 28(6) Marxism & Reality 1, 1-7 (2017); Fan Liao, *Interpretation and Construction of A Community with A Shared Future for Mankind in the Context of Global Governance*, 35(5) China Legal Science 41, 41-60 (2018).

[9] See Jing Gu & John Humphrey et al., *Global Governance and Developing Countries: The Implications of the Rise of China*, 36(2) World Development 274, 274-92 (2008); Deborah W. Larson

fewer studies come from Chinese Mainland.[10] Most of these research is from western countries. There are certain research results on "China's Role in Global Public Health Governance": data shows that there are fewer than 20 Chinese documents whose abstracts contain both "China's Role" and "Global Public Health Governance" on China Knowledge Network, which is the biggest Chinese academic network.

Table 2: Top 10 Countries or Regions the Research Articles on Global Governance Come from based on WOS (Core Collection) (2000-2021)[11]

Rank	Countries/Regions	Record Count
1	USA	607
2	ENGLAND	482
3	CANADA	288
4	GERMANY	240
5	AUSTRALIA	173
6	NETHERLANDS	140
7	SWITZERLAND	107
8	SWEDEN	100
9	PEOPLES R CHINA	87
10	BELGIUM	70

It is known that global governance can be good, bad, or indifferent and refers to concrete cooperative problem-solving arrangements.[12] It can be seen as the way in which global affairs are managed and is able to be evaluated in terms of governing effects.[13] Nowadays, the COVID-19 pandemic being the biggest challenge to all countries and regions in the world, the governance on this public health crisis has attracted the attention of many scholars both domestic and abroad.[14] While most of

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& Alexei Shevchenko, *Status Seekers Chinese and Russian Responses to US Primacy*, 34(4) International Security 63, 63-95 (2010); Hongyi Liu, *The Role and Logic of Nontraditional Security in China's Engagement in Global Governance Mechanisms under Xi Jinping's Regime*, 26(3) Journal of Chinese Political Science 1, 1-19 (2020); Gregory T. Chin, *US-China Relations and Remaking Global Governance: From Stalemate and Progress to Crisis to Resolutions*, 45(1) Asian Perspective 91, 91-109 (2021).

[10] Here the authors refer to the research of which the authors' first affiliation is in Chinese Mainland. See Mengtian Xiao & Fang Cooke et al., *To What Extent is Corporate Social Responsibility Part of Human Resource Management in the Chinese Context? A Review of Literature and Future Research Directions*, 30(4) Human Resource Management Review 100726, 100726 (2019); Guofeng Wang & Ziyu Qian et al., *Analysis of Environmental Policy and the Performance of Sustainable Agricultural Development in China*, 12(24) Sustainability 10453, 10453 (2020).

[11] See supra note 7.

[12] See Hemawad, *Global Governance or World Governance*, https://www.econleaks.com/ question-9/ (accessed on December 28, 2021).

[13] Ibid.

[14] See Jing-Bao Nie, *In the Shadow of Biological Warfare: Conspiracy Theories on the Origins of COVID-19 and Enhancing Global Governance of Biosafety as a Matter of Urgency*, 17(1) Journal of Bioethical Inquiry 567, 567-74 (2020); May C. Van Schalkwyk & Nason Maani et al, *Our Postpandemic World: What Will It Take to Build a Better Future for People and Planet?*, 99(5) Milbank Quarterly 467, 467-502 (2021); Rainer Quitzow & Germán Bersalli et al., *The COVID-19 Crisis Deepens the Gulf between Leaders and Laggards in the Global Energy Transition*, 74(363) Energy Research& Social Science 101981, 101981 (2021); Shiqi Tang, *Ideas and Institutional Changes: COVID-19 and the Future of Global Governance*, 41(3) The Journal of International Studies 9, 9-14 (2020); Qingguo Jia, *International Cooperation During the COVID-19 Pandemic and the*

these studies still fall into the field of international relations or politics and a linguistics-based discursive approach is seldom involved, this article attempts to examine China's role in dealing with the COVID-19 pandemic in the eyes of others by investigating the news values construed through western news discourse. Featured with a systematical and detailed discourse analysis, such a linguistics-based discursive approach to China's role in the eyes of others is conducive to figuring out the hidden stance or ideology in western media as well as the possible reasons behind, being able to provide new insights into the optimization of China's international communication strategies including the external publicity of its role or model in global governance.[15]

As a matter of fact, a discursive approach to China's image is not uncommon in the field of discourse analysis and communication, and even translation, which makes the current research possible.[16]

The present research aims to investigate the following three questions: (1) how the global public health crisis — the COVID-19 pandemic is construed as a news event? (2) As the main news actor, how China's performance in coping with this crisis is evaluated? (3) What news values related to China's performance during the COVID-19 pandemic are prominently constructed in western news discourse, how and why?

2. Focus of Analysis: Attitude Positioning towards "China"

Attitude is one of three categories of appraisal system,[17] which itself is a discourse semantic system construing interpersonal meaning in Systemic Functional Linguistics (hereinafter referred to as SFL).[18] Attitude deals with the emotional reactions, judgement of behavior, and evaluation of things, and thus is further divided into three sub-categories: affect, judgement, and appreciation.[19]

Affect is concerned with language resources that construe emotional feelings, including inclination, happiness, satisfaction, and security. Judgement deals with language resources for evaluating behavior according to normative principles, including social esteem: normality (how special), capacity (how capable), tenacity (how dependable); and social sanction: veracity (how honest), propriety (how far beyond reproach). Appreciation is used to examine language resources that construe "the value of things, including natural phenomena and semiosis (as either product or process)".[20] Three types of appreciation are categorized: reaction (related to affection, emotive or desiderative), composition (related to perception, the view of order), and

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Challenges in Global Governance, 41(3) The Journal of International Studies 15, 15-9 (2020); Ziqiang Hou, *China's Wisdom and Solution in the Post-epidemic era: the "Four Communities" Initiative and Reform of the Global Governance System*, 2 International Communications 24, 24-7 (2021); Changpeng Huan, *Evaluating News Actors in Chinese Hard News Reporting: Language Patterns and Social Values*, 38(1) Text & Talk 23, 23-45 (2018); Tao Li & Feng Pan, *Reshaping China's Image: A Corpus-based Analysis of the English Translation of Chinese Political Discourse*, 29(3) Perspectives-Studies in Translation Theory and Practice 354, 354-70 (2021).

[15] Ibid.

[16] See Liping Tang, *Transitive Representations of China's Image in the US Mainstream Newspapers: A Corpus-based Critical Discourse Analysis*, 22(3) Journalism 804, 804-20 (2018).

[17] See James R. Martin & Peter White, *The Language of Evaluation: Appraisal in English*, Palgrave Macmillan, pp.5-15 (2005); Michael A. K. Halliday, *An Introduction to Functional Grammar* (2nd Edition), Arnold, pp.55-67 (1994).

[18] See Michael A. K. Halliday, *An Introduction to Functional Grammar* (2nd Edition), Arnold, pp.55-67 (1994).

[19] Ibid.

[20] See James R. Martin & Peter White, *The Language of Evaluation: Appraisal in English*, Palgrave Macmillan, p.36 (2005).

valuation (related to cognition, the considered opinions). Moreover, these attitudinal categories (Table 3) can be either positive (with good vibes) or negative (with bad vibes).[21]

Table 3: Interpersonal Choices in Attitude System and Their Illustrations in the Data

Attitudinal categories			Attitudinal instances
affect		inclination	*Halted production could cause another problem that officials fear [inclination: negative]: a spike in unemployment.*
		happiness	*"They all think Wuhan is a city of heroes and want to come and see us," beams [happiness: positive] Zhang Hanye, a tourism worker.*
		satisfaction	*Many experts praise [satisfaction: positive] China's efforts.*
		security	*The Chinese authorities are deeply alarmed [security: negative] by imported cases.*
Judge-ment	social esteem	normality	*Farmers, however, cannot accept any disruption [normality: negative].*
		capacity	*China has effectively controlled [capacity: positive] covid-19 and its economy is returning to life.*
		tenacity	*...the government struggles to [tenacity: positive] get the economy going again after more than a month of paralysis,*
	social sanction	veracity	*Another master of disinformation [veracity: negative], Russia, can sell its oil and gas even amid global chaos.*
		propriety	*The government stopped travel in and out of Wuhan and two nearby cities, corralling [propriety: negative] almost 20m people.*
appreciation		reaction	*The nasty [reaction: negative] side of China's virus diplomacy has political costs, too.*
		composition	*China's investment in health care has mostly gone to big hospitals in cities [composition: negative].*
		valuation	*The disease has killed over 1,300 people and infected around 60,000 in China [valuation: negative] (there is great uncertainty over the totals).*

Along with the recognition of the attitudinal categories that language or discourse resources realize, another important dimension in attitude analysis involves the target that these resources evaluate (judge or appreciate) and the appraiser from which the evaluation comes, or the emote who experiences the emotion and the trigger that is responsible for that emotion. The target, the appraiser the emote, and

[21] Ibid.

the trigger fall into the ideational strand of language.[22] In other words, in the process of text or discourse production (from system to text, namely the instantiation in SFL), there is always the coupling or the co-choice from language systems across metafunction, here the interpersonal metafunction and the ideational metafunction.[23]

From the perspective of discourse analysis, this article actually tries to figure out the stance or evaluation the journalistic discourse takes on China in the aspect of COVID-19 governance. Therefore, the discourse in which "China",[24] "virus"[25] are functioning as the target, the emote as well as the trigger will be recognized and analyzed according to the attitude system (Table 3) within the appraisal framework.[26]

3. Interpretation through the Lens of Discursive News Values Analysis

The pattern of attitudinal positions toward "China" will be interpreted in relation to news values constructed through discourse, inspired by discursive news values analysis (hereinafter referred to as DNVA).[27] News values refer to values in news actors and events,[28] rather than values in the news text or values in the news process in relation to Bell's categories.[29] From a discursive perspective, news values "relate to the events as reported in news stories and to the news actors involved in the events as reported in the news story".[30]

DNVA offers "a framework for systematically analyzing how news values is communicated through discourse",[31] and can be applied to analyze and interpret the regularity of semiotic resources that are frequently employed to construe particular news values.[32] In DNVA, news values (Table 4) are conceptualized into the 9 types:[33] negativity, timeliness, proximity, prominence, consonance, impact, novelty, superlativeness, and personalization. Later, another 2 types — positivity and aesthetic appeal are included, and the naming of prominence and novelty is changed into eliteness and unexpectedness respectively.[34]

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[22] See Michael A. K. Halliday, *An Introduction to Functional Grammar* (2nd Edition), Arnold, pp.5-10 (1994); Michael A. K. Halliday & Christian M.I.M. Matthiessen, *An Introduction to Functional Grammar* (3rd Editon), Arnold, pp.20-30 (2004).

[23] See Michael A. K. Halliday & Christian M.I.M. Matthiessen, *Construing Experience through Meaning: A Language-based Approach to Cognition*, Continuum, pp.323-4 (1999); James R. Martin & Peter White, *The Language of Evaluation: Appraisal in English*, Palgrave Macmillan, pp.162-4 (2005).

[24] Things related to China are also involved in this article.

[25] Things related to the virus (COVID-19) are also involved in this article.

[26] The coding consistency rate in this article is about 91%, and the two authors further discussed to solve the difference and make the coding criteria clearer.

[27] See Monika Bednarek & Helen Caple, *News discourse*, Continuum, p.42 (2012).

[28] Ibid.

[29] See Allan Bell, *The language of news media*, Blackwell, pp.5-15 (1991).

[30] See supra note 27.

[31] See Monika Bednarek & Helen Caple, *The Discourse of News Values: How News Organizations Create Newsworthiness*, Oxford University Press, p.43 (2017).

[32] See Monika Bednarek, *Linguistic Resources for Constructing News Values, "translated" into Systemic Functional Linguistics*, http://www.academia.edu/8607437/_2015_Linguistic_resources_for_constructing_news_values_translated_into_Systemic_Functional_Linguistics (accessed on December 28, 2021).

[33] See supra note 27.

[34] See supra note 31.

Table 4: News Values and Their Detailed Definition[35]

News Value		Definition
1	negativity	The event is discursively constructed as negative
2	timeliness	The event is discursively constructed as timely in relation to the publication date
3	proximity	The event is discursively constructed as geographically or culturally near
4	eliteness (prominence)	The event is discursively constructed as of high status or fame
5	consonance	The event is discursively constructed as (stereo)typical
6	impact	The event is discursively constructed as having significant effects or consequences
7	unexpectedness (novelty)	The event is discursively constructed as unexpected
8	superlativeness	The event is discursively constructed as being of high intensity or large scope/scale
9	personalization	The event is discursively constructed as having a personal or "human" face
10	positivity	The event is discursively constructed as positive
11	aesthetic appeal	The event is discursively constructed as beautiful (visual only)

Based on DNVA, the patterns of attitudinal choices when west media evaluating China's tackling of the COVID-19 pandemic will be interpreted through a discussion of how the above news values are constructed through attitudinal resources in news discourse, and to what extent China's performance in this global public health crisis is acknowledged and why.[36]

4. News Articles from The Economist of 2020

Being one of the most influential western media in China, The Economist offers coverage, commentary, and analysis of global politics, business, finance, science, and technology. In this article, The Economist is chosen mainly for two reasons: one is The Economist, unlike other publications, has its articles published anonymously, representing a collective voice or idea; the other is since 2012 The Economist has launched a China section named "Chaguan" to give more space to articles about China.

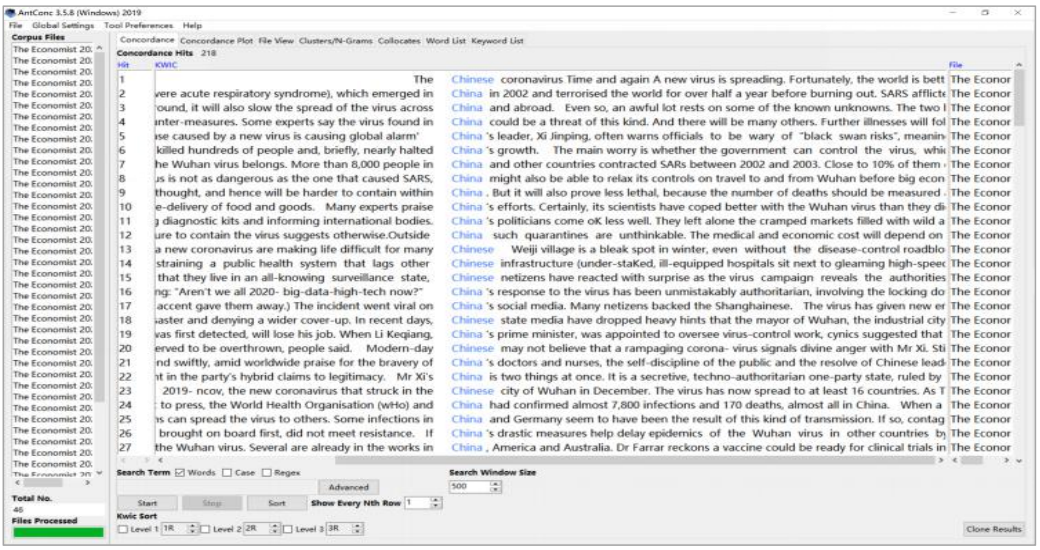
Specifically, the data include news articles from The Economist of 2020 (from January to December), related to COVID-19 which makes people all over the world suffer a lot in the past year. The collected data contain 185 news articles, 217,579 word tokens altogether, and are particularly referring to a specific containment

[35] Ibid.
[36] See supra note 31.

measure implemented by governments around the world to mitigate the spread of COVID-19 — "lockdown", named the Collins Word of the Year 2020.[37]

In order to examine the construction of China's global public health governance in news discourse, the two authors extract two target concordance lines from the data with the help of AntConc,[38] which is a corpus analysis toolkit for concordance and discourse analysis. The first one contains the co-occurring of "China/Chinese" and "virus",[39] aiming to examine how China's performance in dealing with the virus is discursively evaluated; the second one contains the co-occurring of "lockdown"[40] and "China/Chinese" to observe the stance construed on China's specific measure of lockdown. Owing to the fact that the potential distance between the two co-occurring words is actually unknown, the context horizon set in this article is from 20L to 20R which is the largest horizon range in the software. Moreover, for a better close reading of each concordance line, the search window size is set at "500" to display their local context as much as possible. In this way, for the first co-occurrence the authors get 218 concordance lines 36, 000 words, and for the second one, 29 concordance lines about 4,700 words.[41]

Figure 1: Screenshot of the Concordance Lines for the First Con-occurrence



The following passage is an instance of the concordance line (search window size=500) the authors get from the data with the two co-occurring words underlined.

> ... scientists quickly isolated the pathogen and shared its genomic details with the world. Back in the days of SARS, genetic sequencing like this took weeks. The genomic data can help scientists spot cases quickly, both in China and abroad. The government stopped travel in and out of Wuhan and two nearby cities, corralling almost 20m people. That is extreme and heavy-handed. Yet, although it could drive some cases

[37] See Collins Language, *Collins Word of the Year 2020*, http://www.collinslanguage.com/2020/12/21/collins-word-of-the-year-2020/ (accessed on December 28, 2021).

[38] See Laurence Anthony, *AntConc*, https://www.laurenceanthony.net/software (accessed on December 28, 2021).

[39] In the extraction, the other possible naming of the virus, like COVID-19, is covered.

[40] Similarly, considering the other possible forms in the data, "lockdowns", "lock-down", "lock-downs", "locked down" are included.

[41] See supra note 38.

underground, it will also slow the spread of the virus across China and abroad**.** Even so, an awful lot of rests on some of the known unknowns. The two big questions are how easily the virus can be passed directly from person to person and just how dangerous it is. Data from monitoring people who have had contact with those infected will soon help answer the first question. The second will be harder. The 3% mortality rate among cases confirmed so far is alarming, for it is like that of the Spanish influenza pandemic. (The Economist 2020-01-25 Leaders section: The Chinese coronavirus Time and again)[42]

The two concordance lines form the two sub-corpora in this article. For an easier reference in the further detailed analysis of attitudinal prosody, the authors name the 218 concordance lines Corpus A, and the 29 concordance lines Corpus B.

5. Attitudinal Positions towards "China" during the Epidemic

5.1 Attitudinal Construing of COVID-19 as a News Event

Generally speaking, COVID-19 is construed as a news event with great impact or consequence largely through the attitudinal choices of appreciation, especially the categories of reaction and valuation. A detailed observation reveals the following two critical patterns of the attitudinal construing of COVID-19 as a news event. The first one is, although the data in the present study are particularly related to "China", COVID-19 is not construed as a regional public health crisis that only influences China, but a global crisis.

(1) But one thing is certain about the new coronavirus which was discovered in December in China and is now causing a global scare [appreciation: reaction: negative]:[43] it is a known unknown. (The Economist 2020-01-25 Leaders section: The Chinese coronavirus Time and again)

(2) More broadly, the pandemic has fed arguments [appreciation: reaction: negative] that countries should not rely on China for crucial goods and services, from ventilators to 5g networks. The World Trade Organisation expects global merchandise trade to shrink by 13-32% in the short run. If this turns into a long-term retreat from globalisation... (The Economist 2020-04-18 Leaders section: Is China winning? The geopolitical consequences of covid-19 will be long-lasting — and unfortunate)

In (1) and (2), COVID-19 is both constructed as a global crisis with a negative impact of reaction, which is inscribed by the term "scare" in instance (1) but implicitly flagged by "fed arguments" in instance (2). While the expression "fed arguments" is seemingly neutral, its co-choices of "shrink...in the short run", "a long-term retreat from globalisations" and other resources in its local context actually form a typical prosodic structure of interpersonal meaning at the level of discourse semantics.[44] Obviously, the saturating prosody generated in (2) shows the negativity of COVID-19 in terms of its influence on international trade. In our data, such a

[42] To clearly indicate the context of each instance, the publication date, title, and sub-titles are presented in parentheses.

[43] For each instance, the language used for evaluation is underlined, and the details of attitude analysis are shown in square brackets. And only those relevant to the current discussion are presented.

[44] See supra note 20.

negative impact of COVID-19 can also be explicitly reflected in the subtitles of some news reports. The following are two examples:

(3) An outbreak of disease caused by a new virus is causing global alarm [appreciation: reaction: negative] (The Economist 2020-01-25 China section: Viral pneumonia The Wuhan crisis)
(4) The new coronavirus could have a lasting impact [appreciation: reaction: negative] on global supply chains (The Economist 2020-02-15 International section: Covid-19 and trade A deadly disease disrupts NEW YORK, PARIS, SHANGHAI AND TOKYO)

Moreover, the authors notice that the target of the evaluation most of the time is the virus itself, although it may choose different forms of expression, such as "the pandemic" in (2) and "the bug" in other contexts. This article reveals that the things or situations that related to COVID-19 may also be chosen to be the target to show the impact or influence of the virus in a global scope.

(5) China's top leaders are more subtle about their blame-sharing, but still at pains to note that virus-control is now a collective, global challenge [appreciation: reaction: negative]. (The Economist 2020-03-07 China section: Total incredulity China's propagandists are trapped by their own stirring rhetoric)
(6) Covid-19 has given a fresh edge to arguments about which political system is best. It is hard to overstate how bad [appreciation: reaction: negative] the West's handling of the virus looks to ordinary Chinese. (The Economist 2020-10-17 China section: Claiming covid as a win China calls its handling of the pandemic a "heroic feat" proving the Communist Party's wisdom)

The targets evaluated in (5) and (6) both refer to the action taken to contain the virus, that is, "virus-control" in (5) and "the West's handling of the virus" in (6).

And secondly, while in the discursive construction of COVID-19 as a news event, the negative attitude is obviously much more employed than the positive attitude, the positive resources do exist although the number is small.

(7) The virus is - [appreciation: valuation: positive] that, politics aside, a diversified base of suppliers is a good insurance policy. But the past year provided a lesson in how difficult that is. (The Economist 2020-02-01 International section: Coronavirus economics Locked down SHANGHAI China's semi-quarantine will hurt growth at home and abroad)
(8) Though covid-19 would test any country, the epidemic is casting fresh light on [appreciation: valuation: positive] a Chinese society divided by cruel inequalities of wealth, political clout and urban versus rural class. This is a crisis with many sorts of victims. (The Economist 2020-02-22 China section: Putting faces to the numbers With much of China still on virus lockdown, how are migrant workers surviving without pay?)
(9) It is happy [appreciation: reaction: positive] to see covid-19 weaken [appreciation: valuation: positive] rivals like America. But it is worth noting what it has and has not achieved during this pandemic. China has long had a genius for befriending countries and leaders who are shunned by mainstream peers... (The Economist 2020-03-28 China section: No

shining city on a hill China's blame-shifting over covid-19 sits uneasily with claims to be a responsible great power)

In this article, it is interesting to find that the positive evaluation of COVID-19 seems to serve as a beginning point and is always co-occurring with or followed by certain negative resources to show the negativity of other targets. For example, in (7) it goes on to show an unsatisfactory situation that a diversified base of suppliers is hard to achieve, in (8) and (9) to construe its negative judgement of Chinese society. This negativity sometimes may be guided by the countering expressions like "but", and most of the time is manifested from the title of the news report from which it appears.

At last, it is observed in Corpus A that the virus as a news event appears much frequently in the first two months (January and February), occurring in the sub-title of the news report 5 times.

