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The Development of Rule of Law in China under the Xi Jinping Administration (2012-14)

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**Background Briefing: The Development of Rule of Law in China under the
Xi Jinping Administration (2012-14)**

Executive Summary

The ascent to power of Xi Jinping at the Eighteenth National Congress of the Communist Party of China (CPC) in 2012 brought about marked changes in the development of rule of law in China. Whilst Xi's political agenda focuses on maintaining the Party's monopoly of political power in China, he has pledged to fight official corruption, enhance the efficiency of the government, and promote the so-called 'China Dream' that promises "national rejuvenation" and an elevated role for China in the international arena. In this context, Xi preaches the instrumental value of law by repeatedly emphasising that 'no organization or individual should be put above the constitution and the law'.¹ The realignment in the Party's political and legal agenda indicates a departure from the hardline insistence on 'Stability Maintenance' (*weiwen*) under the previous regime of Zhou Yongkang and a return to an emphasis on building the rule of law.²

In considering the development in rule of law in China in the past two years under the Xi Administration, it is necessary to bear in mind the fundamental conflict between the totalitarian nature of the one-party rule in the Chinese political system and the essential requirement of the internationally recognised notions of rule of law that impose limits on the power of the Party-State in favour of protection of the rights of citizens and is administered by independent judicial institutions. There is little doubt that, as a result of three decades of legal reform, law has gained more importance in Chinese society. China's emergent legal institutions have worked to define and protect expectations arising out of social and economic transactions, to settle an increasing number of disputes between individuals and between individuals and the state, and to generate new conceptions of legal rights.³ But confronted by nationwide petitions and protests of a growing number and scale in the first decade of the 21st century,⁴ the CCP faced a crisis of legitimacy and became increasingly concerned about social stability and the survival of the regime itself.⁵ The contradictory developments in the rule of law during the first two years of the Xi Administration reaffirms the phenomenon.

General Introduction

The development of 'socialist rule of law' has been part of the rhetoric of the Party for many years. Whilst the official discourse on rule of law is often replete with bland propaganda and gross contradictions with the reality of law and justice in the country, the past two years under the Xi Administration witnessed significant movements in the rhetoric, policy and practice on rule of law in China. The forthcoming Fourth Plenum of the Eighteenth Party Central Committee will focus on rule of law issues and may foreshadow significant developments in legal reforms in the years to come.

It should be noted that, whilst the current round of rule of law reforms has attracted wide attention, the development of a modern legal system has been part of the Party's overall agenda of reform from the very beginning. In the wake of the calamitous Cultural Revolution (1966-76), the Third Plenum of the Eleventh Party Central Committee in 1978, commonly regarded as the starting point of Deng Xiaoping's reform programme, underscored the importance of safeguarding 'people's democracy' with a 'socialist legal system' and the 'stability, continuity and authority' of the legal system.⁶ The 14th CPC National Congress in 1992 proclaimed the establishment of 'a socialist market economy' as the nation's strategic goal and emphasised the essential role of a legal system in the market economy.⁷ The Fourteenth Party Congress in 1997 put forward the policy of 'governing the country according to law and building a socialist country ruled by law', a catchphrase described as 'a basic strategy for state governance' and incorporated into the Chinese Constitution in 1999.⁸ By late 2011, with the passage of about 240 statutes, over 700 administrative regulations and over 8,600 local regulations in all areas of law, the government declared the completion of 'a socialist legal system with Chinese characteristics'.⁹

If the legal development in China over the past three decades was driven initially by the determination to counter the excesses of the Maoist era and develop the Chinese economy on a market-oriented model, the deepening reform of the legal system increasingly requires a commitment to the internationally recognised notions of rule of law. Legal reforms in recent years have witnessed growing tensions between the fundamental requirement of rule of law for the limitation on the power of the Party and the state and the totalitarian nature of the current political regime in China. Under the grip of Zhou Yongkang, the party's top leader on law and security during 2007-12, the rule of law movement was largely stalled in the years before the inauguration of the Xi Administration in 2012 (as described in the last Report). An important speech by Xi Jinping in

December 2012 shortly after he took office attracted wide attention and reignited hope that the CPC under the new leadership would embark on significant reforms on rule of law.