5.2 Attitudinal Choices in Evaluating China's Tacking of COVID-19

Against the backdrop of a global crisis of COVID-19, China as the main actor in this news event, its behavior and the measures it takes are the two major targets in the discursive construction of China' role in dealing with this crisis, which typically fall into the attitudinal choice of judgement and appreciation respectively according to the attitude system illustrated in Section 2.

For the evaluation of "China", its target does not necessarily point to China directly, but may specifically refer to Chinese governments at all levels, government officials, the party, and ordinary Chinese people. When the evaluated target points to China, the attitudinal choices involved may construe a positive stance for its importance in globalization (instance 10) and its success in controlling covid-19 (instance 11) on the one hand, and on the other hand establish a negative stance concerning its influence on the current western democracy (also instance 11).

(10) One crucial difference compared with SARS is China's <u>importance</u> [appreciation: valuation: positive] for the rest of the world. (The Economist 2020-02-01 International section: Coronavirus economics Locked down SHANGHAI China's semi-quarantine will hurt growth at home and abroad)

(11) In the Financial Times another veteran of this newspaper, Gideon Rachman, suggests America's failure on covid-19 and China's perceived success [judgement: capacity: positive] could do dreadful damage to democracy [appreciation: valuation: negative]. These are plausible scenarios. (The Economist 2020-03-21 United States section: Lexington Pandemic polarisation Covid-19 is exposing America's resilience as well as its vulnerability)

But what stands out is that the evaluation of China for its performance in this global epidemic much of the time could extend to criticism of China's political system just as reflected in (12). The Authors will talk about this in the next section.

(12) ...Mr. Xi's China is two things at once. It is a secretive, techno-authoritarian one-party state, ruled by grey men in unaccountable councils and secretive committees [judgement: propriety: negative]. (The Economist 2020-02-01 China section: The politics of pandemics Xi Jinping wants to be both feared and loved by the Chinese people. The coronavirus may change that)

When the evaluation target points to Chinese governments or officials, the attitudinal choices may go to a kind of positive stance like judgmental tenacity (instance 13), and more frequently the choices will construe a reproach to their behaviors through the use of negative judgmental propriety (instances 14, 15).

(13) But things are very different this time. The Chinese have been forthcoming and swift to act [judgement: social esteem: tenacity: positive]. (The Economist 2020-01-25 Leaders section: The Chinese coronavirus Time and again A new virus is spreading. Fortunately, the world is better prepared than ever to stop it)

(14) The government stopped travel in and out of Wuhan and two nearby cities, corralling almost 20m people [judgement: propriety: negative]. (The Economist 2020-01-25 Leaders section: The Chinese coronavirus Time and again A new virus is spreading. Fortunately, the world is better prepared than ever to stop it)

(15) Chinese officials at first suppressed news of the disease [judgement: propriety: negative], a grave error that allowed the virus to take hold. (The Economist 2020-02-29 Leaders section: Going global The virus is coming. Governments have an enormous amount of work to do)

And when the evaluated target points to China's leaders, Communist Party as well as its officials, the attitudinal choices are usually negative concerning the category of propriety again (instances 16, 17).

(16) But to China's rulers, politics is never play. Every crisis is a chance to strengthen the party's grip [judgement: propriety: negative]. (The Economist 2020-02-08 China section: A people's war China's Communist rulers see a chance to mobilise the masses behind the party)

(17) When a respiratory virus spread in Wuhan, Communist Party officials' instinct was to hush it up [judgement: propriety: negative]. (The Economist 2020-04-18 Leaders section: Is China winning? The geopolitical consequences of covid-19 will be long-lasting — and unfortunate)

Also, the evaluation may point to ordinary Chinese people (as the emoter), in which case the emotional choices are prominently employed, including the category of happiness, satisfaction, and security. In (18), the negative satisfaction is chosen.

(18) Schooled in the idea that they live in an all-knowing surveillance state, Chinese netizens have reacted with surprise [affect: satisfaction: negative] as the virus campaign reveals the authorities' blind spots. (The Economist 2020-02-01 China section: The Wuhan virus Sealed off WEIJI VILLAGE, HENAN Tough measures to control the spread of a new coronavirus are making life difficult for many Chinese)

From the above instances, it can see that the attitudinal choices in evaluating China's roles in tackling COVID-19 vary in terms of different evaluated targets. A closer reading of these evaluative resources of "China" shows three critical patterns of evaluation related to those different targets, through which China's performance in dealing with COVID-19 is construed much more comprehensively in the news discourse.

Firstly, there is a clear attitudinal contrast between the evaluation of China's elite including Chinese governments at all levels, officials, leaders as well as the Party, and

that of its non-elite, particularly ordinary Chinese people. That is, judgmental resources are frequently used to condemn the elite's behaviors, for example, the use of negative propriety (instances 14, 15), and affective resources are preferred when the non-elite is involved, especially the use of negative satisfaction and security (instances 18, 19).

(19) Public anger [affect: satisfaction: negative] about Dr. Li's fate will fade, just as countries recover from earthquakes. But those who feel the ground shake never forget or trust in [re-China; affect: security: negative] its solidity the same way again. (The Economist 2020-02-15 China section: Death of an everyman A virus-related tragedy lays bare the costs and trade-offs of life in a Communist-led dictatorship)

When examining the trigger of those ordinary people's negative emotion, it is easy to observe a rhetorical pattern of "cause-effect" existing between the elite's behaviors and the non-elite's emotion. That is, people's negative emotion is triggered by the elite's improper behavior. Instance (20) further illustrates this point.

(20) Plenty of ordinary citizens remain angry about [affect: satisfaction: negative] early missteps [judgement: propriety: negative] in Wuhan. (The Economist 2020-03-28 China section: No shining city on a hill China's blame-shifting over COVID-19 sits uneasily with claims to be a responsible great power)

Secondly, in terms of the evaluation of China's elite, there is a judgmental contrast between positive social esteem and negative social sanction. In other words, when it comes to the evaluation of their manner of taking action to deal with this crisis, the attitudinal meanings of positive tenacity (instances 13, 21), as well as capacity (instance 22), are construed in the discourse.

(21) On February 25th China's president, Xi Jinping, and the prime minister, Li Keqiang issued instructions on the need to "stabilize" agriculture. They called for an "all-out effort" [judgement: tenacity: positive] to ensure that the epidemic did not affect the planting of vital crops. (2020-03-14 China section: Covid-19 and farmers The other 40% ZHAOQUANYING The epidemic has been causing problems in the countryside, too).

(22) China has effectively controlled [judgement: capacity: positive] covid-19 and its economy is returning to life. (2020-10-17 China section: Claiming covid as a win China calls its handling of the pandemic a "heroic feat" proving the Communist Party's wisdom)

And when it comes to the specific measures taken by them to respond to the epidemic such as lockdown, quarantine, surveillance, as well as their early missteps, the negative judgmental meanings of propriety and sometimes veracity will be used, for example (14), (15), (17) and (20).

Thirdly, while a dynamic change of attitude to China's control of COVID-19 is obviously shown in our data, the main tone is still negative. It's just that the appraised or the target is no longer China's behavior in dealing with COVID-19 directly. For instance,

(23) All the world's attention is on covid-19. Perhaps it was a coincidence that China chose this moment to tighten its control around disputed reefs

in the South China Sea, arrest the most prominent democrats in Hong Kong and tear a hole in Hong Kong's Basic Law [judgement: propriety: negative]. But perhaps not. (The Economist 2020-04-25 Leaders section: A pandemic of power grabs Autocrats and would-be autocrats see opportunity in disaster)

(24) Early on, foreign countries were asked to send medical aid to China without any publicity, and complied. Later, when they sought to buy Chinese ventilators for their own patients, they were told that the price included public praise for China [judgement: propriety: negative]. (The Economist 2020-10-17 China section: Claiming covid as a win China calls its handling of the pandemic a "heroic feat" proving the Communist Party's wisdom)

With China's way of controlling COVID-19 showing its effects, the world is still busy dealing with this crisis. In this context, a negative stance on China is construed in (23) and (24) by criticizing its tightening control in the South China Sea and Hong Kong and its requiring publicity for its aid sent to foreign countries who had no such requirement when they provided aid to China earlier.

In addition to the doer "China", the measures taken by China to contain the spread of the virus is another important evaluated target in the discursive construing of China as a news actor. Based on Corpus B, which contains the "China + lockdown"[45] discourse, it is obvious that while "China" who takes the actions is always criticized, the "lockdown" itself could be appreciated as an abstract entity for its effect or influences.

(25) Life under lockdown is cheaper here than usual [appreciation: reaction: positive] because social visits are banned. Every three households have been given a ticket, allowing one person to buy supplies for them all from the local market. For now, the grandparents who normally work in Beijing are spending savings. They could survive another half a year, they think, but no more [appreciation: reaction: negative]. (The Economist 2020-02-22 China section: Putting faces to the numbers With much of China still on virus lockdown, how are migrant workers surviving without pay?)

In (25), the effect of lockdown is first construed to be positive, but later the negative side is manifested through a seemingly objective description of people's insupportable living conditions under lockdown.

As time goes by, China's perceived success in crushing the epidemic becomes more and more evident. "Lockdown" begins to be construed as valuable and effective in controlling the crisis.

(26) ...They were wrong. After its initial bungling, China's ruling party swiftly imposed a quarantine of breathtaking scope and severity. The lock-down seems to have worked [appreciation: valuation: positive]. (The Economist 2020-04-18 Leaders section: Is China winning? The geopolitical consequences of covid-19 will be long-lasting — and unfortunate)

(27) Like the lockdowns themselves, many of these new rules are transplants from China, which has, its government says, avoided a

[45] See Section 4 for more details.

second wave of infections [appreciation: valuation: positive]. (The Economist 2020-04-18 International section, title: How to end lockdowns Emergency exit BEIJING, BERLIN, MADRID AND SEOUL Governments are starting to ease restrictions, gradually, cautiously and with only a hazy idea of what works)

At the same time, such expressions as "seems" in (26) and "its government says" in (27) establish a dialogically expansive space for its potential audience,[46] which means the positive value of lockdown in the current discourse may not be that case. In other words, this kind of positive evaluation is not all that complete.

Moreover, with the epidemic becoming a global event, a different stance is observed in Corpus B in regard to the evaluation of the behavior or measure of "lockdown" taken by different countries, which mainly refers to China and Italy in this article.[47]

(28) In democracies leaders have to judge [judgement: propriety: positive] if people will tolerate China's harsh regime [judgement: propriety: negative] of isolation and surveillance. Italy's lockdown is largely self-policed and does not heavily infringe people's rights [appreciation: valuation: positive]. (The Economist 2020-03-14 Leaders section: The politics of pandemics All governments will struggle. Some will struggle more than others)

(29) The lockdown has been strictly enforced [judgement: propriety: negative] by neighbourhood committees and building managers, though restrictions are now being loosened as China's new cases have dwindled. In Italy, by contrast, the implementation of the travel restrictions depends on the public's co-operation. Authorities and doctors are imploring people to stay at home [judgement: propriety: positive]. (The Economist 2020-03-14 International section: Covid-19 All'italiana ROME AND SEOUL Italy has imposed a nationwide lockdown. Should other countries copy it?)

The above two instances present a clear stance contrast in the evaluation of China's lockdown and Italy's lockdown. One is democratic therefore self-policed, respecting people's rights and depending on people's co-operation, and the other is harsh, strictly enforced therefore is undemocratic, regardless of the will of the people. Moreover, the use of graduation resources "largely",[48] "not heavily" in (28), and "strictly" in (29) makes this stance contrast much more obvious. The former two are used to somehow avoid a too strong statement about the current situation in Italy, and the latter to justify its criticism of China's evil action by intensifying the degree of the action.[49]

6. Negative Construction of China's Role in Governing the Global Public Health Crisis

Based on the analysis in section 5, it is easy to conclude that China's role in governing the global public health crisis is overall negatively constructed in The Economist.

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[46] See supra note 20, at 104-18.
[47] Ibid.
[48] See supra note 20, at 135-53.
[49] See supra note 2.

6.1 Impact and Superlativeness of COVID-19 as A Global News Event: Great Economic Cost in Particular

As mentioned in Section 4.1, although the current data focus on China's response to COVID-19 in 2020, it is found COVID-19 is construed as a news event with global impact and consequence, which is critically manifested by the attitudinal resources like "causing a global scare" in (1), "global alarm" in (3), "a lasting impact" in (4) and "a collective, global challenge" in (5). That means, the news value[50] of impact is discursively established in the discourse: COVID-19 is a global news event with great effects or consequences. In this process, another value of superlativeness is actually achieved in terms of its large scope.

The analysis reveals that of all the effects led by this global crisis, the economic costs are highlighted in particular. For instance,

> (30) When China went into lockdown in late January, economists thought that its growth trajectory would be v-shaped. There would be a sharp slowdown [appreciation: reaction: negative], followed by a swift rebound as soon as the virus was under control, as happened with China's outbreak of SARS in 2003. They were right about the slowdown. (The Economist 2020-03-28 China section: The post-virus economy Back to work SHANGHAI But not back to normal)
>
> (31) The alarming cost [appreciation: reaction: negative] of hard lockdowns is becoming clearer. This week the IMF forecast that extending full lockdowns well into the third quarter of 2020 would turn a 3% contraction of the world economy this year into a 6% one. (The Economist 2020-04-18 Leaders section: Covid-19 lockdowns: Fumbling for the exit strategy: Overwhelmed by the crisis, most governments are ill-prepared for what comes next)

Both (30) and (31) are about the unattractive situation of the economy under lockdown which is taken to contain COVID-19. This emphasized that in terms of globalization western media believe that China's economy has a direct impact on the whole world, and also explains to some extent the negative construction of China's performance in the global public crisis, for its harsh and enforced measures of lockdown and quarantine as well as its early missteps.[51]

6.2 Foregrounded Negativity of China in the News Event of COVID-19: Negative Stance on "Difference"

As the main news actor in the news event of COVID-19, China's role in dealing with this global crisis is not so well acknowledged abroad. The value of negativity is much more foregrounded, compared with that of positivity. The positivity mainly concerns their positive or active manner of taking actions (instances 11, 13, 21 and 22), and the negativity goes towards China's specific measures it takes. For instance, the negative judgmental propriety is frequently chosen to criticize or condemn China's behavior as in (14), (15), (16), (17), and so on. The appraised includes China, China's leaders, the Chinese government, officials, the Communist Party of China as well as its officials, all of which fall into the category of eliteness. The other side of

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[50] See supra note 20, at 104-18.

[51] See Guang Xu & Ren Ming et al., *Extracting China's Economic Image from Western News*, 5(5) Data Analysis and Knowledge Discovery 30, 30-40 (2021).

eliteness, namely, personalization is also involved in the news event, particularly referring to China's citizens (instances 18, 19, 20).

What is noteworthy is that a hidden semantic relation is rhetorically construed in the discourse: few China's elite's bad performance in dealing with COVID-19 is always the trigger of its non-elite negative emotion. Different from judgement and appreciation, which are institutionalized feelings,[52] the affective meaning is not institutionalized and "is the expressive resource we are born with and embody physiologically from almost the moment of birth" through which a shared stance or value with the potential audience is much easier to establish.[53] For example, the "cause-effect" relation between the government's early missteps and people's anger in (20) enables the criticism of China's earlier behavior much more justified.[54]

However, this article also reveals that even if China's non-elite in the news event is positive to China's performance, the negativity of China is still its ultimate goal by the rhetorical strategy of counter-expectancy. In this situation, the negative evaluation always goes to China's political system.

(32) Many of Beijing's 21m people, like others elsewhere in China, appear confident [affect: security: positive] in the government. "Dammit!" blurts a Mr. Li, a shopkeeper in Chaoyang, a district in eastern Beijing. "I really thought we had made it through. It's awful!" he says. But he says he accepts the need for new restrictions and that he believes [affect: security: positive] they will succeed. If normal life is severely disrupted for long, however, patience may wear thin [affect: security: negative] among those who have suffered blows to their livelihoods or education. That may have been on Mr. Xi's when he stressed stability. Officials will go all out in their efforts to crush this outbreak, not least to keep him happy [judgement: propriety: negative]. (The Economist 2020-06-20 China section: Fighting the pandemic It's back BEIJING An outbreak of covid-19 in the capital is causing alarm)

(33) "They all think Wuhan is a city of heroes [appreciation: reaction: positive] and want to [affect: inclination: positive] come and see us," beams [affect: happiness: positive] Zhang Hanye, a tourism worker. A survey by an official think-tank in late April—soon after the lockdown was lifted—found that Wuhan was China's most popular destination [appreciation: reaction: positive], up from eighth before the virus hit. All this is propaganda manna for China's government [judgement: propriety: negative], which early in the pandemic was widely criticised even within China for silencing [judgement: propriety: negative] doctors in Wuhan... When images spread last month of thousands of people at a music festival at a water park in Wuhan — cheek-by-jowl and maskless — Global Times, a state mouthpiece, crowed [judgement: propriety: negative] that it was "never too late to learn from Wuhan". (The Economist 2020-09-19 China section: Wuhan's recovery Washing away the tears WUHAN A bruised city becomes a showcase for the state)

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[52] See supra note 20, at 45.

[53] See James R. Martin & Peter White, *The Language of evaluation: appraisal in English*, Palgrave Macmillan, p.42 (2005); Clare Painter, *Developing Attitude: An Ontogenetic Perspective on APPRAISAL*, https://doi.org/10.1515/text.2003.008 (accessed on December 28, 2021).

[54] Ibid.

According to the positive evaluation of China's perceived success on March 21 as shown in (11), it can see that China has achieved great success in crushing COVID-19 by the publication dates of two above news reports (32) and (33). It is natural for its people to feel confident, happy, and satisfied, just as the positive affect of security, inclination, and happiness construed in (32), (33). With the development of discourse, they both turn to a negative evaluation of China, guided by a strategy of counter-expectancy: one is explicitly indicated by the function word "however", and the other is implicated through the expression "All this is propaganda manna for China's government". That means, even if Chinese general public acknowledge China's achievement in tackling COVID-19, the news discourse still makes full use of language resources to adjust its potential audience's expectancy and guide them to a negative stance on China.

This ultimate negativity of China well explains its "double standard" in evaluating the "lockdown" measure taken by China and Italy respectively (see the stance contrast construed in instances 28 and 29). One more such contrast is shown in (34) and (35) in terms of travel bans imposed by foreign countries and China.

(34) China's embassies have attacked [affect: satisfaction: negative] foreign governments for imposing travel bans. Its ambassador in Jakarta warned [affect: satisfaction: negative] Indonesia that "overreaction" would have "a direct impact" on relations. But such bullying [judgement: propriety: negative] may not work. (The Economist 2020-02-15 International section: Covid-19 Curbing the Asian contagion JAKARTA, SINGAPORE AND TOKYO China's neighbors are rushing to contain the spread of the new coronavirus)

(35) The Chinese authorities are deeply alarmed by imported cases. The country's borders are closed to almost all foreigners and only about 20 international flights land in all of China each day [judgement: propriety: negative]. (The Economist 2020-05-02 China section: Virus exceptionalism China plans tough measures to crush new covid outbreaks. They may work — but at a high cost)

In (34), China's requiring foreign governments to stop their travel bans is construed as a kind of bullying. In other words, foreign governments' imposing these bans is proper and reasonable, and shouldn't be attacked. But in (35) when it comes to China's imposing travel bans by closing its borders, it is considered to be an improper "overreaction". A double standard exists.[55]

Based on the current empirical discursive analysis, it may be reasonable to argue that the ultimate negativity manifested is to a great extent derived from a seemingly objective term "difference/different", i.e., the difference between China and western countries, which is actually construed as negative in the news reports.

(36) China has endured a lockdown but its social model is different from the West's [appreciation: valuation: negative]. (The Economist 2020-03-21 Leaders section: The world economy Fighting the slump As the virus rages, governments need to be able to dial financial support up and down for people and firms)

(37) ... The World Health Organisation was this week full of praise [affect: satisfaction: positive] for China's approach. That does not, however,

[55] See Dingjia Liu, *A Corpus-Based Diachronic Analysis of U.S. Media Reports of China During COVID-19 Pandemic*, 44(6) Journal of Foreign Languages 52, 52-64 (2021).

mean it is a model for the rest of the world [appreciation: valuation: negative]. (The Economist 2020-02-29 Leaders section: Going global The virus is coming. Governments have an enormous amount of work to do)

By combining the stance contrast construed in (28) and (29) with the seemingly neutral statement in (36), it can see how this difference is negatively evaluated. That is why even if China's approach or model has been greatly praised by World Health Organization, its value is still not positively acknowledged (instance 37). This observation is consistent with what Xu and his colleagues have found recently, that is although the western media have affirmed China's achievements, especially in its economic development, they made no secret of their unease with the rise of China.[56]

Moreover, with China's perceived emerging from the pandemic, China's early missteps are re-mentioned again and again in the news discourse which tends to guide its target audience to an impression that it is China's fault that leads to the present fast spread of COVID-19.[57] The same tendency is observed in the United States media reports.[58]

(38) "When governments suppress the free flow of information, it is terrible for public health, as we saw in Wuhan. The Chinese government's muzzling [judgement: propriety: negative] of the doctors who sounded the warning gave the virus a three-week head-start to go global." A study by the University of Southampton found that if interventions in China had started three weeks earlier, the number of coronavirus cases would have been 95% lower at the end of February, "significantly limiting the geographical spread of the disease" [judgement: propriety: negative]. (The Economist 2020-04-25 International section: Covid-19 and autocracy Protection racket DELHI, ISTANBUL, JOHANNESBURG, KAMPALA AND SINGAPORE Would-be strongmen are using the pandemic as an excuse to grab more power)

(39) China's rulers silence [judgement: propriety: negative] the doctors in Wuhan who first sounded the alarm about the new virus. Censorship can be lethal [appreciation: valuation: negative]. Had China listened to doctors and acted faster to curb the disease, it would not have spread so fast around the world [judgement: propriety: negative]. (The Economist 2020-10-17 China section: Claiming covid as a win China calls its handling of the pandemic a "heroic feat" proving the Communist Party's wisdom)

As this article has shown in (38) and (39), the intended news value of consonance is better achieved by the using of two unreal conditionals.

In a word, through the lens of DNVA, especially the news values of impact, negativity, positivity, eliteness, personalization, and consonance, the hidden stance or ideology in western media as well as the possible reasons are discussed and interpreted. And with these news values being discursively constructed within the news discourse, western media is able to create consonance with its target audience, not only western people but also some western-educated liberals from China, in

[56] See supra note 51.
[57] Ibid.
[58] Ibid.

regard to a hidden negative stance on China' role in dealing with the global public health crisis.

6. Conclusion

As a global public health crisis, COVID-19 has posed severe challenges to the capacity of countries to govern public health crises. In this context, the current research takes a bottom-up discursive approach to China's role in global public health governance by investigating the news values construed through western news discourse. Critical patterns of attitudinal choices concerning "China" and "COVID-19" observed in the news discourse are interpreted through the lens of DNVA. And a hidden negative stance on China's approach in containing the virus as well as the possible reasons behind is identified.[59] The authors argue that such general negativity results from the seemingly objective concept of "difference" between China and western countries. Western media, as a kind of global media model of the world, aim to "transmit views about the way the world works, about how people behave or should behave, and about the problems Chinese encounter and the solutions that are available for dealing with them".[60] Then does globalization inevitably result in increased cultural homogeneity — "the homogenization of world culture through western media, and through the values and kinds of identity they promote"?[61] The fact is that in the process of globalization the international culture dominated by western culture is not universally accepted,[62] and new global cultures emerge albeit with new cultural and political conflicts, as indicated in the current study.

For the question of how to optimize China's global public influence in global governance, this empirical research may provide some new insights. First of all, it is the "difference" that leads to the negativity of China as a news actor in western media.[63] In other words, no matter how China performs, its performance is unavoidably evaluated within the framework of the western political system and is unavoidably negative. According to the Agenda-setting theory,[64] many factors influence western countries' agenda-setting on China, but the deepest ones are ideology and national interest.[65] Under the current background of globalization, it is necessary for China to take the initiative to set up its issues as well as global issues and to rebuild its national image with the help of multimedia and digital techniques. Secondly, the sustainable future with improved global governance capabilities will require actions and operations from all levels, globally, regionally, nationally, locally and personally. As shown in the previous literature review, in the international academic community there is still a relatively small voice from China's philosophy and social sciences.[66] After successfully bringing the pandemic under control, China proposed the idea of building a Global Community of Health for All to the international community. This

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[59] See supra note 2.

[60] See David Machin & Theodoor Jacob Van Leeuwen, *Global Media Discourse: A Critical Introduction*, Routledge, p.39 (2007).

[61] Id., at 5.

[62] Id., at 2.

[63] See Maxwell Mccombs, *Building Consensus: The News Media's Agenda-Setting Roles*, 14(4) Political Communication 433, 433-43 (1997).

[64] Ibid.

[65] See Manli Cheng, *Orientating the Public Opinion: The Impact of Agenda-setting on Construction of National Image*, 45(2) Journal of Peking University (Philosophy and Social Sciences) 162, 162-8 (2008).

[66] See Xiaonan Hong, *Discourse System with Chinese Characteristics and the Construction of International Image*, 30(31) People's Tribune 17, 17-21 (2021).

is a Chinese plan for international reference and shows China's active participation in the global public health governance. International law is at the core of building a Global Community of Health for All.[67] For Chinese government, it is urgent to promote the development of the Chinese discourse system to let the world know about "China in theory", "China in discourse" and know about China's wisdom.[68] Finally, in terms of international communication, a mixture including western audience-oriented narrative and communication mechanism is a very important point. What would such a mechanism look like? This article provides some practical clues, such as the use of counter-expectancy, and cause-effect, the choice of non-elite as news actors, to achieve consonance with the potential audience by constructing legitimation in discourse and communication.[69] Future research may focus on this specific dimension to explore how western news discourse legitimizes or de-legitimizes social practice and the implications for Chinese media.

[67] See Yong Wang & Qingqing Zhou, *Global Community of Health for All: What, Why and How*, 2(1) Foundation for Law and International Affairs Review 91, 91 (2021).
[68] Ibid.
[69] See Theodore Jacob Van Leeuwen, *Legitimation in Discourse and Communication*, 1(1) Discourse & Communication 91, 91-112 (2007).

Integrating Corporate Social Responsibility with Corporate Governance: A Case Study of Russian Companies

Dzhennet-Mari Akhmatova[1]

Abstract: Sustainable development takes centre stage. The need for a radical rethinking of how companies and industries work is being addressed. Sustainability recognizes respect for society and the environment as a benchmark of success. Integrating corporate social responsibility and corporate governance is becoming one of the top priorities. CSR accounts for three pillars of sustainability — economic (profit), social (people), and environmental (planet). Embracing CSR policies helps a company burnish its image, increase financial performance and customer loyalty. Currently, the European Union has been transitioning from guidelines on social responsibility to binding law. In Russia, CSR is not common practice. Besides, it is not regulated by mandatory legal rules. CSR is often limited to charity and social marketing. Undervaluing the importance of CSR is a mistake that could undermine the competitiveness of Russian companies in the international market. This article examines the perspectives of the integration of CSR and CG in Russia. It also focuses on conditions that hinder success in this field. Among the challenges is a lack of a legally binding instrument. Financial aspects, independent directors, and a current level of public awareness are becoming more of a pressing issue. The recommendations suggest ways forward socially responsible business conduct in Russia.

Keywords: Corporate Governance; Corporate Social Responsibility; Sustainability; Russian Business Environment

1. Introduction

The integration of Corporate Social Responsibility (hereinafter referred to as CSR) and Corporate Governance (hereinafter referred to as CG) is considered a fundamentally novel approach towards facilitating interaction among corporations, society, and the environment. At the same time, it is a point for a debate in international corporate management. [2] The source of the conflict is in the nature of these concepts.

CG is a system of management and control over the company's activities. It is expressed in the distribution of rights and responsibilities among the participants of corporate relations (i.e., shareholders, board of directors, management). It outlines the rules and procedures for decision-making and internal control. The post-modern American theory of CG is to maximize shareholder value. This approach leads to single-stakeholder decision-making to maximize profit at any cost.

By contrast, CSR is beneficial to the interests of external stakeholders. It defines the organization's responsibility for the impacts of its decisions and activities on society and the environment. CSR acts through transparent and ethical behavior that promotes sustainable development. This way, CSR is the opposite of maximizing profit by nature as related activities may contradict the interest of the shareholders.[3]

However, CG and CSR are mutually beneficial in promoting shareholder value.

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[1] Dzhennet-Mari Akhmatova, Ph.D. candidate at the KoGuan School of Law of Shanghai Jiao Tong University.

[2] See Quoc T. Tran & Trang T. Lam et al., *Effect of Corporate Governance on Corporate Social Responsibility Disclosure: Empirical Evidence from Vietnamese Commercial Banks*, 7(11) Journal of Asian Finance, Economics and Business 327, 328 (2020).

[3] See Andrea Beltratti, *The Complementarity Between Corporate Governance and Corporate Social Responsibility*, 30(3) The Geneva Papers on Risk and Insurance - Issues and Practice 373, 374 (2005).

For instance, available empirical evidence[4] shows that both CG and CSR are positively related to the firm's market value.[5] Besides, CG and CSR positively affect a firm's financial performance[6] and earnings management.[7] Additionally, coordination of good CG and CSR contributes to establishing value-creating relationships with all stakeholders.[8] It positively affects the company's sustainability in the market.[9] This way, integrating CSR and CG can ensure a more robust and transparent management framework that strengthens the relationships among internal and external stakeholders. This approach is valuable when rebuilding the world's economies in the wake of the global COVID-19 crisis.

Guided by the relevance of integrating CG and CSR, the European Union (hereinafter referred to as EU) has been transitioning from guidelines on social responsibility to binding law. For instance, the first major shift in this issue was the release of the document on Communication on CSR. It represented a new EU strategy for the period 2011-2014. This period emphasized the need for more effective implementation of the United Nations guidelines to achieve human rights goals, comply with basic labor standards, and prohibit discrimination. Besides, the Directive of the European Parliament of 2014 (hereinafter referred to as EU Directive) provided for a novel approach to corporate reporting. It considers disclosure of the business model, policies, and risks management as a matter of course. It additionally requires certain large companies to disclose their key performance indicators (hereinafter referred to as KPIs) in areas related to CSR. These areas cover the environmental, social, and employee issues, respect for human rights, fight against corruption.[10]

In 2021, European Parliament passed a resolution calling upon the urgent adoption of binding EU-wide legislation (hereinafter referred to as EU Resolution). The EU Resolution is the cornerstone of ensuring that companies are held accountable for human rights and environmental protection.[11] This landmark resolution does this in two ways. First, it suggests that a corporation has a duty to abide by fundamental human rights. The second is that a corporation should not harm the environment. Violation of these duties can leave a corporation legally accountable. The intended effect is to force boards of directors to behave accordingly. Directors should consider a broader set of reputational pressures and social criteria affecting the financial advantage-based business model. This way, governments can acquire the capacity to involve businesses in addressing social and environmental problems.

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[4] Id., at 385.

[5] See Farida Farida & Adhika Ramadhan et al., *The Influence of Good Corporate Governance and Corporate Social Responsibility on Firm Value: Evidence from Indonesia*, 5(7) International Journal of Economics and Financial Research 177, 178 (2019).

[6] See Etty Murwaningsari, *The Relationship of Corporate Governance, Corporate Social Responsibilities and Corporate Financial Performance in One Continuum*, 9(1) Indonesian Management and Accounting Research 78, 95 (2019).

[7] See Mayang Mahrani & Noorlailie Soewarno, *The Effect of Good Corporate Governance Mechanism and Corporate Social Responsibility on Financial Performance with Earnings Management as Mediating Variable,* 3(1) Asian Journal of Accounting Research 41, 56 (2018).

[8] See Richard Welford, *Corporate Governance and Corporate Social Responsibility: Issues for Asia*, 14(1) Corporate Social Responsibility & Environmental Management 42, 50 (2007).

[9] See Arash Shahin & Mohamed Zairi, *Corporate Governance as a Critical Element for Driving Excellence in Corporate Social Responsibility*, 24(7) International Journal of Quality & Reliability Management 753, 768 (2007).

[10] See Directive 2014/95/EU of the European Parliament and of the Council of October 22, 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L/1 330, pp.1-9 (2014).

[11] See European Parliament Resolution of March 10, 2021, with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), OJ 2021 C 474/11, pp.11-40 (2021).

Finally, surveys have shown that consumers in developed and developing markets prefer to buy from companies that behave responsibly. According to data from a 2019 survey, 72% of people from 39 countries preferred to buy products from companies that conduct business in a manner that accounts for sustainable development.[12]

However, in Russia, integrating CSR and CG is not widespread or codified in any law.[13] This lack of CSR stands in stark contrast with a growing number of countries that have implemented laws requiring companies to adopt CSR. For instance, in 2017, the French Parliament adopted the Corporate Duty of Vigilance Law for the largest French companies. This law establishes a legally binding obligation for parent companies to identify and prevent human rights abuses and environmental impacts. It covers the parent companies' activities and the activities of any of their domestic or foreign partner entities. This way, the law also affects subsidiaries, subcontractors, and suppliers. Additionally, these companies must publish and implement a vigilance plan annually to identify and prevent the risks of infringing human rights or adversely impacting the environment.[14] This plan shall include the following aspects, covering CSR fields: (1) identification, analysis, and ranking of potential risks; (2) an outline of procedures used to periodically assess compliance on the part of the company's subsidiaries, subcontractors and suppliers; (3) actions to mitigate risks or prevent serious violations; (4) a method for identifying potential or existing risks in cooperation with the trade union organizations representatives of the company concerned; (5) a monitoring system to assess the effectiveness and efficiency of the program.[15]

Three judicial mechanisms control the implementation of the law, such as a formal notice to comply, an injunction with periodic penalty payments, and a civil liability action in case of damages.[16] The effect of the law is that when companies breach these obligations, the law empowers victims and other concerned parties to prosecute for corporate negligence. Penalties can result in fines of up to €10 million if companies fail to publish plans; fines can reach as high as €30 million if this failure results in damages that would otherwise have been preventable.[17]Thus, the international practice underlines the importance of integrating CSR and CG for ensuring sustainable development.

Undervaluing the importance of CSR is a mistake that could undermine the competitiveness of Russian companies in the international market. Besides, there is a problem of a lack of research in the area discussed. The purpose of this article is to examine the perspectives of integrating CSR and CG in Russia and identify conditions that hinder success in this field. Additionally, this article suggests the recommendations.

The remainder of this paper proceeds as follows. The following section outlines CG and CSR frameworks. The third section compares CSR and CG and analyzes the perspectives of their integration. The fourth section considers the successful experience of integrating CSR and CG in Russia. Besides, it identifies existing challenges. The final section represents the conclusion.

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[12] See Olga Vorobyova, *Sustainable Development: Barriers, Advantages and Business Opportunities*,https://www.asi.org.ru/news/2019/05/27/ustojchivoe-razvitie-biznes/ (accessed on December 27, 2021).

[13] See Vyacheslav Sorokin, *Corporate Social Responsibility*, 127(1) Businessman 9, 11 (2018).

[14] See Claire Bright, *Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: is the French Duty of Vigilance Law the Way Forward?* MWP Working Papers No.1 (2020).

[15] See IKARIAN, *Duty of Vigilance and Corporate Social Responsibility: Current Issues*, https://www.ikarian.eu/en/our-areas-of-expertise/duty-of-vigilance-and-corporate-social-responsibility/ (accessed on December 12, 2021).

[16] Ibid.

[17] Ibid.

2. CG and CSR Frameworks

2.1 International Guidelines on CG and CSR

2.1.1 International CG framework

CG is at the peak of its development in organizations worldwide.[18] CG is for legal formalization and regulation of business activity. Additionally, it is about building internal and external relations in the market based on the stated corporate mission and strategy. The ultimate objective is to provide long-term shareholder value. This way, GC is at the core of the corporation's operating framework.

The Organization for Economic Co-operation and Development (hereinafter referred to as OECD) first stated the principles of CG in 1999. They became the international benchmark of CG.[19]

The G20/OECD principles propose that CG supervises fulfillment of a company's strategic goals by the board of directors. The primary responsibility for monitoring managerial performance and achieving adequate returns for shareholders also lies with the board. Besides, the board should ensure the prevention of conflicts of interest.

The principles of CG are defined in six chapters, such as: (1) ensuring the basis for an effective CG framework; (2) the rights and equitable treatment of shareholders and key ownership functions; (3) institutional investors, stock markets, and other intermediaries; (4) the role of stakeholders; (5) disclosure and transparency; (6) the responsibilities of the board.[20] This way, stated CG principles aim to provide robust guidance to companies, policymakers, governments, and other stakeholders.

The application of CG is beneficial for companies. In India, even small and medium-sized enterprises (hereinafter referred to as SMEs) apply CG to increase transparency and profit margins and decrease conflicts.[21] In South Africa, policymakers and companies attribute CG to the success of many large companies.[22]

CG represents a genuine effort to integrate legislation, self-regulatory arrangements, and business activities resulting from a country's specific circumstances, history, and tradition.[23]

2.1.2 International CSR framework

Ideas about the role of social activity in the development of society have existed since ancient times. The charity work and support for vulnerable groups encouraged by representatives of the wealthy class and merchants are the first practices of social responsibility from the past. However, with the expansion of the scale of production activities, the range of social responsibility issues is also gradually expanding. For instance, the industrial revolution of the late 18th to 19th centuries resulted in increased

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[18] See Manuel A.G. Castrillón, *The Concept of Corporate Governance*, 25(2) Revista Científica Visión de Futuro 178, 178 (2021).

[19] Organization for Economic Co-operation and Development is a recognized international organization of 38 countries, which are committed to democracy, development and the market economy. See Organization for Economic Co-operation and Development, *Our Global Reach*, https://www.oecd.org/about/members-and-partners/ (accessed on December 12, 2021).

[20] See Organization for Economic Co-operation and Development, *G20/OECD Principles of Corporate Governance*, OECD Publishing, p.5 (2015).

[21] See Shailendra Sial & Deepak Shrivastava et al., *Advantages of Corporate Governance for Indian Enterprises*, 5(7) Journal of Emerging Technologies & Innovative Research 342, 343 (2018).

[22] See Radebe Sarah, *The Benefits of Good Corporate Governance to Small and Medium Enterprises (SMES) in South Africa: A View on Top 20 and Bottom 20 JSE Listed Companies*, 15(4) Problems and Perspectives in Management 271, 273 (2017).

[23] See supra note 20, at 13.

competition and the rise of the labor movement. It prompted factory owners to soften employees' working conditions and provide additional guarantees to business partners. Later, at the beginning of the 20th century, the business community came up with ideas of balancing the interests of society and businesses. John Clark, the author of "Social Control of Business" (1926), and Howard Bowen, the author of "Social Responsibilities of the Businessman" (1953), were early pioneers of CSR, and their works are quintessential examples of this early-twentieth-century development.

The working group of about 500 experts of the International Organization for Standardization (hereinafter referred to as ISO) developed a definition of social responsibility.[24] ISO 26000:2010 defines it as the responsibility of an organization for the impacts of its decision-making and activities on society and the environment through transparent and ethical behavior.[25] When management integrates this throughout the organization, it contributes to long-term sustainable development. This development includes the health and the welfare of society. Additionally, it focuses on stakeholders' expectations, taking into account applicable laws and international norms of behavior. Thus, CSR acts as an integral part of the business strategy rather than a separate activity.

Archie Carroll proposed a model that is one of the most well-known attempts to represent the social responsibility of business as an integrated system. The model is a pyramid consisting of components representing specific types of responsibility. Economic responsibilities represent the base of the pyramid. Here, the company's primary function in the market as a producer of goods and services is to meet the needs of consumers and bring profit. The legal responsibilities imply the need for a business to act in compliance with laws and regulations in a market economy and coordinate its activities with the expectations of society, which are fixed in legal norms. Existing norms of morality form the basis of ethical responsibility. It requires business practices to meet society's expectations that are not stipulated in the legal standards. Finally, philanthropic responsibility sits at the top of the pyramid. It encourages the company to take actions aimed at maintaining the welfare of society through voluntary participation in socially oriented programs. This way, Carroll's CSR model puts forward an obligation of business, corresponding to today's international agenda. It includes a voluntary contribution to the development of society in social, economic, and environmental terms. This way, it is beyond what is required by law.[26]

CSR consists of programs on charity, employees' development, training, protecting the environment and reducing harmful emissions.

Corporate social reporting is the crucial component of socially responsible business. It is used to represent the impact of CSR efforts on the community and environment. This way, CSR aims to position the company as a "good corporate citizen," which makes it possible to bolster its reputation and reduce non-financial risks.[27]

Regarding sustainability in business, the World Commission on Environment and Development (hereinafter referred to as WCED) described sustainable development as a response to the needs of the present without compromising the ability of future

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[24] See International Organization for Standardization, *ISO 26000 Social Responsibility*, https://www.iso.org/ru/iso-26000-social-responsibility.html (accessed on December 11, 2021).

[25] Ibid.

[26] See Inna Fedchenko, *Corporate Social Responsibility*, Reshetnev Siberian State University of Science and Technology, p.16 (2017).

[27] See Natalia Cherepanova, *Corporate Social Responsibility*, Publishing House of Tomsk Polytechnic University, p.27 (2012).

generations to meet their own needs.[28] In line with this, CSR focuses on three pillars of sustainability – economic (profit), social (people), and environmental (planet). They are known as the "Triple Bottom Line."[29] As a result, CSR supports the company's strategy of contributing to sustainable development.

2.2 Guidelines on CG and CSR in Russia

2.2.1 Framework for CG in Russia

The term "corporate governance" entered the lexicon of Russian companies in the late 1990s. It relates to the integration of the Russian companies into international business relations after the collapse of the Soviet Union. The growing interest of foreign investors encouraged businesses to expand the vision of achieving capitalization.[30] In this context, CG is a source of competitive advantage.

Until recently, Russian legislation did not expressly define what a "corporation" was. A corporation is considered a generic concept of certain types of legal entities. Currently, the Civil Code of the Russian Federation considers such types of legal entities as corporate and unitary ones.[31] The main distinguishing feature of a corporate legal entity compared to a unitary one is participation or membership. The legal status of a corporation's member defines certain rights, duties, and responsibilities.

In general, CG is regulated at the internal corporate level. The activities on CG should not violate the Constitution. Besides, they should comply with the Civil Code of the Russian Federation, the Federal Law "On Joint-Stock Companies," Federal Law "On Limited-Liability Companies" and the Federal law "On the securities market."[32] The state bodies authorized to deal with the corporate issues are Federal Antimonopoly Service, Federal Service for Financial Markets, Federal Labor Inspectorate, Federal Tax Service.

In the case of the foundation of a joint-stock corporation, its founders conclude an agreement among themselves. This agreement determines the procedure for their joint activities to create a corporation, the amount of the authorized capital, the categories of shares issued and the procedure for their placement. Additionally, it may include other conditions provided by the appropriate federal laws.

In turn, a state corporation, a non-affiliated and non-profit organization, may carry out income-generating activities – if provided for by its charter – only insofar as it serves to achieve the goals for which it was created. It must also correspond to those goals. The Russian Federation establishes a state corporation based on a property contribution. It is intendent for socially useful activities.[33]

Following the Letter of the Bank of Russia N 06-52/2463 (dated 10.04.2014), the Board of Directors of the Bank of Russia approved the CG Code recommended for use by Russian joint-stock companies. It establishes the principles of proper behavior of Russian joint-stock companies concerning shareholders and investors.

According to the Corporate Governance Code, the primary objectives of CG in Russia are to create an effective system for ensuring the safety and effective use of

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[28] See World Commission on Environment and Development, *Our Common Future*, Oxford University Press, p.20 (1987).

[29] See Lew T. Yew & Wee Y. Shyen, *How Corporate Social Responsibility Contributes to Sustainable Development*, https://news.curtin.edu.my/insight/2020-2/how-corporate-social-responsibility-contributes-to-sustainable-development/ (accessed on December 11, 2021).

[30] See Polina Kalnitskaya, *Corporate Governance,* Training Course, http://e-biblio.ru/xbook/new/xbook301/book/index/index.html?go=part-005*page.htm (accessed on December 15, 2021).

[31] See Sergey Orekhov, *Corporate Governance*, Urait, p.14 (2018).

[32] See supra note 30.

[33] See supra note 31, at 15.

funds provided by shareholders. These goals are achieved by reducing investment risks and protecting the interests of all shareholders regardless of shares they own.[34]

Corporate disclosure acts as a powerful tool for ensuring information accessibility for all stakeholders.[35] It results in an increase in the degree of trust and transparency.[36]

2.2.2 CSR Framework in Russia

The active development of CSR in Russia began in the last decade. This is primarily due to the active promotion of the Russian business to the international market. Besides, companies strive to strengthen their business image.

Compared to some Western countries, where CSR is partially enshrined in law (for instance, the 2017 French Duty of Vigilance Law), the CSR initiatives in Russia are purely advisory.[37] They remain at the discretion of corporations themselves.

The national standard of the Russian Federation "Guidance on social responsibility" (GOST R ISO 26000-2012)[38] is recommended for use. It is based on the ISO 26000:2010 standard and describes the goal of social responsibility as promoting sustainable development.

Besides, the Russian Union of Industrialists and Entrepreneurs (established in June 1990) issued the Social Charter of the Russian Business and represented a set of pillars of responsible business practice.[39]

Some domestic companies joined the United Nations Global Compact.[40] It encourages them to introduce high standards of non-financial reporting.[41]

Federal Law No.135-FZ regulates charitable activity,[42] a most common CSR practice in Russia. Another widespread practice is social marketing. It simultaneously promotes the brand and popularizes social values.

3. CG and CSR: Comparison and Perspectives of Integration

CG and CSR may seem to propose competing approaches to the company's goals. The CSR practices contradict the ideas of CG as they are focused on the interests of external stakeholders. Besides, social activities require additional costs to be effective in practice. However, many successful organizations position themselves as financially successful and socially responsible.[43]

It is relevant to analyze the conflicting aspects and points of convergence between these concepts to further establish grounds for integrating CSR and CG in Russia.

3.1 Conflicting Aspects of CG and CSR

The conflicting aspects of CG and CSR can be presented by the agency theory, resource dependency theory (hereinafter referred to as RDT) and shareholder theory of

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[34] Id., at 19.
[35] Id., at 22.
[36] Id., at 23.
[37] See Svetlana Kuryanova, *Regulation of Corporate Social Responsibility at The Federal and Regional Levels*, 8(1) Theory and Practice of Social Development 338, 338 (2012).
[38] See Kodeks, *GOST R ISO 26000-2012*, https://docs.cntd.ru/document/1200097847 (accessed on December 15, 2021).
[39] See Inna Platonova & Irina Nikolaeva, *Legal Regulation of Corporate Social Responsibility: Foreign and Russian Experience*, 6(1) Actual Problems of Law 20, 21 (2014).
[40] Ibid.
[41] Id., at 22.
[42] See Federal'nyĭ Zakon RF o Blagotvoritel'noj Deyatel'nosti i Dobrovol'chestve (Volonterstve) [Federal Law of the Russian Federation on charity work and volunteerism (volunteering)], Sobranie Zakonodatel'stva Rossiĭskoĭ Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1995, No. 135, Item 1.
[43] See supra note 3, at 385.