In the speech on 4 December 2012 to commemorate the 30th anniversary of the promulgation of the Chinese Constitution,¹⁰ Xi declared that ‘governing the country according to law is, first and foremost, governing the country according to the Constitution’. The emphasis on the central role of the Constitution in state governance was widely regarded as a strategic shift in the Party’s approach to the development of rule of law. Jiang Bixin, vice-president of the Supreme People’s Court (SPC), wrote in the People’s Daily on 12 December 2012 that the new slogan of ‘governing the country according to the Constitution’ ‘opens a new era of rule of law’.¹¹ However, Xi’s speech was not immediately translated into concrete policies during the next two years.¹² Instead, the Party apparatus continued to stick to the old, repressive rhetoric and policies in early 2013 with the launch of a new wave of ideological purge spearheaded by the secret No. 9 Document of the Party Central Committee.¹³ The document denounced ‘western constitutionalism and democracy’, universal values, civil society and press freedom as amongst the seven major dangers undermining the rule of the Party. For much of 2013, the Party propaganda machinery released a series of essays and commentaries attacking the liberal notions of constitutionalism and rule of law.¹⁴

The trend against constitutionalism and rule of law was bucked with the adoption at the Third Plenum of the Eighteenth Party Central Committee of the far-reaching Decision on Some Major Issues Concerning Comprehensively Deepening the Reform (‘the Third Plenum Decision’) on socio-economic reforms in China through 2020.¹⁵ The Decision outlined in broad terms various policies and an assortment of technical measures on legal and governmental reforms and vowed to ‘further improve the supervision mechanism and procedure for the implementation of the Constitution and raise to a new level the comprehensive implementation of the Constitution’.¹⁶ In September 2014, Xi Jinping gave a speech at a meeting commemorating the establishment of the National People’s Congress and reiterated that ‘governing the country according to law is, first and foremost, governing the country according to the Constitution’.¹⁷

The forthcoming Fourth Plenum of the Eighteenth Party Central Committee in October 2014 will focus on rule of law issues and adopt major policies on judicial and legal reforms. Following upon the Third Plenum Decision, the Fourth Plenum is likely to introduce specific measures on the mechanism for ensuring the implementation of the Constitution and give new interpretations on the general policy of governing the country according to law.¹⁸

In sum, the general trajectory in the development of rule of law under the Xi Administration in the past two years has gone through ups and downs as a result of intense strife and debates within the Party leadership. Whilst Xi's repeated emphasis on upholding the authority of the current Constitution may indicate a strong preference for maintaining the *status quo* of the political and constitutional order of China, a rigorous implementation of the Constitution has the strong potential of leading to the implementation of fundamental rights and freedoms recognised in the Constitution. The Fourth Plenum is likely to throw light on the direction of political and legal changes to be carried out under the Xi Administration.

During the past two years, four specific areas of legal developments are particularly significant for the building of rule of law in China – judicial reform, anti-corruption campaign, rights protection and commercial rule of law.

Judicial Reform

The rapid development in the economy and society and the progressive increase in the rights awareness of the public since the Party embarked on reform and opening up require fundamental change in the judicial process, institutions and operation. The government makes clear that the purpose of judicial reform in the past ten years focused on the independent and fair exercise of judicial powers by the courts and procuratorates in a 'fair, efficient and authoritative socialist judicial system' so as to protect rights of the citizens and maintain social stability.¹⁹ Large-scale judicial reforms started in the late 1990s. Between 1999 and 2013, three five-year reform plans were implemented which involved the organisational structure, jurisdictional division and internal management of the judiciary.²⁰ But there was little substantive progress in court reform and judicial independence during the reign of Zhou Yongkang over the legal institutions in 2008-12.²¹

The Third Plenum Decision outlined new initiatives for the judicial reform. Following up on the Decision, the Central Leading Group on Comprehensively Deepening the Reform headed by Xi Jinping adopted specific programmes including the Framework Opinion on Certain Questions Concerning Pilot Judicial Reforms, which set out the roadmap and timetable for the judicial reform. The new round of reforms focuses on the following four areas: (a) judicial personnel management; (b) judicial accountability system; (c) occupational safeguards for judicial personnel; and (d) unified management of human and financial resources in courts and procuratorates at sub-provincial levels.