Milton Friedman. These concepts are widely applied in CG research.

The conceptual roots for the agency theory in CG came from Adam Smith, one of the founders of economic theory as a science. As early as 1776, he exposed the nature of the agency problem, noting that managers of other people's money do not take the same care as the owner himself.[44] This problem has retained its relevance over time and led to the definition of the agency theory. According to this theory, contradictions among companies' stakeholders are sometimes inevitable. The most significant conflict is between the company's owner and managers.

The origins of the conflict of interests between principals (shareholders) and agents (managers) are that the latter often deviate from the formulated task. Managers are guided in their work by the idea of maximizing benefits for themselves and not for the principal. The most common causes of the conflict are information asymmetry, adverse selection, pre-contractual (or post-contractual) opportunism.[45] This way, CG has to balance the interests of participants of corporate relations.

The situation when the manager is interested in maximizing personal wealth and short-term benefits in a principal-agent relationship does not comply with CSR.[46] The ideas of CSR do not prioritize personal benefits. Besides, the CSR practices imply additional costs.

In turn, the RDT assumes that organizations are dependent on resources and information they use to stand out in a competitive market. To acquire the necessary resources, corporations conclude transactions with other legal entities. In this context, the concept of power is of particular importance. It implies control over vital resources.[47] The businesses attempt to reduce the power of others over resources, often simultaneously trying to expand their influence over others.

Critics of the RDT point out its limitations in analyzing the corporate relationships as it ignores the interests of customers and employees.[48] This way, the RDT is not in line with the aspects of CSR.

Further, the shareholder theory (also known as the Friedman doctrine) suggests that the social responsibility of any business is to increase its profits.[49] This concept provides for a shareholder primacy approach that does not account for the social responsibility to external stakeholders.

From the perspective of CSR, the Friedman doctrine is viewed as controversial. Steve Denning highlights that shareholder value is an entire thought system that can affect corporate strategy and resource allocation.[50] This concept reflects the power of certain types of shareholders over others. Besides, a lack of accountability on the part of shareholders managing such power is highly possible. As a result, managers are under pressure to deliver more predictable returns in a faster and less costly manner. Hence, they tend to avoid riskier investments in innovations and modernization.

Milton Friedman was concerned with the optimization problem (as well as other

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[44] See supra note 8, at 183.

[45] Ibid.

[46] See Harisai Doshi & Vikneswaran S/O Manual et al., *The Impact of Corporate Social Responsibility on Corporate Financial Performance & the Concept and Role of Agency Theory*, 16(20) Journal of Financial Management and Analysis 2, 13 (2018).

[47] See David Ulrich & Jay B. Barney, *Perspectives in Organizations: Resource Dependence, Efficiency, and Population*, 9(3) The Academy of Management Review 471, 472 (1984).

[48] See supra note 18, at 184.

[49] See Milton Friedman, *the Social Responsibility of Business is to Increase its Profits*, The New York Times Company, p.173 (1970).

[50] See Steve Denning, *The "Pernicious Nonsense" of Maximizing Shareholder Value*, https://www.forbes.com/sites/stevedenning/2017/04/27/harvard-business-review-the-pernicious-nonsense-of-maximizing-shareholder-value/?sh=426bd95b71f0 (accessed on December 15, 2021).

late 20th-century academic economists). It is to pick up a single objective and then explore the ways to maximize it.[51] However, the considerable scope of norms affects conditions of company operation. These norms express in the remuneration system, provisions of tax law, environmental protection standards. This way, the concept of shareholder value is more multifaceted than Friedman's doctrine envisages.

Table 1 below compares traditional approaches to CG and CSR.

Table 1: Comparison of traditional approaches to CG and CSR[52]

Aspect	CSR	CG
Primary focus	Various groups of stakeholders	Shareholder value
Problems to be solved	Conflict of business, society and the environment	Principal-agent conflict
Main task	Incorporation of stakeholder interests to companies' business models	Investor protection, value creation, transparency
Performance dimension	Social and environmental	Financial
Formalization	Recommendations, guidelines, green papers. However, a novel approach to CSR provides for "hard law" provisions	Reporting standards, guidelines, "hard" and "soft" laws, fiduciary duty
Shortcomings	Lack of regulation, weak accountability to stakeholders (no fiduciary duty)	Short term orientation, risk of abuse Guidelines and regulations do not solve the fundamental problems

Compared to the theories discussed above, a sustainability vision brings to the fore the stakeholder-focused approach.[53]

3.2 Convergence of CG and CSR

The stakeholder theory, stewardship theory, and knowledge-based approach recognize the convergence of CSR and CG. These concepts represent a revitalized vision of CG.

The stakeholder theory of Edward Freeman has become widespread in visionary and progressive companies.[54] This theory opposes the shareholder theory. It suggests that any company should follow the interests of all parties involved in contracts. These parties are stakeholders who affect or are affected by corporate actions.

The stakeholder theory proposes corporate accountability to the stakeholders. These stakeholders contribute to the company's performance. Hence, the management should recognize and reward them for it. As a result, the company and stakeholders mutually influence each other. These relationships are subject to laws, norms, and market forces. This way, the stakeholder theory provides for convergence between CG

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[51] See Lynn A. Stout, *the Shareholder Value Myth,* Cornell Law Library, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?referer=https://en.wikipedia.org/&httpsredir=1&article=2311&context=facpub (accessed on December 15, 2021).

[52] See Maria Roszkowska-Menkes & Maria Aluchna, *CSR and Corporate Governance: In the Search for Common Ground*, 8(1) Przegląd Organizacji 38, 41 (2015).

[53] See supra note 51.

[54] See Ventsislava Nikolova & Sanela Arsić, *The Stakeholder Approach in Corporate Social Responsibility*, 3(1) Engineering Management 24, 31 (2017).

and CSR. Both stakeholder theory and CSR promote the responsibility of any organization to the different types of stakeholders. In this context, CG should balance the interests of all the stakeholders.[55]

Stewardship theory is contrary to the agency one. It proposes a collaborative relationship between principals and agents toward shared strategic goals.[56] In this context, managers put corporate goals above their selfish interests.

Besides, stewardship theory states that the management should make decisions based on strategic goals and truth. It is to ensure stakeholders' faith in the corporate mission and values.[57] This way, the stewardship approach to CG shares common ideas with CSR.

The knowledge-based approach takes a new look at CG. It implies that value creation now depends on the generated knowledge of the company. That accumulated knowledge serves for making profitable investments within a dynamic efficiency perspective.[58] Effective knowledge management is a source of technical and social innovations.

Knowledge management is an integral part of a novel approach to CG. It also enables information and knowledge sharing in the field of CSR.[59] It integrates information search, analysis, evaluation, and distribution into a single framework. Besides, it promotes optimum decision-making that takes the approaches of all stakeholders into account.

3.3 Analysis of International Experience

3.3.1 Research evidence for integrating CSR and CG

The relevance of integrating CSR and CG prompted researchers to explore related aspects in practice (Table 2).

Table 2: Relevant research evidence

No	Country	Year	Research description	Findings
1	Vietnam[60]	2020	Analysis of survey data: 155 samples of 31 Vietnamese commercial banks from 2015 to 2019	The boards of directors should be aware of CSR to address conflicts among the interested parties
2	France[61]	2020	Analysis of annual reports and extensive sample of French firms for the period of 2014-2016	The CG mechanisms influence CSR practices

[55] Ibid.
[56] See James J. Chrisman, *Stewardship Theory: Realism, Relevance, and Family Firm Governance*, 43(6) Entrepreneurship Theory and Practice 1051, 1051-2 (2019).
[57] Id., at 1062.
[58] See supra note 18, at 86.
[59] See Ya H. Ling & Nguyen T.T. Hoa (Alice), *A Study on Knowledge Management and Corporate Social Responsibility in Vietnamese Manufacturing Companies*, 2(2) International Journal of Recent Advances in Organizational Behavior 772, 775 (2016).
[60] See supra note 2, at 330.
[61] See Souhaila Kammoun & Sahar Loukil et al., *The Impact of Firm Performance and Corporate Governance on Corporate Social Responsibility: Evidence from France*, IGI Global, p.266 (2020).

No	Country	Year	Research description	Findings
3	China[62]	2016	Investigation of the effects of CG concerning the CSR performance in China	Chinese businesses should implement CSR practices and policies to remain competitive in the international markets
4	Indonesia[63]	2019	The empirical research with panel data regression analysis in coordination with the Random Effect model method. A purposive sampling of 15 companies listed in the LQ-45 (a stock market index) on the Indonesia Stock Exchange for 2014-2017	A significant influence of good CG and CSR on increasing firm value
5	USA[64]	2014	Analysis of the relationship between CG and CSR on the example of large commercial banks in the USA for 2009–2011	Reporting on CSR and CSR provides financial and strategic advantages for the firms by improving their business reputation
6	Italy[65]	2020	Analysis of how the CG's characteristics affect CSR disclosure	The CSR practices decided by boards of directors are now a key issue of the decision-making process. There is a need to find out additional means for engaging stakeholders in implementing CSR practices
7	Kazakhstan[66]	2019	Evidence on the relationship between CG and CSR in the context of the banking sector of Kazakhstan	The study provided new evidence on the relationship between CG and CSR. Besides, results suggested that the board's gender diversity positively affected CSR reporting. The commercial

[62] See Chung M. Lau & Yuan Lu et al., *Corporate Social Responsibility in China: A Corporate Governance Approach*, 136(1) The Journal of Business Ethics 73, 73-4 (2016).
[63] See supra note 5, at 178.
[64] See Mohammad I. Jizi & Aly Salama et al., *Corporate Governance and Corporate Social Responsibility Disclosure: Evidence from the US Banking Sector*, 125(1) The Journal of Business Ethics 601, 602-3 (2014).
[65] See Veronica Tibiletti & Pier L. Marchini et al., *Does Corporate Governance Matter in Corporate Social Responsibility Disclosure? Evidence from Italy in the "Era of Sustainability"*, 28(2) Corporate Social Responsibility and Environmental Management 896, 896-7 (2021).
[66] See Nurlan Orazalin, *Corporate Governance and Corporate Social Responsibility (CSR) Disclosure in an Emerging Economy: Evidence from Commercial Banks of Kazakhstan*, 19(3) Corporate Governance 490, 490-1 (2019).

No	Country	Year	Research description	Findings
				banks improved their CSR reporting in the fields of community engagement, human resources, and customer services
8	New Zealand[67]	2020	Analysis of the evidence on CG and CSR interfaces	There is an increasing convergence between frameworks of CG and CSR. A more robust CG framework would trigger the implementation of more sustainable CSR practices. It is necessary to promote responsible business practices in New Zealand

The international business community recognizes the importance of integrating CSR and CG for achieving benefits. However, it is worth noting the role of governments in encouraging social responsibility.

For instance, the 2019 German CG Code puts forward the obligation of the management and supervisory boards to coordinate corporate goals with the pillars of the social market economy.[68] The 2018 CG Code of the United Kingdom focuses on the stakeholders, workforce engagement, and responsible behavior.[69] The 2018 CG Code for listed companies in China issued by the China Securities Regulatory Commission promotes openness and social responsibilities. It also states requirements for green development and poverty prevention.[70] This way, there is a greater integration of CSR into the international CG framework.

3.3.2 Litigation cases and complaints

Recent years have shown an uptick in litigation cases related to the frameworks of CSR and CG. The impact of the business's activities on the community and the environment is under scrutiny. Table 3 contains the analysis of notable litigation cases and complaints. It formulates a message for a novel approach to CG and CSR.

[67] See Rashid Zaman & Muhammad Nadeem et al., *Corporate Governance and Corporate Social Responsibility Synergies: Evidence from New Zealand*, 29(1) Meditari Accountancy Research 135, 136 (2021).

[68] See Regierungskommission, *2017 German Corporate Governance Code*, https://www.dcgk.de/files/dcgk/usercontent/en/download/code/170214_Code.pdf (accessed on December 15, 2021).

[69] See the Financial Reporting Council Limited, *2018 UK Corporate Governance Code* (2018), https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf (accessed on December 14, 2021).

[70] See The European Corporate Governance Institute, *2018 Code of Corporate Governance for Listed Companies*, ECGI China (2018), https://ecgi.global/code/code-corporate-governance-listed-companies-2018 (accessed on December 14, 2021).

Table 3: Notable litigation cases and complaints

Year	Fields of CSR	Case			Legal issues	Judgment / Decision	Message for CG and CSR
		Plaintiff / Complainant	Defendant	Description			
2019-2021	Environmental responsibility Ethical responsibility Human rights	Friends of the Earth Netherlands (Milieudefensie) and 17 000 co-plaintiffs, as well as six other organizations	Royal Dutch Shell Company	The lawsuit accused the defendant of violating its duty of care by knowingly undermining the world's chances of restricting global warming to 1.5C above pre-industrial levels[71]	The focus of the dispute was whether the company accused of causing climate change should be held accountable and how	The judges stated that the defendant failed to meet climate goals as the company emitted nine times as much carbon dioxide emissions as all of the Netherlands.[72] The District Court of the Hague held the defendant liable for causing dangerous climate change in line with the Paris agreement. On the basis of the United Nations' Guiding Principles on Business and Human Rights, the court ruled that the defendant must reduce its carbon dioxide emissions by 45% within 10 years based on 2019 levels.[73] This requirement must be applied to the defendant's entire corporate group and global value chain[74]	The District Court of the Hague made an unprecedented decision. The plaintiffs forced the Royal Dutch Shell Company to change its business model instead of claiming damages. A new corporate strategy of Royal Dutch Shell Company now should focus on sustainable development, not a financial advantage

[71] See Alejandro G. Esteban & Jill Mcardle, *People v Shell: from Corporate Social Responsibility to Legal Accountability*, https://socialeurope.eu/people-v-shell-from-corporate-social-responsibility-to-legal-accountability (accessed on December 14, 2021).
[72] Ibid.
[73] Ibid.
[74] Ibid.

Year	Fields of CSR	Case			Legal issues	Judgment / Decision	Message for CG and CSR
		Plaintiff / Complainant	Defendant	Description			
2021	Ethical responsibility	The British environmental group ClientEarth	British Petroleum Corporation	ClientEarth filed a complaint against British Petroleum for a misleading advertising campaign titled "Keep Advancing" and "Possibilities Everywhere." The complaint alleged that the campaign ran afoul of the OECD Guidelines for Multinational Enterprises. [75] These guidelines put forward ensuring honest, accurate, clear, and informative communications between companies and the public. However, the advertisement of British Petroleum created a false impression about the company's low-carbon energy activities.[76] ClientEarth requested British Petroleum to remedy the situation. Withdrawing the advertising campaign and publishing an explaining statement were proposed for it[77]	The focus was whether a misleading advertising campaign violates ethical principles and OECD guidelines	The United Kingdom National Contact Point's initial assessment confirmed that complainant (ClientEarth) was material and substantiated. British Petroleum withdrew its misleading advertising campaign. Hence, the case was dismissed	CG of British Petroleum was affected. First, the complainant raised the issue of the importance of truthful advertising in the company's strategy. Besides, the question of compliance with the OECD guidelines, the international benchmark in CG, was raised

[75] See Grantham Research Institute on Climate Change and the Environment, *Complaint Against BP in Respect of Violations of the OECD Guidelines*, https://climate-laws.org/geographies/united-kingdom/litigation_cases/complaint-against-bp-in-respect-of-violations-of-the-oecd-guidelines (accessed on December 14, 2021).
[76] Ibid.
[77] Ibid.

Year	Fields of CSR	Case			Legal issues	Judgment / Decision	Message for CG and CSR
		Plaintiff / Complainant	Defendant	Description			
2015	Environmental responsibility Ethical responsibility Human rights	All-China Environment Federation	Dezhou Jinghua Group Zhenhua Decoration Glass Co.	A public-interest litigation was filed by All-China Environment Federation against a glass producer from Dezhou. It accused the defendant of the excessive emission of air pollutants. The pollution affected the health of the local community[78]	The focus of the dispute was on the company's responsibility for environmental pollution	The court ordered the defendant to pay CNY 21.9836 million to the dedicated account of Dezhou Municipality as compensation for the damages caused by excessive emission of pollutants. The decision was based on China's laws. For instance, Article 124 of the General Principle of the Civil Law of the People's Republic of China, Article 58 of Environmental Protection Law of the People's Republic of China et al., were taken into account. It was expected that the compensation would assist in restoring the air quality.[79] Besides, the defendant was required to reimburse the plaintiff CNY 100,000 for the assessment fees[80]	The defendant was held responsible for the environmental damage. Besides, the court ordered a public apology. The decision demonstrates the importance of protecting the environment and guaranteeing the rights of the community

[78] See InforMEA, *All-China Environment Federation vs. Dezhou Jinghua Group Zhenhua Decoration Glass Co., Ltd.*, Court Decisions, https://www.informea.org/en/court-decision/all-china-environment-federation-vs-dezhou-jinghua-group-zhenhua-decoration-glass-co (accessed on December 16, 2021).

[79] Ibid.

[80] Ibid.

Year	Fields of CSR	Case			Legal issues	Judgment / Decision	Message for CG and CSR
		Plaintiff / Complainant	Defendant	Description			
2019-2020	Human rights Labor rights Ethical responsibility	Eritrean refugees Gize Y. Araya, Kesete T. Fshazion and Mihretab Y. Tekle[81]	Nevsun Resources, a Canadian mining company	The plaintiffs alleged the defendant was complicit in the use of forced labor by Nevsun's local sub-contractor, Segen Construction (owned by Eritrea's ruling party), at the Bisha mine in Eritrea. Besides, it was accused of breaches of customary international law. The defendant denied the claims and asked the lawsuit to be dismissed. He proposed that Eritrea could be a more appropriate forum to litigate the case than Canada[82]	The focus of the dispute was whether a private actor should be held liable in Canada for its breaches of international law abroad	The Supreme Court of Canada dismissed the claim and ruled that there was no bar to the plaintiff's claims being heard in Canadian court. Additionally, the Supreme Court of Canada affirmed that customary international law can bind corporation in Canada[83]	The Supreme Court of Canada took the unprecedented decision in the field of transnational human rights litigation.[84] Corporations have human rights obligations under customary international law. This way, it is a landmark case of corporate responsibility for human rights abuse

When comparing discussed litigation cases and complaints, it is evident that the most unprecedented case from the point of view of CSR and CG is Milieudefensie et al. v. Royal Dutch Shell plc. In this case, the court's decision entailed not just compensation for damage to the affected parties. It ordered the defendant to reconsider the company's business model in favor of public interests. As a result, the court's decision will affect the company itself and its subsidiaries, suppliers, and partners.[85] It will force shareholders to look for ways to preserve corporate reputation and shareholder value. These ways are apt to focus on balancing the interests of shareholders and stakeholders.

The discussed precedents are prominent examples of regulating the companies' activities in the area of CSR. They address the issues of environmental protection, human rights, compliance with laws in places where companies do their business. In this context, the novel CG requirements should follow the trends of ensuring sustainable development.

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[81] See Araya v. Nevsun Resources Ltd., 2016 BCSC 1856.
[82] Ibid.
[83] Ibid.
[84] See Nevsun Resources Ltd. v. Araya, 2020 SCC 5.
[85] See supra note 71.

3.4 Finding: Relevance for Integrating CSR and CG

The relevance for integrating CSR and CG in Russian companies is as follows.

1) The integration of CSR and CG contributes to sustainable development. The corporate competitiveness and performance now depend on the ability of the managers to deal with the integration of the legal, social, economic, and environmental aspects into the business activity. In this context, a novel CG encourages CSR. It focuses on balancing the interests of all the interested parties. The shift in focus from financial advantage to stakeholders' interests depends to a great extent on the boards of directors.[86]

2) CSR could prevent the conflict between the social goals of sustainable development and the corporate goals of maximizing profits.[87] Awareness of such a conflict is required to achieve fundamental changes in corporate culture. The integration of CSR and CG could provide potential benefits. It contributes to public welfare, ecology, and future global development. The companies that encourage CSR can achieve several benefits.[88] For instance, an enhanced corporate image, reduced operating costs and customer loyalty.[89]

3) Within the company, CSR focuses on employees that are internal stakeholders. It could drive employee engagement and labor productivity. As a result, a firm's performance could be enhanced.[90] Besides, the combination of good CG and CSR has a positive impact on increasing firm value[91] and competitiveness.[92]

4. Case Study: Russian Business Environment

4.1 Successful experience of integrating CSR and CG

The integration of CSR and CG is rare in the practice of Russian enterprises.[93] However, some companies succeed in their CSR programs.

Table 4 represents four large Russian companies that follow the CSR trends. The considered companies occupy leading positions in the rating of the socially responsible Russian companies for 2021. The rating is formed by the AK&M Rating Agency.[94] It is based on two indicators, such as the load on the environment and the social effect of the activity.

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[86] See Caroline Flammer & Bryan Hong et al., *Corporate Governance and the Rise of Integrating Corporate Social Responsibility Criteria in Executive Compensation: Effectiveness and Implications for Firm Outcomes*, 40(7) Strategic Management Journal 1097, 1102-3 (2016).

[87] See supra note 54, at 24.

[88] See Francesco Ciliberti & Job de Haan et al., *CSR Codes and the Principal-Agent Problem in Supply Chains: Four Case Studies*, 19(8) Journal of Cleaner Production 885, 886-7 (2011).

[89] See supra note 54, at 31.

[90] See supra note 86, at 1100.

[91] See supra note 5, at 178.

[92] See supra note 62, at 73.

[93] See supra note 13, at 11.

[94] See AK&M, *List Rating of Social Efficiency of the Largest Russian Companies* (2021), https://www.akm.ru/upload/akmrating/AK&M_Social_Performance_Rating_2021.pdf (accessed on December 14, 2021).

Table 4: Analysis of socially friendly Russian companies: general aspects

Company	Sector	Activity	CG framework	CG and CSR framework	Non-financial performance
ALROSA, Public Joint-Stock Company (hereinafter referred to as PJSC)	Non-ferrous metallurgy and mining	The largest diamond mining company in the world	– The supreme governing body of the company is the General Meeting of Shareholders. – The Supervisory Board provides strategic guidance and controls the Management Board. – ALROSA has an effective audit system. – ALROSA's CG Code allows the company to implement CG standards. It encourages CSR initiatives. – ALROSA aims to improve its investment attractiveness. The company achieves it by enhancing transparency	–Committee on strategy and sustainable development, audit, personnel, and remuneration were formed under the Supervisory Board. Besides, there is the Working Group on Sustainable Development. –Sustainable development goals: environmental protection; social programs for employees and business ethics; support of local communities and charity (more than 500 projects).	–the share of social expenses in revenue is about 4.6%; –the share of environmental protection expenses in revenue is about 2.5%; –the share of renewable energy in energy consumption is about 92%
Aeroflot – Russian Airlines, PJSC	Transporta-tion	The largest aviation group in Russia	–The supreme governing body of the company is the General Meeting of Shareholders. –Aeroflot adopted its own CG Code. –CG principles: protection of shareholders' rights, ensuring transparency, accountability of Boards of Directors and executive bodies. – The goals are sustainable and dynamic growth and increasing the value of the company	–CG's principles accounts for compliance with the ethical norms and standards of social responsibility. –Aeroflot, a member of the SkyTeam International Alliance, follows the Alliance's CSR statement. It covers commitments on sustainable economic well-being, environmental protection, eco-efficiency.	– a fleet renewal contributed to improving environmental friendliness; – a reduced load on the environment compared to operators of an older fleet

Company	Sector	Activity	CG framework	CG and CSR framework	Non-financial performance
RusHydro, PJSC	Energy	One of the world's largest hydroelec-tricity companies	–The supreme governing body of the company is the General Meeting of Shareholders. –RusHydro adopted its own CG Code. –The quality of CG is the basis for increasing the value of shares and dividend yield. Therefore, it enhances the company's investment attractiveness. –Areas of CG improvement: CG performance; independent external assessment of the Board of Directors and committees.	– The issues of sustainable development are discussed at the meetings of the Board of Directors and the Management Board. – Corporate values are underpinned by responsible business, social policy, and environmental friendliness. – The Committee on Reliability, Energy Efficiency and Innovation formed under the Board of Directors facilitates RusHydro's sustainable development management. It focuses on the development of renewable energy sources and related policies (technical, environmental).	–a reduced greenhouse gas emissions from the thermal power plants by about 14.6%; –a reduction in nitrous oxide (N_2O) emissions by 20.4% and methane (CH_4) by 19.6%
MTS, PJSC	Telecom-munications	One of the largest mobile network operators in Russia	–The supreme governing body of the company is the General Meeting of Shareholders. –CG aspects are transparency of financial flows; monitoring compliance with the stated standards; the protection of investors' rights and interests; implementation of best CG practices.	–CG Committee was transformed into the Committee on CG, Environmental and Social Responsibility in 2021. –Socially responsible business behavior is the pillar of CG. –CSR focuses on caring for the environment	– digital volunteering; – the number of employees participating in the volunteer movement known as "Just give good" exceeded 7.5 thousand volunteers

The data in Table 4 is from the open annual reports for 2020 for the following companies: ALROSA, PJSC,[95] Aeroflot – Russian Airlines, PJSC,[96] RusHydro, PJSC,[97] MTS, PJSC.[98] These companies operate in different sectors, including non-ferrous metallurgy and mining, transportation, energy, and telecommunications.

Based on the information presented, the following aspects for socially responsible companies could be highlighted.

First, due to the crisis phenomena observed in the last decade (the Great recession of 2007-2009, the currency crisis in Russia of 2014-2016, COVID-19 pandemic), mainly large and financially sound companies can afford costly CSR practices. These companies aim to enter the international markets. In turn, SMEs are concerned with solving urgent problems related to key business activities. Therefore, they do not place CSR among the priority areas of CG development.[99] As a result, they reduce funding for social projects and programs.[100]

Second, socially friendly companies engage CG governing bodies in CSR activities.[101] For instance, ALROSA's Supervisory Board formed the Sustainable Development Committee.[102] Aeroflot Public Council assists in formulating a position on sustainable development and social responsibility.[103] RusHydro's Board of Directors and the Management Board consider challenges to sustainable development.[104] MTS transformed the CG Committee into the Committee on CG, Environmental and Social Responsibility.[105] This way, the top management is authorized to approve the CSR strategy, promote social and environmental responsibility and monitor performance.

Third, discussed companies harmonize the CG's principles with CSR. In this context, CG aims to guarantee the stakeholders' rights and maintain a trusting relationship among the company, investors, and the public.

Finally, CSR practices are a part of the marketing strategy of socially friendly companies in Russia. It contributes to promoting sustainability, transparency, and social action.

4.2 Problems of CG and CSR Integration in Russia

The following problems are hindering the successful integration of CSR and CG in Russia.

1) The lack of a legally binding instrument. Integrating CSR and CG is not codified in any national law. The Russian business environment is just beginning to comprehend the importance of integrating CG and CSR despite the successful

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[95] See ALROSA, *2020 ALROSA Annual Report* (2020), https://www.akm.ru/upload/akmrating/ALROSA_annual_report_2020.pdf (accessed on December 14, 2021).

[96] See Aeroflot, *2020 Aeroflot Annual Report* (2020), https://ir.aeroflot.ru/fileadmin/user_upload/files/rus/reports/annual_reports/ar2020_rus.pdf (accessed on December 14, 2021).

[97] See RusHydro, *2020 RusHydro Annual Report* (2020), http://www.rushydro.ru/upload/iblock/6be/Godovoy-otchet-2020.pdf (accessed on December 14, 2021).

[98] See MTS, *2020 MTS Annual Report* (2020), https://mts.ru/upload/contents/10677/Annual%20Report%202020-rus.pdf?_ga=2.138758643.1540213215.1636229535-1591120799.1636229535 (accessed on December 14, 2021).

[99] See Lyubov Danilova & De Sattarova, *Social Responsibility of Business in Russia and Abroad: Comparative Analysis*, 9(1) Social and Economic Suprasformations and Problems 32, 39 (2019).

[100] See supra note 13, at 10.

[101] See supra note 94.

[102] See supra note 95.

[103] See supra note 96.

[104] See supra note 97.

[105] See supra note 98.

experience of some large companies in this field.[106] Recognizing social responsibility as a part of CG would promote more consistent CSR practices.[107] Besides, the 2021 Accenture's survey among representatives of Russian business community showed that about 44% of respondents are concerned with the need to transform the business processes. They consider it a constraint on implementing sustainable development practices.[108] In this regard, CSR in Russian enterprises often does not act as a strategic engine aimed at reorienting the CG model towards social responsibility.

2) Undervaluing the importance of CSR. Based on Accenture's survey for 2021, 61% of respondents do not consider CSR an important part of the company management. Besides, some respondents suggest CSR could entail additional costs,[109] while companies are interested in a rapid return on investment. Therefore, CSR is only a topic for PR campaigns.[110]

3) Financial aspects. Lack of financial resources could hinder the transition to a socially friendly CG model.

4) The insufficient number of independent directors. In the context of CG, independent directors assist in protecting the rights of shareholders, including minority ones. Besides, they promote business ethics and social responsibility. According to Spencer Stuart's survey, the actual share of independent directors in Russian companies fell from 38% to 36.7% during 2014-2019.[111] Following the Russian CG Code, at least one-third of the members of the boards of directors should be independent. Thus, almost 40% of the companies under consideration do not comply with this recommendation.[112] It could negatively affect the introduction of innovations into the CG framework, including CSR initiatives.

5) The insufficient levels of public awareness. According to the PWC survey for 2020, about 80% of respondents express concerns about environmental issues.[113] However, only 47% of respondents are willing to pay more for goods and services that do not harm the environment.[114] This way, there is a lack of actual demand for sustainable development practices. As a result, the management of corporations does not prioritize CSR practices.

4.3 Recommendations

Table 5 below proposes recommendations to address the problems of CG and CSR integration in Russia.

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[106] See supra note 99, at 38.
[107] See supra note 13, at 10.
[108] See Accenture, *How Russian Business Becomes Responsible: Survey in the Field of Sustainable Development*, https://www.accenture.com/_acnmedia/PDF-162/Accenture-Sustainability-Survey-2021-RUSSIA.pdf (accessed on December 14, 2021).
[109] Ibid.
[110] See Alexey Kostin, *CSR in CG and its Role in Company Development*, Corporate Social Responsibility, https://soc-otvet.ru/kso-v-korporativnom-upravlenii-i-ee-rol-v-razvitii-kompanii/ (accessed on December 14, 2021).
[111] See Spencer Stuart, *2019 Russian Index of Boards of Directors*, https://www.spencerstuart.com/-/media/2020/may/russiabi_2019.pdf (accessed on December 14, 2021).
[112] Ibid.
[113] See PwC, *Transformation of the Consumer. A Global Study of Consumer Behavior for 2020: Russia*, https://www.pwc.ru/ru/retail-consumer/publications/assets/pwc-global-customer-insights-survey-2020-russia-ru.pdf (accessed on December 14, 2021).
[114] Ibid.

Table 5: Problems and proposed recommendations

No	Problems of CSR and CG integration	Recommendations
1	The lack of a legally binding instrument	– Provide a regulatory framework for integrating CSR and CG. CSR should be considered an integral part of CG. – The companies should manage the development of CSR departments and engage stakeholders. – In the case of mandatory integration of CSR and CG (following the ideas of EU Directive,[115] EU Resolution of 2021[116] or the 2017 French Duty of Vigilance Law),[117] the companies can be officially required to provide CSR disclosure.[118] – Enhance accountability. – The parties affected by the company's failure to implement the CSR practices should have an opportunity to file a lawsuit and seek damages for corporate negligence (on the example of the 2017 French Duty of Vigilance Law).[119] – Boards are expected to incorporate a wider perspective for evaluating company performance and live up to the expectation of both shareholders and stakeholders[120]
2	Undervaluing the importance of CSR	– Provide education to the business community on the concept of CSR. It is vital to meet the international agenda for sustainable development. – Incorporate the CSR aspects into the CG codes. – The regulatory, industrial, and economic decisions should take into account the effects on society and the environment
3	Financial aspects	– Improve public-private partnership in the field of environmental protection. – Strengthen state support for the activities of SMEs in the field of CSR practices. For instance, it could be made by increasing tax benefits for charity. – Executive compensation can be structured to combine social, environmental, and financial performance. UN recommendations for the remuneration of directors of listed companies provide for this approach.[121] It could act as an incentive for managers to encourage social practices[122]

[115] See supra note 10.
[116] See supra note 11.
[117] See supra note 14.
[118] See supra note 10.
[119] Id., at 6.
[120] See supra note 52, at 42.
[121] Commission Recommendation, of April 2009, complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies (Text with EEA relevance), 2009 O.J. (L 120) 15.5 (May 15, 2009), https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0028:0031:EN:PDF (accessed on December 14, 2021).
[122] See supra note 52, at 43.

No	Problems of CSR and CG integration	Recommendations
4	The insufficient number of independent corporate directors	–About 67% of directors propose introducing a mandatory institution of the board of directors for private companies by the government. It would improve CG performance in companies by recruiting qualified independent directors.[123] However, this measure would also require the development of monitoring systems and KPIs
5	The insufficient levels of public awareness	–Convey to the public the relevance of sustainable development. –Introduce higher environmental taxes and charges. –On the part of manufacturers, it is necessary to cut the cost of eco-friendly products. For instance, it can be achieved by eliminating non-manufacturing costs. This measure could make the products more accessible to a wide range of customers

5. Conclusion

This article has attempted to examine the perspectives of the integration of CSR and CG in Russia. CSR is a concept whereby companies integrate a set of social and environmental concerns in their business models and interactions with the interested parties.

The general finding is that CSR in Russia has the enormous potential to expand its influence on the business environment. It is mainly due to the current sustainability agenda and the uptick in litigation cases in this area worldwide. Besides, CSR should now act as an integral component of CG. It can incorporate the values and principles of sustainable development into the CG framework.

This article considered the successful experience of socially responsible Russian companies. It also identified challenges faced by the representatives of the domestic business community. The general one is the lack of a legally binding instrument. Undervaluing the importance of CSR by companies, insufficient number of independent corporate directors, and levels of public awareness are becoming more of a pressing issue. Some companies also bring to the forefront financial issues. The article proposed recommendations to address these challenges.

Following the international experience (for instance, ideas of EU Directive,[124] EU Resolution of 2021,[125] the 2017 French Duty of Vigilance Law[126]), the integration of CSR and CG in Russia can be carried out based on laws.

Therefore, it is worth noting the role of the board of directors, shareholders, investors, and all stakeholders in encouraging CSR-facilitating policies. The changes outside of courtrooms are also required. There is a need to develop clearer and more ambitious corporate due diligence laws and legal instruments to hold companies accountable for abuses.

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[123] See Svetlana Radchenko, *Why Are There So Few Truly Independent Boards of Directors in Russia and How Does This Affect the Development of Russian Business*, Secretmag, https://secretmag.ru/opinions/nuzhnye-lyudi-pochemu-v-rossii-tak-malo-deistvitelno-nezavisimykh-sovetov-direktorov.htm (accessed on December 14, 2021).

[124] See supra note 10.

[125] See supra note 11.

[126] See supra note 14.

A Brief Commentary on the Proposed Amendments to the PRC Arbitration Law: Adapting to International Arbitration Practices with Chinese Characteristics

Xiaofei Mao[1]

Abstract: On July 30, 2021, the Ministry of Justice of the People's Republic of China issued the first version of the Arbitration Law of the People's Republic of China (Revised) (Draft for public comments) (hereinafter referred to as the Draft for Comments), together with its explanatory notes.[2] The Draft for Comments makes major strides toward eliminating anachronisms of the existing Arbitration Law of the People's Republic of China (1995) and bringing the Chinese arbitration regime more in line with international norms and standards.[3] It significantly expands the scope of arbitration by removing the "equal status" requirement and replacing "citizens" with "natural persons" in Article 2 so that contractual disputes and other disputes arising from the property rights and interests between all parties may be arbitrated in Chinese Mainland, including those involving governmental bodies. Further, the Draft for Comments incorporates some key arbitration norms and principles, such as the concept of the seat of arbitration, the competence-competence doctrine, the legality of *ad hoc* arbitration for foreign-related arbitration, interim measures, and preliminary orders by arbitral tribunals, among others. It appears to send out a signal that the Arbitration Law of the People's Republic of China is moving toward the Model Law on International Commercial Arbitration issued by the United Nations Commission on International Trade Law (UNCITRAL) (hereinafter referred to as UNCITRAL Model Law). Nevertheless, it is hard to predict at this stage whether China will become a so-called "Model Law country", since the Draft for Comments still maintains the basic framework of the existing Arbitration Law of the People's Republic of China which distinguishes domestic and foreign-related arbitration and contains detailed provisions on the establishment and operation of arbitration institutions with unique Chinese characteristics. Of the changes made, this commentary will highlight some noteworthy modifications which show the integration of the Arbitration Law of the People's Republic of China into the international arbitration regime on the one hand, and the maintenance of Chinese characteristics on the other hand.

Keywords: Arbitration Law of the People's Republic of China; Draft for public comments; Seat of Arbitration; Double-Track System of *ad hoc* Arbitration; Competence-Competence Doctrine; Interim Measures

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[1] Xiaofei Mao, Associate Professor, Arbitrator, Head of Research Department for Laws of Nations of the Institute of International Law at the Chinese Academy of Social Sciences. She is also the Standing member of China Academy of Arbitration Law (CAAL).

[2] See Ministry of Justice, *Notice on the Public Comments for the Arbitration Law of the People's Republic of China (Revised) (Draft for public comments)*, official website of MOJ, http://www.moj.gov.cn/pub/sfbgw/zlk/202107/t20210730_432965.html (accessed on July 30, 2021).

[3] The revision of the Arbitration Law was once put on the agenda of the legislation work of the National People's Congress in 2006, which, however, led to no result. See Legal Affairs Committee of the Standing Committee of the National People's Congress, *A Brief Statement of the Five-Year Legislation Work of the Tenth National People's Congress and its Standing Committee*, Website of the NPC, http://www.npc.gov.cn/npc/c238/200803/d7ca5b4634fb4db98d5f8186dc827912.shtml. In 2009 and 2017 minor changes were made to the Arbitration Law (accessed on July 30, 2021).

1. Seat of Arbitration

There is no provision on the seat of arbitration in the existing Arbitration Law of the People's Republic of China. However, the seat of arbitration is a fundamental concept widely acknowledged in international arbitration as it determines the validity of arbitration agreements, the application of the law, the nationality of arbitral awards, as well as the competent court for judicial review.[4] Article 27 of the Draft for Comments provides for the seat of arbitration and Subsection 3 thereof specifies that the seat of arbitration is different from the places where arbitration activities such as collegiate discussion or hearings are conducted. Nevertheless, there is still a subtle difference to be seen from the international arbitration practice. Pursuant to Sentence 2 of Article 27.1, the place where the arbitration institution administering the case is located shall be the seat of arbitration if the parties have not specified the seat of arbitration or the seat of arbitration is not explicitly agreed upon. By contrast, Article 20 of the UNCITRAL Model Law provides that "the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties if there is no agreement on the place of arbitration by the parties." Hence, the arbitral tribunal is given the authority to determine the seat of arbitration under the UNCITRAL Model Law, whereas the Draft for Comments empowers the arbitration institution administering the case. The reason for this special arrangement could be that the drafter does not want to legalize the *ad hoc* arbitration for pure domestic arbitration but retains the system of institution arbitration, while for disputes involving foreign-related elements *ad hoc* arbitration is allowed. In the framework of institution arbitration, it is common that the arbitration institute administering the case has the competence to determine the seat of arbitration in the absence of party choice.[5]

2. Double-Track System of a*d hoc* Arbitration

As aforementioned, a "double-track system" of *ad hoc* arbitration is created in the Draft for Comments, that is, parties to a commercial dispute involving foreign-related elements may agree on *ad hoc* arbitration (Article 91), but not for a pure domestic dispute. By giving up the stringent statutory requirements under Article 16 of the existing Arbitration Law of the People's Republic of China, Article 21 of the Draft for Comments does not require "the matters for arbitration" and "selected arbitration commission" in an arbitration agreement for its validity but only asks the parties to express the intention to apply for arbitration in the arbitration agreement. It seems that the statutory obstacle for *ad hoc* arbitration involving domestic disputes in terms of arbitration agreements has been removed. However, if one takes a closer look at the wording of Article 27 on the seat of arbitration and Article 35 on the application for arbitration, no room can be seen for *ad hoc* arbitration. An arbitration agreement on resolving domestic disputes can only be deemed valid if the arbitration institution is determined by contracting parties or by law. Putting aside the merits of

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[4] See Xiuwen Zhao, *On the Legal Place of Arbitration and Its Determination*, 2(4) Frontiers of Law in China 634, 634-46 (2007); Manjiao Chi, *Several Issues and Improvements in the International Arbitration System*, Law Press, pp.269-71 (2014).

[5] For example, Article 7.2 of China International Economic and Trade Arbitration Commission Arbitration Rules (CIETAC 2015) provides that "where the parties have not agreed on the place of arbitration or their agreement is ambiguous, the place of arbitration shall be the domicile of CIETAC or its sub-commission/arbitration center administering the case. CIETAC may also determine the place of arbitration to be another location having regard to the circumstances of the case."

creating such a bifurcated system, a problem arises because the Draft for Comments does not provide any guidance on what constitutes a "foreign-related" arbitration. Further, according to Article 35.3 and Article 35.4, where no supplementary agreement is reached by the disputing parties, the arbitration institution which received the application in the first place accepts the case concerned. Such wording bears the risk that it may lead to negative competition among arbitration institutions in grabbing cases in practice.[6]

3. Competence-Competence Doctrine

Competence-Competence is one of the core doctrines in international commercial arbitration,[7] which now has been adopted in the Draft for Comments. Pursuant to Article 28.1, it is the arbitral tribunal that shall rule on the objection by the parties on the validity of an arbitration agreement, or the jurisdiction over an arbitration case. The arbitration institution may decide, according to Article 28.2, on the basis of *prima facie* evidence, whether or not it is to continue the arbitration proceedings if the arbitral tribunal is not composed. In addition, Article 28.3 and Article 28.4 authorize the people's court to perform a judicial review on the decisions made by arbitral tribunals or arbitration institutions. In contrast to the current arbitration practices in Chinese Mainland, the disputing parties shall first turn to an arbitral tribunal or an arbitration institution prior to the composition of the tribunal for requesting a ruling on the validity of an arbitration agreement or the jurisdiction over an arbitration case, instead of directly applying to the people's court. Only if parties still have objections to the ruling concerned, they may turn to the people's court for a final decision. The arbitration proceeding can move on during the process of judicial review to maintain the arbitration efficiency (Article 28.5), which is in line with the best international practice. However, Article 28.4 provides for a two-level jurisdiction of judicial review that could lead to a lengthy process and result in potential conflicts of the court ruling with the decision made by the arbitral tribunal even if the time of reconsideration by the people's court is limited to one month.

4. Appointment of Arbitrators

Even though Article 13 of the existing Arbitration Law of the People's Republic of China does not stipulate a mandatory panel of arbitrators, the actual effect of the provision is coercive since many Chinese arbitration institutions do ask the parties to appoint arbitrators from the given panel of arbitrators.[8] By adding "recommended" to the wording Article 18.3 of the Draft for Comments clarifies that the parties are free to appoint arbitrators outside the panel of arbitrators provided by the arbitration institution. With regard to the statutory requirement for being an arbitrator, the Draft for Comments contains both a negative list of qualifications (Article 18.1), and a positive list of conditions under which the appointment of an arbitrator will be prohibited (Article 18.2). The drafter follows the stringent approach set forth by

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[6] See Panfeng Fu, *A Few Comparisons between the Arbitration Law (Revision) (Draft for Comments) and the French Arbitration Law*, IOLAW, http://iolaw.cssn.cn/bwsf/202108/t20210816_5353703.shtml (accessed on August 16, 2021).

[7] See A. Redfern et al., *Law and Practice of International Commercial Arbitration*, Sweet & Maxwel, p.213 (1991); Steven D. Walt, *Decision by Division: The Contractarian Structure of Commercial Arbitration*, 51(1) Rutgers Law Review 369, 370 (1999).

[8] See Yongshuang Ma & Jinlong Zhao, *The Status Quo and Improvement of the System of Arbitrators*, 23(8) Hebei Law Science 105, 106-7 (2005).

Article 13 of the existing Arbitration Law of the People's Republic of China which is unique from a comparative perspective.[9]

5. Interim Measures

Significant improvements have been made to the provisions on interim measures in Chapter IV of the Draft for Comments. It not only includes the preservation of assets or evidence, measures requiring the party to take or to refrain from taking certain actions as standard means, but also allows "any other short-term measures deemed necessary by the arbitral tribunal" (Article 43). Further, parties concerned may apply either to the competent people's court or to the arbitral tribunal for granting interim measures, which replaces the sole jurisdiction of the people's court under the current arbitration regime. Article 49 of the Draft for Comments incorporates the system of an emergency arbitrator, which is still new to the legislation of many other countries. One problem with Article 48 of "other interim measures" is that Section 3 stipulates that "where the assistance of the people's court is required for enforcing a decided interim measure, the party may apply to the people's court for assistance in enforcement. Where the people's court deems that assistance can be provided, enforcement shall be rendered as provided by the relevant provisions of the law." Since there is no wording of "other", a systematic interpretation of the law would lead to a narrow application of Section 3, while a textual interpretation would expand the application of Section 3 to all types of interim measures.

6. Conclusion

Extensive revisions have been made in the Draft for Comments aimed at reforming the arbitration infrastructure in Chinese Mainland. It does not mirror the UNCITRAL Model Law and retains the Chinese characteristics to accommodate the special circumstances in Chinese Mainland. It bears the risks of creating some new uncertainties and exacerbating certain existing uncertainties, such as the unclear boundary between purely domestic and foreign-related arbitration. Hopefully, some or all of the outstanding issues will be resolved in the process of law revision since the draft law has not been submitted to the National People's Congress for legislative review. Further amendments will very likely be undertaken after the stage of public comments.

[9] See Lianbin Song, *From Ideas Towards Rules: Several Issues in the Amendment of the Arbitration Law*, 10(2) Beijing Arbitration 1, 5-6 (2004).