The Party leadership resolved to initiate the reform in Shanghai, Guangdong, Jilin, Hubei, Hainan and Qinghai on a pilot basis.²² In July 2014, the Supreme People's Court announced the fourth Five-Year Reform Plan of the People's Courts (2014-18) that further set out the reform measures for the courts.²³

Although the full text of the official documents on judicial reforms are yet to be published, the most significant measures of reform may be summarised as follows:

(a) Personnel management

The Leading Group plans to reform the personnel system for judges and prosecutors, which currently is identical with the civil service personnel system. A selection committee for judges and prosecutors will be created at the provincial level. Judges and prosecutors are to be selected on professional standards, in addition to political and anti-corruption examinations by the Party organisational and disciplinary departments. Court personnel will be classified into judges, judicial support staff and judicial administrative staff. Judges will be subject to a quota system, a system of periodic promotions and special retirement scheme. These measures are intended to ensure that judges are professionally competent and focus their time and energy on adjudicative, as opposed to administrative work. A direct consequence of these measures is that a large number of current judges who do not engage in adjudicative work will lose judgeships, and how the shakeup will play out remains to be seen. Also, whether the selection committee will be under the control of the provincial court / procuratorate or the political and legal affairs committee of the Party is also significant as it will impact on the function and operation of the new system.²⁴

(b) Unified control of human and financial resources of sub-provincial courts and procuratorates

The long-standing system for the control of personnel, finance and other resources in courts and procuratorates is that the powers of control are vested in the local government of the corresponding administrative level, which has resulted in rampant interference in the work of the courts and procuratorates by the local government and the pervasive regional protectionism in judicial decisions, particularly in cross-regional cases and politically sensitive or socially destabilising disputes over land, labour and environmental issues.²⁵ The reform measures, to be first implemented on a pilot basis in six provinces, will consolidate, "unify" the power over personnel matters and allocation of financial resources of courts and procuratorates at sub-provincial levels and have it vested in the provincial-level Party and government authorities. Whilst a far cry from a fully independent judicial

and procuratorial system, these measures represent incremental but significant steps in the direction of gradual strengthening of judicial independence.

(c) Judicial accountability

A judicial accountability system is considered crucial for achieving fairness in judicial activities. The Third Plenum Decision proclaimed, 'we will reform the judicial committee system, improve the accountability system for handling cases by the presiding judge and the collegiate bench, so that these who hear the cases shall adjudicate and those who adjudicate shall be accountable'.²⁶ The SPC's Fourth Five-Year Reform Plan further provides for a performance review system for judges and a disciplinary committee for judicial misconduct.

(d) Cross-regional jurisdiction

The Third Plenum Decision envisaged 'exploring ways to establish a judicial jurisdiction system that is appropriately separated from the administrative divisions to ensure that the state laws are enforced properly and uniformly'. The SPC's Fourth Five-Year Plan sets out ways of jurisdictional oversight by higher courts over administrative cases and cross-regional civil / commercial and environmental cases, including the dispatch of 'circuit tribunals' by higher courts to deal with 'important, difficult and complex' cases in the lower courts. Again, these measures are designed to contain local governmental interference and regional protectionism. The efficacy of these measures remains to be seen as there are clearly limits on the capacity in the higher courts to address problems that belong to the lower courts.

In sum, judicial reform appears to be the centrepiece of the rule of law initiatives to be further hammered out at the Fourth Plenum. Under the overriding principle of the Party leadership over the courts and procuratorates, the various reform measures are designed to increase judicial independence incrementally and develop a more rational and efficient administration of the justice system so that the judicial system will deliver results more compliant with the requirement of rule of law and protection of rights. The details of the reform measures remain to be uncovered.

Anti-Corruption Campaign

The large-scale populist drive to root out rampant official corruptions has been Xi Jinping's signature campaign since his rise to power in 2012. Top leaders see the Party's legitimacy as being contingent on its ability to control corruption. In a speech to the Central Committee in November 2012, Xi said,

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“facts have shown that if corruption becomes increasingly severe, it will ultimately lead to the ruin of the Party and the country!” and ‘corruption was among the most important causes for social contradictions’ that led to social unrest and the collapse of political power in some countries.²⁷

Since the Eighteenth Party Congress in November 2012, over 50 cadres at or above the ministerial or provincial level have been charged with corruption, including two members and five alternate members of the Party Central Committee. Amongst the most high-profile cases, Bo Xilai, a former member of the Party Politburo and Chongqing’s Party Secretary was charged with bribery, embezzlement, and abuse of power and put on trial in August 2013. Bo was convicted a month later and sentenced to life imprisonment. In June 2014, Xu Caihou, another former Politburo member and former vice-chairman of the Central Military Commission, was charged with accepting bribery and expelled from the Party. In July 2014, the anti-corruption campaign reached a climax when Zhou Yongkang, the law and security tsar of the Party during 2007-12, became the first member of the Party’s Politburo Standing Committee to be investigated for corruption, officially called ‘serious disciplinary violations.’