A Comparison between the PRC Arbitration Law (Revised) (Draft for Comments) and the Current PRC Arbitration Law

Xiaofei Mao[1]

The current Arbitration Law of the People's Republic of China (hereinafter referred to as the Arbitration Law) in 1995 has provided a solid institutional foundation for China's commercial arbitration to break away from the administrative arbitration under the planned economic system and gradually develop into a modern commercial arbitration system based on the fundamental principle of party autonomy. However, there is a gap between China's Arbitration Law and the international arbitration legal regime. On September 7, 2018, the Standing Committee of the 13th National People's Congress included the amendment of the Arbitration Law in the second-class legislative plan with the purpose of modernizing China's Arbitration Law. On July 30, 2021, the Ministry of Justice of the People's Republic of China issued the first version of the Arbitration Law (Revised) (Draft for Public Comments), which made major amendments to the Arbitration Law. The comparison is made between the Arbitration Law and the Arbitration Law (Revised) so that the deleted, added, and modified contents can be observed.

The English version of the current Arbitration Law is based on the English version provided by Mr. CAO Lijun (Senior Partner of Zhong Lun Law Firm) with a few modifications. I am very grateful for the great contributions made by the experts in proofreading the translation work (in the order of the initials of their surnames):

Ms. HUANG Zhijin (Director of Arbitration and Alternative Dispute Resolution of the North Asia Region and Chief Representative of the Shanghai Office, International Chamber of Commerce),

Mr. LIAN Jie (Senior Counsel of Zhonglun W&D Law Firm),

Prof. LU Song (China Foreign Affairs University),

Ms. SUN Jiajia (Partner of Beijing W & H Law Firm),

Ms. WANG Fang (Associate Professor of China University of Political Science and Law),

Mr. XU Jie (Chief of the Case Managing Team II, Beijing Arbitration Commission/Beijing International Arbitration Center),

Mr. ZHANG Yulin Jerry (Director of Beijing Linli Law Office), and

Mr. ZHANG Cunyuan (Chief Representative of Singapore International Arbitration Center in China).

[1] Xiaofei Mao, Associate Professor, Arbitrator, Head of Research Department for Laws of Nations of the Institute of International Law at the Chinese Academy of Social Sciences. She is also the Standing member of China Academy of Arbitration Law (CAAL).

Arbitration Law of the People's Republic of China (2017 Edition)	Arbitration Law of the People's Republic of China (Draft for Comments)
Adopted at the 9th Session of the Standing Committee of the 8th National People's Congress on 31 August 1994; amended for the first time in accordance with the Decision of the Standing Committee of the National People's Congress on Amending Certain Laws at the 10th Session of the Standing Committee of the 11th National People's Congress on 27 August 2009; and amended for the second time in accordance with the Decision of the Standing Committee of the National People's Congress on Amending Eight Laws Including the Judges Law of the People's Republic of China at the 29th Session of the Standing Committee of the 12th National People's Congress on 1 September 2017.	
Chapter I General Provisions	**Chapter I General Provisions**
Article 1 This Law is formulated in order to ensure the impartial and prompt arbitration of economic disputes, to protect the legitimate rights and interests of the parties, and to guarantee the healthy development of the socialist market economy.	**Article 1** This Law is formulated in order to ensure the impartial and prompt arbitration of economic disputes, to protect the legitimate rights and interests of the parties~~, and~~ to guarantee the healthy development of the socialist market economy, and to promote international economic interaction.

Article 2 Contractual disputes and other disputes arising from property rights and interests between citizens, legal persons and other organizations of equal status in law may be arbitrated.	**Article 2** Contractual disputes and other disputes arising from property rights and interests between ~~citizens~~ natural persons, legal persons and other organizations ~~of equal status~~ may be arbitrated.
Article 3 The following disputes shall not be submitted to arbitration: (1) disputes over marriage, adoption, guardianship, dependents' maintenance, and inheritance; and (2) administrative disputes falling within the jurisdiction of the relevant administrative authorities according to the law.	~~**Article 3**~~ The following disputes shall not be submitted to arbitration: (1) disputes over marriage, adoption, guardianship, dependents' maintenance, and inheritance; and (2) administrative disputes falling within the jurisdiction of the relevant administrative authorities ~~according to the law~~ as provided by the law. Where there are special provisions in other laws, such special provisions shall prevail.
Article 4 The parties' submission to arbitration to resolve their disputes shall be on the basis of both parties' free will and the arbitration agreement concluded between them. If a party applies for arbitration in the absence of arbitration agreement, the arbitration commission shall not accept the case.	**Article 3** ~~4~~ The parties' submission to arbitration to resolve their disputes shall be on the basis of both parties' free will and the arbitration agreement concluded between them. ~~If a party applies for arbitration in the absence of arbitration agreement, the arbitration commission shall not accept the case.~~
	Article 4 Arbitration shall be conducted under the principle of good faith, credibility, and promise-keeping.
Article 5 If the parties have concluded an arbitration agreement, and one party institutes an action before a people's court, the people's court shall not accept the case, unless the arbitration agreement is null and void.	**Article 5** If the parties have concluded an arbitration agreement, and one party institutes an action before a people's court, the people's court shall not accept the case, unless the arbitration agreement is null and void.

Article 6 The arbitration commission shall be selected by the parties through agreement. The level jurisdiction system and the territorial jurisdiction system shall not apply to arbitration.	**Article 6** The jurisdiction of arbitration ~~commission~~ shall be ~~selected~~ agreed upon by the parties through agreement. The level jurisdiction system and the territorial jurisdiction system shall not apply to arbitration.
Article 7 In arbitration, disputes shall be resolved on the basis of facts, in compliance with the law, and in a fair and reasonable manner.	**Article 7** In arbitration, disputes shall be resolved on the basis of facts, in compliance with the law, with reference to transaction practices, and in a fair and reasonable manner.
Article 8 Arbitration shall be conducted independently in accordance with the law and shall be free from interference of administrative authorities, social organizations or individuals.	**Article 8** Arbitration shall be conducted independently in accordance with the law and shall be free from interference of administrative authorities, social organizations or individuals.
Article 9 The system of finality of arbitral award shall apply to arbitration. If a party applies for arbitration to an arbitration commission or institutes an action before a people's court regarding the same dispute after an arbitral award has been rendered, the arbitration commission or the people's court shall not accept the case. If an arbitral award is set aside or its enforcement is refused by the people's court pursuant to the law, parties may apply for arbitration according to a new arbitration agreement concluded between them or institute an action before the people's court regarding the same dispute.	**Article 9** The system of finality of arbitral award shall apply to arbitration. ~~If a~~ A party shall not re-apply ~~applies~~ for arbitration ~~to an arbitration commission~~ or institute~~s~~ an action before a people's court regarding the same dispute after an arbitral award has been rendered.~~, the arbitration commission or the people's court shall not accept the case~~. If an arbitral award is set aside ~~or its enforcement is refused~~ by the people's court pursuant to the law, parties may apply for arbitration according to a new arbitration agreement concluded between them or institute an action before the people's court regarding the same dispute.

	Article 10 The people's court shall support and supervise arbitration in accordance with the law.
Chapter II Arbitration Commissions and the Arbitration Association	**Chapter II Arbitration ~~Commissions~~ Institution, Arbitrator and the Arbitration Association**
Article 10 Arbitration commissions may be established in municipalities directly under the Central Government and in municipalities where the people's governments of provinces or autonomous regions are located. They may also be established in other cities with subordinate districts if necessary. Arbitration commissions may not be established at each level of the administrative divisions. Arbitration commissions shall be jointly established by the relevant departments and chambers of commerce organized by the people's governments of the municipalities and the cities specified in the preceding paragraph. The establishment of an arbitration commission shall be registered with the judicial administrative department of the provinces, autonomous regions or municipalities directly under the Central Government.	**Article 11 ~~10~~** Arbitration ~~commissions~~ institutions may be established in municipalities directly under the Central Government and in municipalities where the people's governments of provinces or autonomous regions are located. They may also be established in other cities with subordinate districts if necessary. Arbitration ~~commissions~~ institutions may not be established at each level of the administrative divisions. Arbitration ~~commissions~~ institutions shall be jointly established by the relevant departments and chambers of commerce organized by the people's governments of the municipalities and the cities specified in the preceding paragraph. In other areas where there is a genuine need to establish arbitration institutions, they shall be established with reference to the provisions of the preceding paragraph upon approval by the judicial administrative department of the State Council. ~~The establishment of an arbitration commission shall be registered with the judicial administrative department of the provinces, autonomous regions or municipalities directly under the Central Government.~~

	Article 12 ~~11~~ Arbitration institutions shall be established upon registration with the judicial administrative department of the relevant province, autonomous region or municipality directly under the Central Government. The arbitration institutions established by China Chamber of International Commerce shall be registered with the judicial administrative department of the State Council. Foreign arbitration institutions establishing business offices and handling foreign-related arbitration business within the territory of the People's Republic of China shall be registered with the judicial administrative department of the relevant province, autonomous region or municipality directly under the Central Government, and the registration records shall be filed with the judicial administrative department of the State Council. Administrative measures on registration of arbitration institutions shall be formulated by the State Council.
	Article 13 Arbitration institutions are non-profit legal persons established pursuant to this Law to provide public welfare services for resolution of contractual disputes and other disputes arising from property rights and interests, including arbitration commissions and other specialized organizations conducting arbitration business. Arbitration institutions shall obtain legal person status upon registration.
	Article 14 Arbitration institutions shall be independent of administrative authorities and shall not be subordinate to administrative authorities. An arbitration institution shall not be subordinate to any other arbitration institution.

Article 11 An arbitration commission shall meet the following criteria: (1) having its own name, domicile and articles of association; (2) having necessary property; (3) having its own members; and (4) having enlisted arbitrators for appointment. The articles of association of an arbitration commission shall be formulated in accordance with this Law.	**Article 15** ~~11~~ An arbitration ~~commission~~ institution shall meet the following criteria: (1) having its own name, domicile and articles of association; (2) having necessary property; (3) ~~having its own members;~~ having necessary organizational body; and (4) having enlisted arbitrators for appointment. The articles of association of an arbitration ~~commission~~ institution shall be formulated in accordance with this Law.
Article 12 An arbitration commission shall comprise one chairman, two to four vice chairmen and seven to eleven members. The chairman, vice chairmen and members of an arbitration commission shall be experts specialized in law, economy and trade, and people having practical working experience. Specialists in law, economy and trade shall take up no less than two thirds of the members of an arbitration commission.	**Article 16** ~~12~~ Arbitration institutions shall formulate their articles of association in accordance with the principles of separation of the decision-making, executive and supervisory authorities, effective checks and balance, and the authority accompanied with the corresponding responsibilities, and shall establish a non-profit legal person governance structure. Where an arbitration institution sets up a committee as its decision-making body, the committee ~~An arbitration commission~~ shall comprise one chairman, two to four vice chairmen and seven to eleven members. The chairman, vice chairmen and members shall be experts specialized in law, economy and trade, and people having practical working experience, and at least two thirds of the them shall be experts specialized in law, economy and trade. ~~of an arbitration commission.~~ The principal responsible person of the decision-making and executive body of an arbitration institution shall not be appointed as an arbitrator of the institution during his tenure. Civil servants shall not act concurrently as the principal responsible person of the executive body of an arbitration institution.

	Article 17 Arbitration institutions shall establish a mechanism for public disclosure of information, and timely publish information such as articles of association, registration and filing information, schedule of arbitration fees, annual work reports, financial information, et cetera.
Article 13 An arbitration commission shall appoint its arbitrators from among righteous and upright persons. An arbitrator shall meet one of the conditions set forth below: (1) having passed the national uniform legal profession qualification examination and obtained the legal profession qualification, and conducted the arbitration work for at least eight years; (2) having worked as a lawyer for at least eight years; (3) having served as a judge for at least eight years; (4) having been engaged in legal research or legal education, possessing a senior professional title; or (5) having acquired the knowledge of law, engaged in the professional work in the field of economy, trade, et cetera, possessing a senior professional title or having an equivalent professional level. An arbitration commission shall have a panel of arbitrators in different specializations.	**Article 18** ~~**Article 13** An arbitration commission shall appoint its arbitrators from among righteous and upright persons.~~ An arbitrator shall be a person of impartiality and integrity, and shall meet one of the conditions set forth below: (1) having passed the national uniform legal profession qualification examination and obtained the legal profession qualification, and conducted the arbitration work for at least eight years; (2) having worked as a lawyer for at least eight years; (3) having served as a judge for at least eight years; (4) having been engaged in legal research or legal education, possessing a senior professional title; or (5) having acquired the knowledge of law, engaged in the professional work in the field o~~f~~ economy, trade, et cetera, possessing a senior professional title or having an equivalent professional level. A person shall not be appointed as an arbitrator, if he or she falls under any of the following circumstances: (1) having no or limited capacity for civil conduct; (2) having been subject to criminal punishment, except for criminal negligence; or (3) being prevented otherwise from serving as an arbitrator pursuant to conditions set forth by the law. An arbitration ~~commission~~ institution shall have a recommended panel of arbitrators in different specializations.

Article 14 Arbitration commissions shall be independent from administrative authorities and shall not be subordinate to any administrative authority. Also, an arbitration commission shall not be subordinate to any other arbitration commission.	~~**Article 14** Arbitration commissions shall be independent from administrative authorities and shall not be subordinate to any administrative authority. Also, an arbitration commission shall not be subordinate to any other arbitration commission.~~
Article 15 The China Arbitration Association is a social organization with the status of a legal person. Arbitration commissions are members of the China Arbitration Association. The articles of association of the China Arbitration Association shall be formulated by its national members' congress.	**Article 19** ~~15~~ The China Arbitration Association is a self-governing organization of the arbitration community and a social organization with the status of a legal person. Arbitration ~~commissions~~ institutions are members of the China Arbitration Association. Arbitration-related academic and research institutes and social organizations may apply to be a member of the China Arbitration Association. The rights and obligations of the members shall be stipulated by the articles of association of the China Arbitration Association. The authoritative organ of the China Arbitration Association shall be its national members congress. The articles of association shall be formulated by its national members congress.
The China Arbitration Association is a self-regulated organization of arbitration commissions. It shall supervise the observation of discipline by arbitration commissions, their members and arbitrators in accordance with its articles of association. The China Arbitration Association shall formulate arbitration rules in accordance with this Law and the relevant provisions of the Civil Procedure Law.	**Article 20** The China Arbitration Association ~~is a self-regulated organization of arbitration commissions. It shall supervise the observation of discipline by arbitration commissions, their members and arbitrators in accordance with its articles of association.~~discharge the following duties: (1) supervise disciplinary violations by arbitration institutions, arbitrators and other arbitration practitioners in accordance with the articles of association; (2) ~~The China Arbitration Association shall~~ formulate model arbitration rules in accordance with this Law for arbitration institutions and parties to select and apply ~~and the relevant provisions of the Civil Procedure Law~~. protect the legitimate rights and interests of the members pursuant to law and provide services to its members;

	(4) coordinate the relationship with relevant authorities and other industries, and optimize the arbitration development environment; and (5) formulate business norms for the arbitration industry, and organize vocational training for practitioners; (6) organize research for arbitration activities, and promote domestic and overseas business exchange and cooperation; and (7) any other duties stipulated by the articles of association of the China Arbitration Association.
Chapter III Arbitration Agreement	**Chapter III Arbitration Agreement**
Article 16 An arbitration agreement shall include the arbitration clauses provided for in a contract and agreements for arbitration that are concluded in other written forms before or after disputes arise. An arbitration agreement shall contain the following elements: (1) an expression of the intention to apply for arbitration; (2) matters for arbitration; and (3) a designated arbitration commission.	**Article 21** ~~16~~ An arbitration agreement shall include the arbitration clause provided for in a contract ~~agreements for arbitration that are concluded in other written forms before or after disputes arise.~~ and agreements in other written forms which express an intent to apply for arbitration before or after disputes arise. ~~An arbitration agreement shall contain the following elements:~~ ~~(1) an expression of the intention to apply for arbitration;~~ ~~(2) matters for arbitration; and~~ ~~(3) a designated arbitration commission.~~ Where one party alleges during an arbitration that there exists an arbitration agreement, which the other party does not deny, the arbitration agreement shall be deemed to exist between the parties.
Article 17 An arbitration agreement shall be declared null and void if any of the following circumstances exists: (1) contains matters that shall not submitted to arbitration as provided by the law; (2) the arbitration agreement has been reached by parties who has no capacity or limited capacity of civil conduct; or (3) a party enters into the arbitration agreement under duress from the other party.	**Article 22** ~~17~~ An arbitration agreement shall be declared null and void if any of the following circumstances exists: (1) contains matters that shall not submitted to arbitration as provided by the law; (2) the arbitration agreement has been reached by parties who has no capacity or limited capacity of civil conduct; or (3) a party enters into the arbitration agreement under duress from the other party.

Article 18 If an arbitration agreement contains no or unclear provisions concerning the matters to be submitted to arbitration or concerning the designation of an arbitration commission, the parties may conclude a supplementary agreement. If no such supplementary agreement can be concluded, the arbitration agreement shall be null and void.	~~**Article 18** If an arbitration agreement contains no or unclear provisions concerning the matters to be submitted to arbitration or concerning the designation of an arbitration commission, the parties may conclude a supplementary agreement. If no such supplementary agreement can be concluded, the arbitration agreement shall be null and void.~~
Article 19 An arbitration agreement shall exist independently. The amendment, rescission, termination or invalidity of a contract shall not affect the validity of the arbitration agreement. The arbitral tribunal shall have the power to rule on the validity of a contract.	**Article 23** An arbitration agreement shall exist independently. The amendment, rescission, ineffectiveness, invalidity, revocation or termination ~~or invalidity~~ of a contract shall not affect the validity of the arbitration agreement. The arbitral tribunal shall have the power to rule on the validity of the contract.
Article 20 If a party objects to the validity of the arbitration agreement, it can request the arbitration commission to make a decision or request people's court to render a ruling. If one party requests the arbitration commission to make a decision and the other party requests the people's court to render a ruling, the validity of the arbitration agreement shall be determined by the people's court. If a party objects to the validity of the arbitration agreement, it shall raise the objection before the first hearing.	
	Article 24 Where a dispute involves a principal contract and an accessory contract, and discrepancies exist between the arbitration agreement of the principal contract and that of the accessory contract, the principal contract's stipulation prevails. Where no arbitration agreement is stipulated in the accessory contract, the parties are bound by the arbitration agreement in the principal contract.

	Article 25 A shareholder of a company and a limited partner of a partnership are bound by the arbitration agreement concluded between the company or the partnership and the opposing parties, where the shareholder or the limited partner raises a claim in its own name on behalf of the company or the partnership in accordance with the law.
	Article 26 Where the law provides that a party may institute civil proceedings in a people's court, without clearly stating that the matter involved is not arbitrable, the arbitration agreement concluded by the parties which complies with the provisions of this Law shall be valid.
	Article 27 The parties may specify the seat of arbitration in an arbitration agreement. Where the parties have not specified the seat of arbitration or the seat of arbitration is not explicitly agreed upon, the place where the arbitration institution administering the case is located shall be the seat of arbitration. An arbitral award shall be deemed to have been made at the seat of arbitration. The determination of the seat of arbitration shall not affect the parties or the arbitral tribunal to, depending on the circumstances of the case, agree on or decide a suitable place differently from the seat of arbitration to conduct arbitration activities such as deliberation and hearings.
	Article 28 An objection to the validity of an arbitration agreement, such as whether it exists or is valid, or an objection to the jurisdiction over an arbitration case, shall be raised no later than the submission of the statement of defense as requested by the applicable arbitration rules and shall be ruled upon by the arbitral tribunal. Prior to the composition of the arbitral tribunal, the arbitration institution may decide, on the basis of *prima facie* evidence, whether or not it is to continue the arbitration proceedings.

	The people's court shall not accept such objection directly filed by the parties, where no objection has been raised according to the preceding paragraph. Where a party has objection to the decision on validity of an arbitration agreement or on the jurisdiction over an arbitration case, that party shall, within ten days of receipt of the decision, request the intermediate people's court at the seat of arbitration to review the decision. Where a party disagrees with the ruling which confirms the invalidity of the arbitration agreement or the lack of jurisdiction over an arbitration case, that party shall, within ten days of receipt of the ruling, request the people's court at the higher level for reconsideration. The people's court shall make a ruling on the reconsideration within one month of receipt of such application for reconsideration. Such review and reconsideration of the people's court shall not affect the continuation of the arbitration proceedings involved.
Chapter IV Arbitration Proceedings	**Chapter IV Arbitration Proceedings**
	Section 1 General Provisions
	Article 29 The parties shall be treated with equality in arbitration and each party shall be given a full opportunity of presenting his case.
	Article 30 The parties may agree upon the arbitration procedures or the applicable arbitration rules, to the extent that such agreements do not violate the mandatory provisions of this Law. Where there is no agreement by the parties, or the agreement is not explicit, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, to the extent that the manner does not violate the mandatory provisions of this Law. Arbitration proceedings may be conducted online. Arbitration procedures shall avoid unnecessary delays and expenses.

Article 40 The arbitration shall be held in camera. It may be conducted openly if the parties so agree, unless state secrets are involved.	**Article 31** ~~40~~ The arbitration shall be held in camera. It may be conducted openly if the parties so agree, unless state secrets are involved.
	Article 32 The parties may resolve their disputes through mediation during arbitration proceedings.
	Article 33 A party who knows or ought to have known that any provision of the arbitration procedures or any requirement under the arbitration agreement has not been complied with and yet takes part in or proceeds with the arbitration proceedings without stating his objection to such non-compliance without undue delay in writing, shall be deemed to have waived his right to object.
	Article 34 Arbitration documents shall be served upon the parties in a reasonable and *bona fide* manner. Where the parties have agreed on a method of service, such agreement prevails. Where the parties have not agreed on the method, service may be conducted in person or by registered mail, courier, facsimile, or other recorded electronic means such as email and instant messenger. The service shall be effective if the arbitration documents have reached the parties in accordance with the preceding paragraph, or are delivered to the parties' place of business, registration address, domicile, habitual residence or mailing address. If, despite reasonable inquires, none of the above address can be found, service shall be deemed to have been effective if the arbitration documents are delivered to the addressee's last known place of business, registration address, domicile, habitual residence or mailing address by any other means of delivery which allows for a record of such delivery.

Section 1 Application and Acceptance	Section 21 Application and Acceptance
Article 21 A party's application for arbitration shall meet the conditions set forth below: (1) there is an arbitration agreement; (2) there is a specific claim and facts and grounds; and (3) the application is within the jurisdiction of the arbitration commission.	**Article 35 ~~21~~** A party's application for arbitration shall meet the conditions set forth below: (1) there is an arbitration agreement; (2) there is a specific claim and facts and grounds; and (3) ~~the application is within the jurisdiction of the arbitration commission.~~ the dispute is arbitrable under this Law. The parties shall apply for arbitration to an arbitration institution stipulated in their arbitration agreement. Where the arbitration agreement has not specified an arbitration institution, the arbitration institution which could be determined through the arbitration rules agreed to be applicable may accept the case concerned. Where no arbitration rules are agreed to be applicable, the parties may reach a supplementary agreement. Where no supplementary agreement is reached, the arbitration institution which received the application in the first place may accept the case concerned. Where the arbitration agreement has no agreed arbitration institution and no supplementary agreement has been reached, the parties may apply for arbitration at the arbitration institution at their common domicile. The parties may apply for arbitration at an arbitration institution located at a place other than the domicile of the parties, if no common domicile exists, and in such a case, the arbitration institution which receives the application in the first place may accept the case concerned. The arbitration proceedings shall commence on the date on which the arbitration application is submitted to the arbitration institution.