Xi’s anti-corruption campaign has important implications for the rule of law. Whilst a clean government and legal system is indispensable for rule of law, the anti-corruption campaign has often been conducted in disregard of established laws and procedures safeguarding individual rights. Bo Xilai was reportedly denied his choice of counsel and was held by Party disciplinary officials for months before he was formally indicted.²⁸ In many cases, Party disciplinary officials detain senior Party or government officials (including Bo and presumably Zhou Yongkang and Xu Caihou) by means of *shuanggui*, a form of custody authorised under CPC’s disciplinary rules.²⁹ As a compulsory measure depriving a citizen of personal liberty, *shuanggui* has no basis in law and is presumably inconsistent with the provisions of the Legislation Law that require all compulsory measures that deprive personal rights of citizens to be prescribed by statutory law.³⁰ Without legal safeguards in the criminal justice process such as the right to counsel, application for bail and family visitation, *shuanggui* has been widely used by the Party anti-corruption body as an effective tool of investigation, and there has been little complaint in China about its extensive use and extra-legal character. The anti-corruption campaign has been waged on the basis that law and legal process are merely instruments of governance that is readily dispensable where expedient and necessary.

Rights Protection

Xi Jinping's renewed emphasis on the supremacy of the Constitution holds out hopes for enhanced respect for and implementation of fundamental human rights and freedoms enshrined in the Constitution. In this regard, the past two years under the Xi Administration again witnessed conflicting pictures and mixed messages. On the positive side, one of the most remarkable measures towards better rights protection under the Third Plenum Decision was the abolition of the re-education through the labour (RTL) system. The Decision also reiterated the prohibition on torture and called for strict application of the exclusionary rules and gradual reduction of capital crimes.³¹ The SPC's Fourth Five-Year Plan on judicial reform has reportedly incorporated many of these policy objectives.³²

Introduced in the late 1950s, RTL has been an extra-judicial system of administrative punishment that enables the police to incarcerate individuals guilty of petty offences at RTL centres for 1-3 years. There were reportedly 350 RTL detention centres nationwide with over 100,000 inmates that included petitioners seeking redress for official abuses, Falun Gong practitioners, drug users, sex workers and other minor offenders. Reports of harsh and abusive treatments of inmates have been widespread and RTL system has been widely condemned as violating not only international human rights standards, but also China's own Constitution and laws.³³ Whilst the abolition of RTL system signalled a significant step forward that is long overdue, it remains to be seen whether a corrective system to be introduced in its place would not repeat the ills of RTL and comply with international standards.

On the negative side, there continued to be high-profile cases of crackdown on democracy and rights activists in China for their exercise of freedom of speech, association and assembly. In 2013, Chinese authorities commenced a crackdown on anti-corruption and transparency advocates, many linked to the 'New Citizens' Movement,' a loose network of advocates for legal and political reforms, human rights, and social justice. Xu Zhiyong, one of the leading legal rights advocates, was sentenced to four years in prison in January 2014 for 'gathering a crowd to disturb social order' and as a 'ringleader' who 'organized, planned, and incited' events that 'disturbed order in a public place', whereas the events in question were actually those that publicly promoted equality of education and the transparency of governmental officials' finances.³⁴

In the most recent case that outraged the international community, a Xinjiang court sentenced Ilham Tohti, a prominent Uighur scholar, to life in prison on charges of separatism in September 2014. Mr. Tohti is widely seen as a passionate but moderate voice pushing for the rights of his fellow Uighurs in Xinjiang. This unusually harsh sentence drew strong condemnations from foreign governments and human rights groups.³⁵

Commercial Law

The development of commercial law and economic regulation in China has been driven by the market-oriented economic reform in the past thirty years. The Third Plenum Decision pledged to 'deepen economic system reform by centring on the decisive role of the market in allocating resources',³⁶ which promised to push further for the reform of China's legal and regulatory system for economic and financial activities. In the past two years, the Chinese legislature and government introduced reforms in significant commercial law areas including banking and finance, environmental protection, intellectual property and consumer safety. However, the underdevelopment of rule of law in China and the state-led growth model of the Chinese economy have every so often led to allegations of official corruptions and abuse of authority to favour special interests. Two areas of development have attracted international attention in the past two years.