Article 22 Where a party applies for arbitration, it shall submit the arbitration agreement and the request for arbitration and copies thereof to the arbitration commission.	**Article 36** ~~22~~ Where a party applies for arbitration, it shall submit the arbitration agreement and the request for arbitration and ~~copies~~ appendices thereof to the arbitration ~~commission~~ institution.
Article 23 A request for arbitration shall specify the following matters: (1) the name, gender, age, occupation, work unit and domicile of the party; or the name and domicile of the legal person or other organizations, and the name and position of its legal representative or person in charge; (2) the claim, and the facts and grounds on which the claim is based; and (3) the evidence, the source of the evidence, and the names and domiciles of witnesses.	**Article 37** ~~23~~ A request for arbitration shall specify the following matters: (1) the name, gender, age, occupation, work unit and domicile of the party; or the name and domicile of the legal person or other organizations, and the name and position of its legal representative or person in charge; (2) the claim, and the facts and grounds on which the claim is based; and (3) the evidence, the source of the evidence, and the names and domiciles of witnesses.
Article 24 When the arbitration commission receives the request for arbitration and considers that the request complies with the conditions for acceptance, it shall accept the request and notify the party within five days from the date of receipt. If the arbitration commission considers that the request does not comply with the conditions for acceptance, it shall inform the party in writing of its rejection of the request and explain the reasons.	**Article 38** ~~24~~ When the arbitration ~~commission~~ institution receives the request for arbitration and considers that the request complies with the conditions for acceptance, it shall accept the request and notify the party within five days from the date of receipt. If the arbitration ~~commission~~ institution considers that the request does not comply with the conditions for acceptance, it shall inform the party in writing of its rejection of the request and explain the reasons.

Article 25 After the arbitration commission accepts the request for arbitration, it shall, within the specified time period in the arbitration rules, deliver a copy of the arbitration rules and the panel of arbitrators to the claimant, and serve one copy of the request for arbitration together with the arbitration rules and the panel of arbitrators upon the respondent. After receiving the copy of the request for arbitration, the respondent shall file a statement of defense to the arbitration commission within the time period specified in the arbitration rules. After receiving the statement of defense, the arbitration commission shall serve a copy thereof upon the claimant within the specified time period in the arbitration rules. The failure of the respondent to file a statement of defense shall not affect the conduct of the arbitral proceedings.	**Article 39 ~~25~~** After the arbitration ~~commission~~ institution accepts the request for arbitration, it shall, within the specified time period in the arbitration rules, deliver a copy of the arbitration rules and the panel of arbitrators to the claimant, and serve ~~one copy of~~ the request for arbitration and appendices thereof together with the arbitration rules and the panel of arbitrators upon the respondent. After receiving ~~the copy of~~ the request for arbitration, the respondent shall file a statement of defense to the arbitration ~~commission~~ institution within the time period specified in the arbitration rules. After receiving the statement of defense, the arbitration ~~commission~~ institution shall serve ~~a copy thereof~~ the statement of defense and appendices thereof upon the claimant within the specified time period in the arbitration rules. The failure of the respondent to file a statement of defense shall not affect the conduct of the arbitral proceedings.
Article 26 If the parties have concluded an arbitration agreement and one party has instituted an action before a people's court without declaring the existence of the arbitration agreement, and, after the people's court has accepted the case, the other party submits the arbitration agreement prior to the first hearing, the people's court shall dismiss the case unless the arbitration agreement is null and void; if, prior to the first hearing, the other party has not raised an objection to the acceptance of the case by the People's court, it shall be deemed to have renounced the arbitration agreement and the people's court shall continue to hear the case.	**Article 40 ~~26~~** If the parties have concluded an arbitration agreement and one party has instituted an action before a people's court without declaring the existence of the arbitration agreement, and, after the people's court has accepted the case, the other party submits the arbitration agreement prior to the first hearing, the people's court shall dismiss the case unless the arbitration agreement is null and void; if, prior to the first hearing, the other party has not raised an objection to the acceptance of the case by the People's court, it shall be deemed to have renounced the arbitration agreement and the people's court shall continue to hear the case.
Article 27 The claimant may renounce or amend its claim. The respondent may accept or refute the claim and shall have the right to file a counterclaim.	**Article 41 ~~27~~** The claimant may renounce or amend its claim. The respondent may accept or refute the claim and shall have the right to file a counterclaim.

Article 28 A party may apply for property preservation if it may become impossible or difficult to enforce the arbitral award due to the acts of the other party or other reasons. If a party applies for property preservation, the arbitration commission shall forward the party's application to the people's court in accordance with the relevant provisions of the Civil Procedure Law. If the application turns out to be improper, the applicant shall compensate the respondent for loss suffered due to the property preservation measures.	
Article 29 A party or its legal representative may appoint lawyers or other representatives to carry out arbitration activities. In the event that lawyers or other representatives are appointed to carry out arbitration activities, a power of attorney shall be submitted to the arbitration commission.	**Article 42** ~~29~~ A party or its legal representative may appoint lawyers or other representatives to carry out arbitration activities. In the event that lawyers or other representatives are appointed to carry out arbitration activities, the power of attorney shall be submitted to the arbitration ~~commission~~ institution.
	Section 3 Interim Measures
	Article 43 In order to ensure the conduct of arbitral proceedings, establish the facts of the dispute or enforce the arbitral award, a party may, before or during the arbitration proceedings, request from a people's court or an arbitral tribunal an interim or emergency measure relevant to the subject matter of the dispute. Interim measures include preservation of assets or evidence, measures requiring a party to take or to refrain from taking certain actions, and any other short-term measures deemed necessary by the arbitral tribunal.

	Article 44 ~~28~~ If the enforcement of an award is likely to become impossible or difficult or if any other detriment is likely to be caused to a party as the result of the conduct of the other party or of the existence of any other grounds, that party may apply for an order to preserve assets of the other party, or to require that party to take actions or to refrain from taking certain actions.
	Article 45 A party may apply for an order to preserve evidence if there is a risk that such evidence might be lost or destroyed, or might subsequently become difficult to obtain.
	Article 46 Where a party applies for preservation measures before submitting its application for arbitration, he shall submit its application directly to the competent people's court in accordance with relevant laws. Where a party applies for preservation measures after the arbitration has been initiated, he may apply directly to the people's court at the place where the assets to be preserved are located, where the evidence is located, where the action is to be taken, where the respondent is located or where the arbitration takes place, as the case may be; and it may also apply to the arbitral tribunal.
	Article 47 Where a party applies to the people's court for preservation measures, the people's court shall grant such preservation measures in a timely manner in accordance with relevant laws. Where a party applies to the arbitral tribunal for preservation measures, the arbitral tribunal shall make a decision in a timely manner, and require the party to provide guarantee. Upon submission of the decision granting such measures by the party or the arbitral institution to the competent court, the court shall implement the decision in a timely manner in accordance with relevant laws. The party requesting preservation measures shall be liable for any costs and damages caused to the other party due to the wrong request of such measures.

	Article 48 Where a party applies for other interim measures, the arbitral tribunal shall rule upon the necessity and feasibility of granting such interim measures and make a decision in a timely manner. Upon request of the party and where it is deemed necessary, the arbitral tribunal may decide to modify, suspend or terminate an interim measure it has granted in accordance with the preceding paragraph. Where the assistance of the people's court is required for enforcing an interim measure, the party may apply to the people's court for assistance in enforcement. Where the people's court determines that the assistance can be provided, it shall do so in accordance with relevant laws.
	Article 49 Where the interim measures need to be enforced outside the territory of the People's Republic of China, the party may apply directly to a foreign court with jurisdiction for enforcement. Before the constitution of the arbitral tribunal, a party that needs to appoint an emergency arbitrator to grant an interim measure may submit the application to the arbitration institution for the appointment of an emergency arbitrator in accordance with the arbitration rules. The power of the emergency arbitrator is preserved until the arbitral tribunal is constituted.
Section 2 Constitution of the Arbitral Tribunal	**Section 4 ~~2~~Constitution of the Arbitral Tribunal**
Article 30 An arbitral tribunal may be composed of either three arbitrators or one arbitrator. An arbitral tribunal composed of three arbitrators shall have a presiding arbitrator.	**Article 50 ~~30~~** An arbitral tribunal may be composed of either three arbitrators or one arbitrator. An arbitral tribunal composed of three arbitrators shall have a presiding arbitrator. The parties may appoint arbitrators within the panel of recommended arbitrators, and may appoint arbitrators outside such panel. Arbitrators chosen by the parties outside such panel shall meet the conditions set forth in this Law. Where the parties have agreed upon the conditions for arbitrators, such agreement shall prevail, except where such agreement cannot be performed or where there are circumstances under which a person may not act as an arbitrator as stipulated in this Law.

Article 31 If the parties agree that the arbitral tribunal shall be composed of three arbitrators, they shall each appoint or entrust the chairman of the arbitration commission to appoint one arbitrator. The parties shall jointly appoint or jointly entrust the chairman of the arbitration commission to appoint the third arbitrator. The third arbitrator shall be the presiding arbitrator. If the parties agree that the arbitral tribunal shall be composed of one arbitrator, they shall jointly appoint or jointly entrust the chairman of the arbitration commission to appoint the arbitrator.	**Article 51** ~~31~~ If the parties agree that the arbitral tribunal shall be composed of three arbitrators, they shall each appoint ~~or entrust the chairman of the arbitration commission to appoint~~ one arbitrator; where a party fails to do so, the arbitration institution shall make the appointment. The parties shall jointly appoint ~~or jointly entrust the chairman of the arbitration commission to appoint~~ the third arbitrator; where the parties fail to do so, the nominated or appointed two arbitrators shall jointly make the appointment; where the nominated or appointed two arbitrators fail to do so, the arbitration institution shall appoint such third arbitrator. The third arbitrator shall be the presiding arbitrator. If the parties agree that the arbitral tribunal shall be composed of one arbitrator, they shall jointly appoint ~~or jointly entrust the chairman of the arbitration commission to appoint the arbitrator~~ such arbitrator; where the parties fail to jointly make the appointment, the arbitration institution shall appoint such arbitrator.
Article 32 If the parties fail to agree on the method of formation of the arbitral tribunal or fail to nominate the arbitrator(s) within the time period specified in the arbitration rules, the arbitrator(s) shall be appointed by the chairman of the arbitration commission.	~~**Article 32** If the parties fail to agree on the method of formation of the arbitral tribunal or fail to nominate the arbitrator(s) within the time period specified in the arbitration rules, the arbitrator(s) shall be appointed by the chairman of the arbitration commission.~~
Article 33 After the arbitral tribunal has been composed, the arbitration commission shall notify the parties in writing of the composition of the arbitral tribunal.	**Article 52** ~~33~~ After the arbitral tribunal has been composed, ~~the arbitration commission shall notify the parties in writing of~~ the arbitrators shall sign a declaration to promise its independence and impartiality during the arbitration. The declaration shall be served upon the parties by the arbitration institution along with the composition of the arbitral tribunal. Where an arbitrator is aware of circumstances which may give rise to reasonable doubt as to his independence or impartiality, he shall disclose such circumstances in writing.

	Upon receipt of the disclosure of an arbitrator, if a party intends to challenge the arbitrator on the grounds of the disclosed matters, he shall raise the challenge in writing within ten days. Where a party fails to do so within the stipulated period, he shall not challenge an arbitrator on the basis of the matters disclosed by the arbitrator.
Article 34 In one of the following circumstances, the arbitrator shall withdraw from the arbitration, and the parties shall also have the right to challenge the arbitrator: (1) the arbitrator is a party in the case, or is a close relative of a party or its representative in the case; 2) the arbitrator has personal interests in the case; (3) the arbitrator has other relationships with a party or with its representative in the case which may affect the fairness of arbitration; or (4) the arbitrator meets with a party or its representative privately or has accepted entertainment or gift from the party or its representative.	**Article 53** ~~34~~ In one of the following circumstances, the arbitrator shall withdraw from the arbitration, and the parties shall also have the right to challenge the arbitrator: (1) the arbitrator is a party in the case, or is a close relative of a party or its representative in the case; (2) the arbitrator has personal interests in the case; (3) the arbitrator has other relationships with a party or with its representative in the case which may affect the fairness of arbitration; or (4) the arbitrator meets with a party or its representative privately or has accepted entertainment or gift from the party or its representative.
Article 35 A party's challenge of arbitrator shall specify the grounds and shall be submitted before the first hearing. If the ground for challenge become known after the first hearing, the challenge may be made before the conclusion of the last hearing.	**Article 54** ~~35~~ A party's challenge of arbitrator shall specify the grounds and shall be submitted before the first hearing. If the ground for challenge become known after the first hearing, ~~the challenge may be made before the conclusion of the last hearing~~, or where the proceedings are conducted on a documents-only basis, the party shall raise the challenge within ten days after becoming aware of the ground for challenge.
	A party challenging an arbitrator whom it has appointed may only raise the challenge for grounds which are only become known to him subsequent to the appointment of the arbitrator.

Article 36 The decision on whether the arbitrator shall be withdrawn from his office shall be made by the chairman of the arbitration commission. If the chairman of the arbitration commission is serving as the arbitrator, the decision shall be collectively made by the arbitration commission.	**Article 55** ~~36~~ The decision on whether the arbitrator shall be withdrawn from his office shall be made by ~~the chairman of~~ the arbitration ~~commission~~ institution. ~~If the chairman of the arbitration commission is serving as the arbitrator, the decision shall be collectively made by the arbitration commission.~~ The decision of withdrawal shall state the reason. Before the decision of withdrawal is made, the arbitrator who has been challenged may continue to participate in the arbitration proceedings.
Article 37 If an arbitrator cannot fulfill his functions due to challenge or other reasons, a substitute arbitrator shall be nominated or appointed in accordance with this Law. After a substitute arbitrator has been nominated or appointed due to the challenge, a party may request that the previous arbitral proceedings be repeated; the decision on such request shall be made by the arbitral tribunal. The arbitral tribunal may also make a decision of its own initiative as to whether the previous arbitral proceedings should be repeated.	**Article 56** ~~37~~ If an arbitrator cannot fulfill his functions due to challenge or other reasons, a substitute arbitrator shall be nominated or appointed in accordance with this Law. After a substitute arbitrator has been nominated or appointed due to the challenge, a party may request that the previous arbitral proceedings be repeated; the decision on such request shall be made by the arbitral tribunal. The arbitral tribunal may also make a decision of its own initiative as to whether the previous arbitral proceedings should be repeated.
Article 38 If an arbitrator is involved in the circumstances described in Article 34 (4) of this Law and the circumstances are serious, or involved in the circumstances described in Article 58 (6) of this Law, he shall assume legal liability in accordance with the law and the arbitration commission shall remove that arbitrator from the panel.	**Article 57** ~~38~~ If an arbitrator is involved in the circumstances described in Article ~~34~~ 53 (4) of this Law and the circumstances are serious, or involved in the circumstances described in Article ~~58~~ 77 (6) of this Law, he shall assume legal liability in accordance with the law and the arbitration ~~commission~~ institution shall remove that arbitrator from the panel.

Section 3 Hearing and Award	Section 53 Hearing and Award
Article 39 The arbitration shall be conducted with oral hearing. If the parties agree to arbitration without oral hearing, the arbitral tribunal may render an arbitral award based upon the request for arbitration, the statement of defense and other documents.	**Article 58** ~~39~~ The arbitration shall be conducted with oral hearing. If the parties agree to arbitration without oral hearing, the arbitral tribunal may conduct proceedings on a documents-only basis and render an arbitral award based upon the request for arbitration, the statement of defense and other documents.
Article 40 The arbitration shall be held in camera. An open hearing can be conducted if the parties so agree, unless state secrets are involved.	~~**Article 40** The arbitration shall be held in camera. An open hearing can be conducted if the parties so agree, unless state secrets are involved.~~
Article 41 The arbitration commission shall notify the parties of the date of the hearing(s) within the time period specified in the arbitration rules. A party may, within the time period specified in the arbitration rules, request postponement of the hearing if the party has justified reasons. The arbitral tribunal shall decide whether to postpone the hearing.	**Article 59** ~~41~~ The arbitration ~~commission~~ institution shall notify the parties of the date of the hearing(s) within the time period specified in the arbitration rules. A party may, within the time period specified in the arbitration rules, request postponement of the hearing if the party has justified reasons. The arbitral tribunal shall decide whether to postpone the hearing.
Article 42 If the claimant who has been notified about the oral hearing in writing fails to appear at the oral hearing without justified reasons or withdraws from the on-going oral hearing without the permission of the arbitral tribunal, the claimant may be deemed to have withdrawn its application for arbitration. If the respondent who has been notified in writing fails to appear at the oral hearing without justified reasons or withdraws from the on-going oral hearing without the permission of the arbitral tribunal, the arbitral tribunal may make a default arbitral award.	**Article 60** ~~42~~ If the claimant who has been notified about the oral hearing in writing fails to appear at the oral hearing without justified reasons or withdraws from the on-going oral hearing without the permission of the arbitral tribunal, the claimant may be deemed to have withdrawn its application for arbitration. If the respondent who has been notified in writing fails to appear at the oral hearing without justified reasons or withdraws from the on-going oral hearing without the permission of the arbitral tribunal, the arbitral tribunal may make a default arbitral award.
Article 43 Each party bears the burden of proof to adduce evidence to support that party's claim. The arbitral tribunal may collect evidence on its own motion as it considers necessary.	**Article 61**~~43~~ Each party bears the burden of proof to adduce evidence to support that party's claim. The arbitral tribunal may collect evidence on its own motion as it considers necessary. It may request assistance from the people's court where necessary.

Article 44 If the arbitral tribunal considers that a specific issue requires expert evaluation, it may refer the issue for appraisal to an appraisal entity agreed by the parties or to an appraisal entity appointed by the arbitral tribunal. If it is requested by a party or required by the arbitral tribunal, the appraisal entity shall send its appraiser to attend the oral hearing. Subject to the approval of the arbitral tribunal, the parties may pose questions to the appraiser.	**Article 62 ~~44~~** If the arbitral tribunal considers that a specific issue requires expert evaluation, it may refer the issue for appraisal to an appraisal entity agreed by the parties or to an appraisal entity appointed by the arbitral tribunal. If it is requested by a party or required by the arbitral tribunal, the appraisal entity shall send its appraiser to attend the oral hearing. Subject to the approval of the arbitral tribunal, the parties may pose questions to the appraiser.
Article 45 The evidence shall be produced at the oral hearings and may be examined by the parties.	**Article 63 ~~45~~** The evidence shall be ~~produced at the oral hearings and may be examined by the parties.~~ served upon the parties and the arbitral tribunal in a timely manner. The parties may agree on a method of examination of evidence or conduct examination of evidence in such a manner as the arbitral tribunal deems appropriate. The arbitral tribunal shall have the right to determine the admissibility and probative force of evidence and allocate the burden of proof reasonably in accordance with the law.
Article 46 If evidence may be destroyed or lost, or may be difficult to obtain in the future, a party may apply for evidence preservation. If a party applies for evidence preservation, the arbitration commission shall forward the party's application to the basic-level people's court at the place where the evidence is located.	~~**Article 46** If evidence may be destroyed or lost, or may be difficult to obtain in the future, a party may apply for evidence preservation. If a party applies for evidence preservation, the arbitration commission shall forward the party's application to the basic-level people's court at the place where the evidence is located.~~
Article 47 Both parties shall have the opportunity to debate. At the end of the debate, the presiding arbitrator or the sole arbitrator shall inquire final opinions from the parties.	**Article 64 ~~47~~** Both parties shall have the opportunity to debate. At the end of the debate, the presiding arbitrator or the sole arbitrator shall inquire final opinions from the parties.

Article 48 The arbitral tribunal shall make a transcript of the oral hearings in writing. The parties and other participants in the arbitration shall have the right to apply for supplementation or correction of the record of their own statements if they consider that such record contains omissions or errors. If an application for supplementation and correction is denied, the application shall be recorded. The record shall be signed or sealed by the arbitrators, the transcriber, the parties and other participants in the arbitration.	**Article 65** ~~48~~ The arbitral tribunal shall make a transcript of the oral hearings in writing. The parties and other participants in the arbitration shall have the right to apply for supplementation or correction of the record of their own statements if they consider that such record contains omissions or errors. If an application for supplementation and correction is denied, the application shall be recorded. The record shall be signed or sealed by the arbitrators, the transcriber, the parties and other participants in the arbitration.
Article 49 After an application for arbitration has been made, the parties may settle the disputes on their own. If the parties have reached a settlement agreement, they may request the arbitral tribunal to render an arbitral award in accordance with the settlement agreement; or they may withdraw their application for arbitration.	**Article 66** ~~49~~ After an application for arbitration has been made, the parties may settle the disputes on their own. If the parties have reached a settlement agreement, they may request the arbitral tribunal to render an arbitral award in accordance with the settlement agreement; or they may withdraw their application for arbitration.
Article 50 If a party repudiates the settlement agreement after the application for arbitration has been withdrawn, the party may apply for arbitration in accordance with the arbitration agreement.	**Article 67** ~~50~~ If a party repudiates the settlement agreement after the application for arbitration has been withdrawn, the party may apply for arbitration in accordance with the arbitration agreement.
Article 51 The arbitral tribunal may carry out mediation prior to rendering an arbitral award. The arbitral tribunal shall carry out mediation if both parties voluntarily seek mediation. If the mediation is unsuccessful, an arbitral award shall be made in a timely manner. If the mediation leads to a settlement agreement, the arbitral tribunal shall make a mediation statement or make an arbitral award in accordance with the result of the settlement agreement. The mediation statement and an arbitral award shall have equal legal effect.	**Article 68** ~~51~~ The arbitral tribunal may carry out mediation prior to rendering an arbitral award. The arbitral tribunal shall carry out mediation if both parties voluntarily seek mediation. If the mediation is unsuccessful, an arbitral award shall be made in a timely manner. If the mediation leads to a settlement agreement, the arbitral tribunal shall make a mediation statement or make an arbitral award in accordance with the result of the settlement agreement. The mediation statement and an arbitral award shall have equal legal effect.

	Article 69 Where the parties have reached a settlement agreement prior to the constitution of the arbitral tribunal, they may request the constitution of the arbitral tribunal, and request the arbitral tribunal to prepare a mediation statement or an arbitral award in accordance with the terms of the settlement agreement; or they may withdraw the application forarbitration. Where the parties voluntarily appoint a mediator other than the member of the arbitral tribunal to conduct mediation after the constitution of the arbitral tribunal, the arbitral proceedings shall be suspended. Where the parties reach a settlement agreement, they may request for resumption of the arbitral proceedings, and request the original arbitral tribunal to prepare a mediation statement or an arbitral award in accordance with the terms of the settlement agreement; or they may withdraw the application for arbitration. Where a settlement agreement cannot be reached, the arbitral proceedings shall continue upon the request of a party.
	Article 70 Where the parties request an arbitration institution to provide confirmation of a settlement agreement in accordance with the arbitration agreement, the arbitration institution shall form an arbitral tribunal. Upon examination and verification pursuant to the law, the arbitral tribunal may render a mediation statement, or an arbitral award based on the contents of the settlement agreement.
Article 52 A mediation statement shall specify the claim and the result of the settlement agreed upon between the parties. The mediation statement shall be signed by the arbitrator(s), sealed by the arbitration commission, and then served upon both parties. The mediation statement shall become legally effective immediately after both parties have signed for receipt thereof.	**Article 71** ~~52~~ A mediation statement shall specify the claim and the result of the settlement agreed upon between the parties. The mediation statement shall be signed by the arbitrator(s), sealed by the arbitration ~~commission~~ institution, and then served upon both parties. The mediation statement shall become legally effective immediately after both parties have signed for receipt thereof.