First, allegations of cyber intrusion and hacking of foreign corporations by the Chinese military have become an area of grave concern. In a February 2013 report, a US information security company Mandiant alleged that, since 2006, an organization within the People's Liberation Army identified as "Unit 61398" stole 'large amount of data from foreign corporations in a wide range of industries'.³⁷ The tension reached an unprecedented height when, on 19 May 2014, the US Department of Justice announced criminal indictment against five Chinese army officers affiliated with Unit 61398 for computer hacking, economic espionage and other offenses, alleging that the defendants conspired to 'steal information from those entities that would be useful to their competitors in China, including state-owned enterprises'.³⁸ The Chinese government steadfastly denied the allegations.

Second, many foreign governments and businesses expressed growing concerns in the past two years over the enforcement of the 2008 Anti-Monopoly Law by the Chinese government. The responsibility for the enforcement of the Anti-Monopoly Law is distributed amongst three government agencies and the recent rounds of enforcement activities in 2014 have targeted over 30 foreign companies, including tech giants such as Microsoft and Qualcomm and leading American,

German and Japanese auto makers. Foreign businesses under investigation have complained that the Chinese enforcement measures are aggressive, opaque, uneven and motivated by protectionism.³⁹ In a report issued in September 2014, the US Chamber of Commerce claimed that anti-monopoly enforcement 'often appear designed to advance industrial policy and boost national champions'.⁴⁰ Without meaningful legal recourse in Chinese courts, foreign business that rely on the Chinese market often have few options but to submit to fines and penalties.

Recommendations

The European Union and the international community in general can contribute to the positive development of the rule of law in China in a variety of ways. Resources should be allocated to the study of Chinese legal reform, dialogue with the Chinese government on issue of rule of law and constitutionalism, the training of judges, prosecutors and lawyers, and lobbying for specific legal reform initiatives. Efforts should be made to push forward the reform measures already identified in the Chinese policy discourse. For the next five years, the European Union should focus on the following areas.⁴¹

- The creation of an independent body for the implementation of the Constitution, such as a constitutional court
- Ratification of the ICCPR
- Pushing for progressive measures of judicial reform, including limiting the judicial committee to a strictly advisory role, limiting the Party political and legal affairs committee to a strictly policy-making role, placing judicial appointment under the control of the court, and central guaranteeing of resource provision for the courts
- Legal reforms that empower the court to review and invalidate laws and regulations that contradict higher-level legislation
- Legal reforms that promote class lawsuits by changing standing rules, creating new financing mechanisms and allowing lawyers to charge contingency fees
- Reform of the legal profession by making it an autonomous and self-governing body and eliminating the supervisory role of the Ministry of Justice

¹ See Congressional-Executive Commission on China, *Annual Report 2013*, available at <http://www.cecc.gov/publications/annual-reports/2013-annual-report>, pp. 137-8.

² See *China Story Yearbook 2013*, available at <http://www.thechinastory.org/yearbooks/yearbook-2013/>, p.206.

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- ³ See Albert H.Y. Chen, "'China's Long March Toward Rule of Law' or 'China's Turn Against Law?'" available at <http://ssrn.com/abstract=2471505>, p.13.
- ⁴ Between 2007 and 2012, collective public protests or "mass incidents" rose from around 80,000 to well over 100,000 annually. See China Story Yearbook, *supra*, note 2, p.206.
- ⁵ *Id.*, p.16.
- ⁶ Information Office of the State Council, *White Paper on the Socialist System of Laws with Chinese Characteristics*, October 2011, available at http://www.gov.cn/english/2011-10/27/content_1979838.htm, pt. I.
- ⁷ *Id.*
- ⁸ *Id.* See Constitution, art. 5.
- ⁹ White Paper, *supra*, note 6, pt. I.
- ¹⁰ "Xi Jinping's Speech at the Meeting in Beijing to Commemorate the 30th Anniversary of the Promulgation and Implementation of the Current Constitution", 4 December 2012, available at http://news.xinhuanet.com/politics/2012-12/04/c_113907206.htm.
- ¹¹ Jiang Bixin, "Governing the Country According to the Constitution Opens a New Era in Rule of Law", *People's Daily*, 12 December 2012, available at <http://cpc.people.com.cn/n/2012/1212/c78779-19869633.html>.
- ¹² See Qian Gang, "missing Speech", China Media Project, 4 September 2014, available at <http://cmp.hku.hk/2014/09/04/35905/>.
- ¹³ For a summary of the No. 9 Document, see <http://www.laqingdan.net/?p=2993>.
- ¹⁴ See China Story Yearbook, *supra*, note 2, pp. 226-7.
- ¹⁵ "Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform", 12 November 2013, available at http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm.
- ¹⁶ See Randall Peerenboom, "The Battle Over Legal Reforms in China: Has There Been a Turn Against Law?", available at <http://ssrn.com/abstract=2479716>, pp. 9-13.
- ¹⁷ "Xi Jinping's Speech at the Meeting Commemorating the 60th Anniversary of the Establishment of the National People's Congress", 5 September 2014, available at <http://cpc.people.com.cn/n/2014/0906/c64093-25615123.html>.
- ¹⁸ See "Refashioning the Supreme Authority of the Constitution", *Outlook Weekly*, 22 September 2014, available at <http://www.lwgcw.com/NewsShow.aspx?newsId=36600>.
- ¹⁹ Information Office of the State Council, *White Paper on Judicial Reform in China*, October 2012, available at http://english.gov.cn/white_paper/2014/08/23/content_281474983043170.htm, pt. I.
- ²⁰ *Id.*
- ²¹ See CECC Annual Report, *supra*, note 1, pp. 157-8.
- ²² "Interview with the Responsible Person of the Office of the Central Leading Group on Judicial Reform", 15 June 2014, available at http://news.china.com.cn/2014-06/15/content_32671022.htm.
- ²³ For a summary of the fourth Five-Year Plan, see "Supreme Court Announces Core Content of 4th Five-Year Reform Plan", Xinhua, 9 July 2014, available at <http://news.sina.com.cn/c/2014-07-09/123230493241.shtml>.
- ²⁴ See "Academics Propose People's Congress to Control Judges' Selection", *Southern Weekly*, 25 September 2014, available at <http://www.infzm.com/content/104386>.
- ²⁵ See China Story Yearbook, *supra*, note 2, pp. 216-7.
- ²⁶ Third Plenum Decision, *supra*, note 15, para. 33..
- ²⁷ See CECC Annual Report, *supra*, note 1, p.143.
- ²⁸ *Id.*
- ²⁹ See CPC Regulation on the Work of Case Inspection by the Disciplinary Inspection Organs (1994), art. 28(3).
- ³⁰ Legislation Law, art. 8(5).
- ³¹ Third Plenum Decision, *supra*, note 15, para. 34.
- ³² See Interview, *supra*, note 22.
- ³³ See CECC Annual Report, *supra*, note 1, p.158.
- ³⁴ See Congressional-Executive Commission on China, "Xi's Anticorruption Drive: Trials for Transparency Advocates, New Rules for Officials", 21 February 2014, available at <http://www.cecc.gov/publications/commission-analysis/xi%E2%80%99s-anticorruption-drive-trials-for-transparency-advocates-new>.
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³⁵ See “China Sentences Uighur Scholar to Life”, *NY Times*, 23 September 2014, available at http://www.nytimes.com/2014/09/24/world/asia/china-court-sentences-uighur-scholar-to-life-in-separatism-case.html?_r=0.

³⁶ Third Plenum Decision, *supra*, note 15, para. 2.

³⁷ See CECC Annual Report, *supra*, note 1, pp. 151-2.

³⁸ See Press Release by the US Department of Justice Office of Public Affairs, 19 May 2014, available at <http://www.justice.gov/opa/pr/us-charges-five-chinese-military-hackers-cyber-espionage-against-us-corporations-and-labor>.

³⁹ “The Politics of China’s Anti-Monopoly Investigations”, *International Policy Digest*, 17 September 2014, available at <http://www.internationalpolicydigest.org/2014/09/17/politics-china-s-anti-monopoly-investigations/>.

⁴⁰ US Chamber of Commerce, “Competing Interests in China’s Competition Law Enforcement: China’s Anti-Monopoly Law Application and the Role of Industrial Policy”, 9 September 2014, available at <https://www.uschamber.com/report/competing-interests-chinas-competition-law-enforcement-chinas-anti-monopoly-law-application>.

⁴¹ See Peerenboom, *supra*, note 16, pp. 13-14.