If the mediation statement is repudiated by a party before signing for receipt thereof, the arbitral tribunal shall make an arbitral award in a timely manner.	If the mediation statement is repudiated by a party before signing for receipt thereof, the arbitral tribunal shall make an arbitral award in a timely manner.
Article 53 The arbitral award shall be made in accordance with the opinion of the majority of the arbitrators. The opinion of the minority of the arbitrators may be kept in the record. If the arbitral tribunal is unable to form a majority opinion, the arbitral award shall be made in accordance with the opinion of the presiding arbitrator.	**Article 72** ~~53~~ The arbitral award shall be made in accordance with the opinion of the majority of the arbitrators. The opinion of the minority of the arbitrators may be kept in the record. If the arbitral tribunal is unable to form a majority opinion, the arbitral award shall be made in accordance with the opinion of the presiding arbitrator.
Article 54 An arbitral award shall specify the claim, the facts of the disputes, the reasons for the arbitral award, the results of the arbitral award, the allocation of arbitration fees and the date of the arbitral award. If the parties agree that they do not wish the facts of the dispute and the reasons for the decision to be specified in the arbitral award, the same may be omitted. The arbitral award shall be signed by the arbitrator(s) and sealed by the arbitration commission. An arbitrator with dissenting opinions as to the arbitral award may choose to sign the arbitral award or not to sign it.	**Article 73** ~~54~~ An arbitral award shall specify the claim, the facts of the disputes, the reasons for the arbitral award, the results of the arbitral award, the seat of arbitration, the allocation of arbitration fees and the date of the arbitral award. If the parties agree that they do not wish the facts of the dispute and the reasons for the decision to be specified in the arbitral award, the same may be omitted. The arbitral award shall be signed by the arbitrator(s) and sealed by the arbitration ~~commission~~ institution. An arbitrator with dissenting opinions as to the arbitral award may choose to sign the arbitral award or not to sign it.
Article 55 When arbitrating disputes, if a part of the facts involved has already been determined, the arbitral tribunal may first make an award in respect of such part of the facts.	**Article 74** ~~55~~ When arbitrating disputes, if a part of the facts involved has already been determined, the arbitral tribunal may first make a partial award in respect of such part of the facts.

	When arbitrating disputes, if a disputed matter affects the progress of the arbitration proceedings or needs to be clarified before the final award is made, the arbitral tribunal may make an interim award in advance. The parties shall implement the partial award and interim award if there are matters for implementation. Where the party fails to implement the partial award, the other party may apply to the people's court to enforce the award in accordance with the law. The arbitral proceedings and the making of the final award shall not be affected by the performance of the partial award or interim award.
Article 56 If there are clerical errors or calculation errors in the arbitral award, or if the matters which have been decided by the arbitral tribunal are omitted in the arbitral award, the arbitral tribunal shall make due corrections or supplementation. The parties may, within thirty days from the date of receipt of the arbitral award, request the arbitral tribunal to make such corrections or supplementation.	**Article 75** ~~56~~ If there are clerical errors or calculation errors in the arbitral award, or if the matters which have been decided by the arbitral tribunal are omitted in the arbitral award, the arbitral tribunal shall make due corrections or supplementation. The parties may, within thirty days from the date of receipt of the arbitral award, request the arbitral tribunal to make such corrections or supplementation. Where the matters decided in the award and applied for enforcement are unclear, making it impossible to be enforced, the people's court shall notify the arbitral tribunal in writing and the arbitral tribunal may make a supplementation or explanation. The explanatory statement of the arbitral tribunal shall not form a part of the arbitral award.
Article 57 The arbitral award shall be legally effective as of the date on which it is rendered.	**Article 76** ~~57~~ The arbitral award shall be legally effective as of the date on which it is rendered.

Chapter V Application for Setting Aside an Arbitral Award	Chapter V Application for Setting Aside an Arbitral Award
Article 58 A party may apply for setting aside an arbitral award to the intermediate people's court at the place where the arbitration commission is located if the party can provide evidence to prove that the arbitral award involves one of the following circumstances: (1) there is no arbitration agreement; (2) the matters decided in the arbitral award fall outside the scope of the arbitration agreement or beyond the authority of the arbitration commission; (3) the composition of the arbitral tribunal or the arbitral procedure violates the statutory procedure; (4) the evidence on which the arbitral award is based is forged; (5) the opposing party has concealed evidence which is enough to affect the fairness of the arbitration; or (6) an arbitrator, in deciding the case, has solicited or accepted bribes, or has engaged in other misconducts that prevent him from rendering a just award.	**Article 77 ~~58~~** A party may apply for setting aside an arbitral award to the intermediate people's court at the ~~place where the arbitration commission is located~~ seat of arbitration, if the party can provide evidence to prove that the arbitral award involves one of the following circumstances: (1) there is no arbitration agreement or the arbitration agreement is null and void; (2) the matters decided in the arbitral award fall outside the scope of the arbitration agreement or ~~beyond the authority of the arbitration commission~~ beyond the scope of arbitrable matters as provided by this Law. (3) the respondent was not notified of the appointment of the arbitrator(s) or of the arbitration proceedings or was otherwise unable to present the case due to the reasons for which the respondent is not responsible; (4) the composition of the arbitral tribunal or the arbitral procedure violates the statutory procedure or the agreement of the parties, which seriously harms the rights of the parties; ~~(4) the evidence on which the arbitral award is based is forged;~~ (5) ~~the opposing party has concealed evidence which is enough to affect the fairness of the arbitration; or~~ the award is obtained as a result of fraudulent means such as malicious collusion and falsification of evidence; or (6) an arbitrator, in deciding the case, has solicited or accepted bribes, or has engaged in other misconducts that prevent him from rendering a just award.

The people's court shall render a ruling to set aside the arbitral award if a collegiate bench formed by the people's court reviews and verifies that the arbitral award involves one of the circumstances set forth in the preceding paragraph. If the people's court determines that the arbitral award is contrary to the social and public interest, it shall render a ruling to set aside the arbitral award.	The people's court shall render a ruling to set aside the arbitral award if a collegiate bench formed by the people's court reviews and verifies that the arbitral award involves one of the circumstances set forth in the preceding paragraph. Where the application for setting aside an arbitral award by the party involves only part of the matters awarded, the people's court may set aside part of the award. If the awarded matters are indivisible, the award shall be set aside. If the people's court determines that the arbitral award is contrary to the social and public interest, it shall render a ruling to set aside the arbitral award.
Article 59 An application for setting aside an arbitral award shall be submitted within six months from the date of receipt of the arbitral award.	**Article 78** ~~59~~ An application for setting aside an arbitral award shall be submitted within ~~six~~ three months from the date of receipt of the arbitral award.
Article 60 The people's court shall, within two months from the date of accepting an application for setting aside an arbitral award, render a ruling to either set aside the arbitral award or to deny the application.	**Article 79** ~~60~~ The people's court shall, within two months from the date of accepting an application for setting aside an arbitral award, render a ruling to either set aside the arbitral award or to deny the application.
Article 61 If the people's court considers that the case may be re-arbitrated by the arbitral tribunal after accepting an application for setting aside an arbitral award, it shall notify the arbitral tribunal that it shall re-arbitrate the case within a specified time period and shall render a ruling to suspend the setting-aside proceedings. If the arbitral tribunal refuses to re-arbitrate the case, the people's court shall render a ruling to resume the setting-aside proceedings.	**Article 80** ~~61~~ If the people's court considers that the case may be re-arbitrated by the arbitral tribunal after accepting an application for setting aside an arbitral award, it shall notify the arbitral tribunal that it shall re-arbitrate the case within a specified time period and shall render a ruling to suspend the setting-aside proceedings. ~~If the arbitral tribunal refuses to re-arbitrate the case, the people's court shall render a ruling to resume the setting-aside proceedings.~~

	Where an arbitral tribunal commences re-arbitration pursuant to the period stipulated by the people's court, the people's court shall render a ruling to terminate the setting-aside proceedings. Where the arbitral tribunal does not commence the re-arbitration, the people's court shall render a ruling to resume the setting-aside proceedings. Where a party applies for setting aside an arbitral award, and the people's court finds that any of the following circumstances exists, it may notify the arbitral tribunal to re-arbitrate: (1) the evidence on which the award is based proves to be false as a result of objective reasons: (2) the presence of circumstances stipulated in item (3) and item (4) of Article 77 of this Law, which may be remedied through re-arbitration. The people's court shall state the specific reasons for re-arbitration in the notice. The people's court may, depending on the circumstances of the case, specify the time limit for re-arbitration. The re-arbitration shall be conducted by the original arbitral tribunal. Where a party applies for setting aside an arbitral award due to irregularities in the composition of the arbitral tribunal or the conduct of the arbitrator(s), a new arbitral tribunal shall be formed to arbitrate the case.
	Article 81 Where a party disagrees with the ruling on setting aside an arbitral award, that party may apply to the people's court of the higher level for a reconsideration within ten days from the date of receipt of the ruling. The people's court shall render its ruling on the reconsideration within one month from the date of accepting the review application.

Chapter VI Enforcement	Chapter VI Enforcement
Article 62 The parties shall comply with the arbitral award. If a party fails to comply with the arbitral award, the other party may apply to the people's court for enforcement in accordance with the relevant provisions of the Civil Procedure Law. The people's court to which the application has been made shall enforce the arbitral award.	**Article 82** ~~62~~ The parties shall comply with the arbitral award. If a party fails to comply with the arbitral award, the other party may apply to the competent intermediate people's court for enforcement, ~~in accordance with the relevant provisions of the Civil Procedure Law. The people's court to which the application has been made shall enforce the arbitral award.~~ The people's court shall, upon review, render a ruling confirming the enforcement of the arbitral award, unless it finds that the enforcement is contrary to social and public interest, in which case the court shall reject the enforcement. The written ruling shall be served upon the parties and the arbitral institution. Where the application for enforcement of an arbitral award is rejected by the people's court, the parties may apply for arbitration based on a new arbitration agreement or commence an action in the people's court.
Article 63 If the party against whom the enforcement is sought presents evidence which proves that the arbitral award involves one of the circumstances set forth in the second paragraph of Article 213 of the Civil Procedure Law(as the Civil Procedure Law was revised in 2017, Article 213 mentioned here refers to Article 237 of the current Civil Procedure Law), after review and verification by a collegiate bench formed by the people's court, a ruling shall be rendered to refuse the enforcement of the arbitral award.	~~**Article 63** If the party against whom the enforcement is sought presents evidence which proves that the arbitral award involves one of the circumstances set forth in the second paragraph of Article 213 of the Civil Procedure Law(as the Civil Procedure Law was revised in 2017, Article 213 mentioned here refers to Article 237 of the current Civil Procedure Law), after review and verification by a collegiate bench formed by the people's court, a ruling shall be rendered to refuse the enforcement of the arbitral award.~~
Article 64 If one party applies for enforcement of the arbitral award where the other party applies for setting aside the arbitral award, the people's court shall render a ruling to suspend the enforcement proceedings.	**Article 83** ~~64~~ If one party applies for enforcement of the arbitral award where the other party applies for setting aside the arbitral award, the people's court shall render a ruling to suspend the enforcement proceedings.

If the people's court later renders a ruling to set aside the arbitral award, it shall render a ruling to terminate the enforcement proceedings. If the application for setting aside the arbitral award is dismissed, the people's court shall render a ruling to resume the enforcement proceedings.	If the people's court later renders a ruling to set aside the arbitral award, it shall render a ruling to terminate the enforcement proceedings. If the application for setting aside the arbitral award is denied, the people's court shall render a ruling to resume the enforcement proceedings.
	Article 84 Where, in the course of enforcing an arbitral award, a person who is not a party to the arbitration raises a written objection to the subject matter of the enforcement, the people's court shall make a review within fifteen days from the date of receipt of the written objection. If the objection is reasonable, the people's court shall render a ruling to terminate the enforcement of the subject matter; if the objection is untenable, the people's court shall dismiss it. A person who is not a party to the arbitration shall file an application within thirty days from the date on which he knows or should have known that the people's court has taken enforcement measures against the subject matter and before the completion of the enforcement of the subject matter that affects that third-person's legal interests.
	Article 85 Where a person who is not a party to the arbitration has evidence to prove that a portion or the entirety of the award has been made in error, which harms his civil interests, he may institute an action against the party in accordance with the law. If a person who is not a party to the arbitration institutes a lawsuit and has provided guarantee, the enforcement of the arbitral award shall be suspended. The people's court shall make a ruling to resume or terminate the enforcement of the arbitral award in accordance with the outcome of the lawsuit.

	Article 86 ~~72~~ If a party applies for enforcement of a legally effective arbitral award, ~~rendered by a foreign-related arbitration commission~~ and if the party against whom the enforcement is sought, or such party's property, is not within the territory of the People's Republic of China, the party shall directly apply to a competent foreign court for the recognition and enforcement.
	Article 87 An application to recognize and enforce an arbitral award rendered outside the territory of the People's Republic of China shall be made by the party to the intermediate people's court at the place of the domicile of the party against whom the enforcement is sought or the location of the property. Where the party against whom the enforcement is sought, or that party's property is not in the territory of the People's Republic of China, but the case is related to a case pending before the people's court, the party may apply for enforcement to the people's court which hears the related case. Where the party against whom the enforcement is sought or that party's property is not in the territory of the People's Republic of China, and the case is related to an arbitration case in the territory of China, the party may apply for enforcement to the intermediate people's court at the place where the arbitration institution is located or at the seat of arbitration. The people's court shall handle matters in accordance with the applicable international treaties which the People's Republic of China has concluded or acceded to or based on the principle of reciprocity.

Chapter VII Special Provisions for Arbitration Involving Foreign-related Elements	Chapter VII Special Provisions for Arbitration Involving Foreign-related Elements
Article 65 The provisions of this chapter shall apply to the arbitration of disputes arising from foreign-related economy and trade, transportation and maritime activities. For matters that are not covered in this chapter, other relevant provisions of this Law shall apply.	**Article 88** ~~**65** The provisions of this chapter shall apply to the arbitration of disputes arising from foreign-related economy and trade, transportation and maritime activities.~~ The provisions of this Chapter shall apply to arbitration of disputes involving foreign-related elements. For matters that are not covered in this Chapter, other relevant provisions of this Law shall apply.
Article 66 A foreign-related arbitration commission may be organized and established by the China Chamber of International Commerce.	~~**Article 66** A foreign-related arbitration commission may be organized and established by the China Chamber of International Commerce.~~
A foreign-related arbitration commission shall be composed of one chairman, a certain number of vice chairmen and members. The chairman, vice-chairmen and members of a foreign-related arbitration commission may be appointed by the China Chamber of International Commerce.	~~A foreign-related arbitration commission shall be composed of one chairman, a certain number of vice chairmen and members.~~ ~~The chairman, vice-chairmen and members of a foreign-related arbitration commission may be appointed by the China Chamber of International Commerce.~~
Article 67 A foreign-related arbitration commission may appoint arbitrators from among foreigners with special knowledge in the fields of law, economy and trade, science and technology, et cetera.	~~**Article 67** A foreign-related arbitration commission may appoint arbitrators from among foreigners with special knowledge in the fields of law, economy and trade, science and technology, et cetera.~~
Article 68 If the parties to a foreign-related arbitration apply for evidence preservation, the foreign-related arbitration commission shall forward the application to the intermediate people's court at the place where the evidence is located.	~~**Article 68** If the parties to a foreign-related arbitration apply for evidence preservation, the foreign-related arbitration commission shall forward the application to the intermediate people's court at the place where the evidence is located.~~
Article 69 The arbitral tribunal in a foreign-related arbitration may make written record of the hearings or prepare a summary of the written record. The written summary of key points may be signed or sealed by the parties and other participants in the arbitration.	~~**Article 69** The arbitral tribunal in a foreign-related arbitration may make written record of the hearings or prepare a summary of the written record. The written summary of key points may be signed or sealed by the parties and other participants in the arbitration.~~

Article 70 If a party provides evidence which proves that a foreign-related arbitral award involves one of the circumstances set forth in the first paragraph of Article 258 of the Civil Procedure Law(as the Civil Procedure Law was revised in 2017, the first paragraph of Article 258 mentioned here refers to the first paragraph of Article 274 of the current Civil Procedure Law), after review and verification by a collegiate bench formed by the people's court, a ruling to set aside the arbitral award shall be rendered.	~~**Article 70** If a party provides evidence which proves that a foreign-related arbitral award involves one of the circumstances set forth in the first paragraph of Article 258 of the Civil Procedure Law(as the Civil Procedure Law was revised in 2017, the first paragraph of Article 258 mentioned here refers to the first paragraph of Article 274 of the current Civil Procedure Law), after review and verification by a collegiate bench formed by the people's court, a ruling to set aside the arbitral award shall be rendered.~~
Article 71 If the party against whom the enforcement is sought presents evidence which proves that the foreign-related arbitral award involves one of the circumstances set forth in the first paragraph of Article 258 of the Civil Procedure Law (as the Civil Procedure Law was revised in 2017, the first paragraph of Article 258 mentioned here refers to the first paragraph of Article 274 of the current Civil Procedure Law), after review and verification by a collegiate bench formed by the people's court, a ruling to refuse the enforcement shall be rendered.	~~**Article 71** If the party against whom the enforcement is sought presents evidence which proves that the foreign-related arbitral award involves one of the circumstances set forth in the first paragraph of Article 258 of the Civil Procedure Law (as the Civil Procedure Law was revised in 2017, the first paragraph of Article 258 mentioned here refers to the first paragraph of Article 274 of the current Civil Procedure Law), after review and verification by a collegiate bench formed by the people's court, a ruling to refuse the enforcement shall be rendered.~~
Article 72 If a party applies for enforcement of a legally effective arbitral award rendered by a foreign-related arbitration commission and if the party against whom the enforcement is sought, or such party's property, is not within the territory of the People's Republic of China, the party shall directly apply to a competent foreign court for the recognition and enforcement.	
Article 73 Foreign-related arbitration rules may be formulated by the China Chamber of International Commerce in accordance with this Law and the relevant provisions of the Civil Procedure Law.	~~**Article 73** Foreign-related arbitration rules may be formulated by the China Chamber of International Commerce in accordance with this Law and the relevant provisions of the Civil Procedure Law.~~

	Article 89 Chinese or foreign professionals with expertise in foreign-related law, arbitration, economics and trade, science and technology may serve as arbitrators in foreign-related arbitration.
	Article 90 The validity of foreign-related arbitration agreement shall be determined in accordance with the applicable law agreed upon by the parties. If the parties have not agreed on the applicable law governing the foreign-related arbitration agreement, the law of the seat of arbitration shall apply. If there is no agreement on the applicable law or the seat of arbitration or if the agreement is unclear, the people's court may apply the law of the People's Republic of China to determine the validity of the arbitration agreement.
	Article 91 The parties to a commercial dispute involving foreign-related elements may agree on arbitration by an arbitral institution or directly agree on arbitration by an *ad hoc* arbitral tribunal. Arbitral proceedings before an *ad hoc* arbitral tribunal shall commence on the date on which the application for arbitration has been received by the respondent. Where the parties have not agreed on the seat of arbitration or their agreement is unclear, the arbitral tribunal shall determine the seat of arbitration in accordance with the circumstances of the case.
	Article 92 Where a case is arbitrated by an *ad hoc* arbitral tribunal, if the arbitral tribunal cannot be constituted in a timely manner or it is necessary to decide on the issue of a challenge, the parties may agree to entrust an arbitral institution to assist in constituting the arbitral tribunal and to decide on the issue of the challenge. If the parties are unable to reach the entrustment agreement, the intermediate people's court at the seat of

	arbitration, or at the place where the parties locate or at the place where there is a close connection with the dispute shall designate an arbitration institution to render the assistance. When designating the arbitral institution and determining the choice of arbitrators, considerations shall be given to the conditions of the arbitrators agreed upon by the parties, as well as the nationality of arbitrators, and the seat of arbitration and other factors that ensure independence, impartiality and efficiency of the arbitration proceeding. The ruling on the designation made by the people's court shall be final.
	Article 93 Where a case is arbitrated by an *ad hoc* arbitral tribunal, the arbitral award shall take effect upon signature of the arbitrators. The arbitrator who disagrees with arbitral award may decide not to sign on the arbitral award, but shall submit his dissenting opinion in writing and serve it upon the parties. The dissenting opinion shall not form a part of the arbitral award. The arbitral tribunal shall deliver the arbitral award to the parties, and submit the record of service and the original arbitral award to the intermediate people's court at the seat of arbitration for record filling within thirty days of the date of service.
Chapter VIII Supplementary Provisions	**Chapter VIII Supplementary Provisions**
Article 74 If provisions of law have stipulated a time period for arbitration, such provisions shall apply. If provisions of law have not stipulated a time period for arbitration, the provisions on statute of limitation shall apply.	**Article 94** ~~74~~ If provisions of law have stipulated a time period for arbitration, such provisions shall apply. If provisions of law have not stipulated a time period for arbitration, the provisions on statute of limitation shall apply.

Article 75 Prior to the formulation of arbitration rules by the China Arbitration Association, arbitration commissions may formulate provisional arbitration rules in accordance with this Law and the relevant provisions of the Civil Procedure Law.	~~**Article 75** Prior to the formulation of arbitration rules by the China Arbitration Association, arbitration commissions may formulate provisional arbitration rules in accordance with this Law and the relevant provisions of the Civil Procedure Law.~~ **Article 95** Arbitration rules shall be formulated in accordance with this Law.
Article 76 The parties shall pay arbitration fees pursuant to the relevant regulation. The regulation on arbitration fees shall be submitted to the price regulation authorities for review and approval.	**Article 96** ~~76~~ The parties shall pay arbitration fees pursuant to the relevant regulation. The regulation on arbitration fees shall ~~be submitted to the price regulation authorities for review and approval~~ be jointly formulated by the price supervision department under the State Council and the judicial administrative department of the State Council.
Article 77 The provisions on arbitration of labor disputes, and arbitration of rural contracting disputes arising within the agricultural collective economic organizations, shall be stipulated in other documents.	**Article 97** ~~77~~ The provisions on arbitration of labor disputes, and arbitration of rural contracting disputes arising within the agricultural collective economic organizations, shall be stipulated in other documents.
Article 78 If a provision on arbitration promulgated before the implementation of this Law conflicts with a provision of this Law, the provision of this Law shall prevail.	**Article 98** ~~78~~ If a provision on arbitration promulgated before the implementation of this Law conflicts with a provision of this Law, the provision of this Law shall prevail.
Article 79 Arbitration institutions established prior to the implementation of this Law in the municipalities directly under the Central Government, in the municipalities where the people's governments of provinces or autonomous regions are located, and in other cities with subordinate districts shall be reorganized in accordance with this Law. Those that have not been reorganized shall be terminated upon the end of one year from the date of the implementation of this Law.	~~**Article 79** Arbitration institutions established prior to the implementation of this Law in the municipalities directly under the Central Government, in the municipalities where the people's governments of provinces or autonomous regions are located, and in other cities with subordinate districts shall be reorganized in accordance with this Law. Those that have not been reorganized shall be terminated upon the end of one year from the date of the implementation of this Law.~~

Other arbitration institutions which were established prior to the implementation of this Law and do not comply with the provisions of this Law shall be terminated on the date of the implementation of this Law.	~~Other arbitration institutions which were established prior to the implementation of this Law and do not comply with the provisions of this Law shall be terminated on the date of the implementation of this Law.~~
Article 80 This Law shall come into effect as of 1 September 1995.	**Article 99 ~~80~~** This Law shall come into effect as of ~~September 1~~ [date/month/year] ~~1995~~.

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