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CHINA'S GLOBAL LAW ENFORCEMENT DRIVE

The need for a European response

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Main findings and conclusions:

- **International law enforcement cooperation (LEC) has become an important tool of Chinese foreign and security policy.** China's active role is driven by a sweeping anti-corruption campaign, the need to protect citizens and assets abroad, and the quest for recognition as a "responsible power".

- **Beijing concludes extradition treaties with liberal democracies to eradicate "safe havens" for Chinese fugitives.** China aims for extradition and mutual legal assistance treaties with countries that require procedural safeguards. Where formal efforts fail, Beijing is willing to use covert police operations to pressure citizens into returning.

- **China shares intelligence with and trains and funds border guards of partner countries to address the threat of transnational terrorism.** Beijing emphasizes the protection of citizens and investments along the flagship 'Belt and Road Initiative'.

- **The Chinese government tries to allay concerns in the West and build trust.** Confidence building measures include joint declarations, for instance on cybercrime, dialogue mechanisms and on-the-ground police cooperation.

- **Cooperation with China is a necessity but could challenge international legal standards.** China joins institutions and complies with established practices but also tries to set the LEC agenda to challenge norms and definitions, e.g. on corruption and terrorism. When expedient, Beijing ignores international standards, challenging key principles of international law.

- **European governments have reacted to Chinese LEC offers in an uncoordinated way that exposes them to high risks and yields few gains.** EU member states need to improve LEC with China in a way that respects legal principles and fundamental rights. Awareness of China's differentiated strategy, a joint EU approach and coordination with like-minded third countries can mitigate risks to EU members' strategic interests.

Chinese law enforcement goes global

European states cooperate with China on extradition, joint police action and fighting cybercrime

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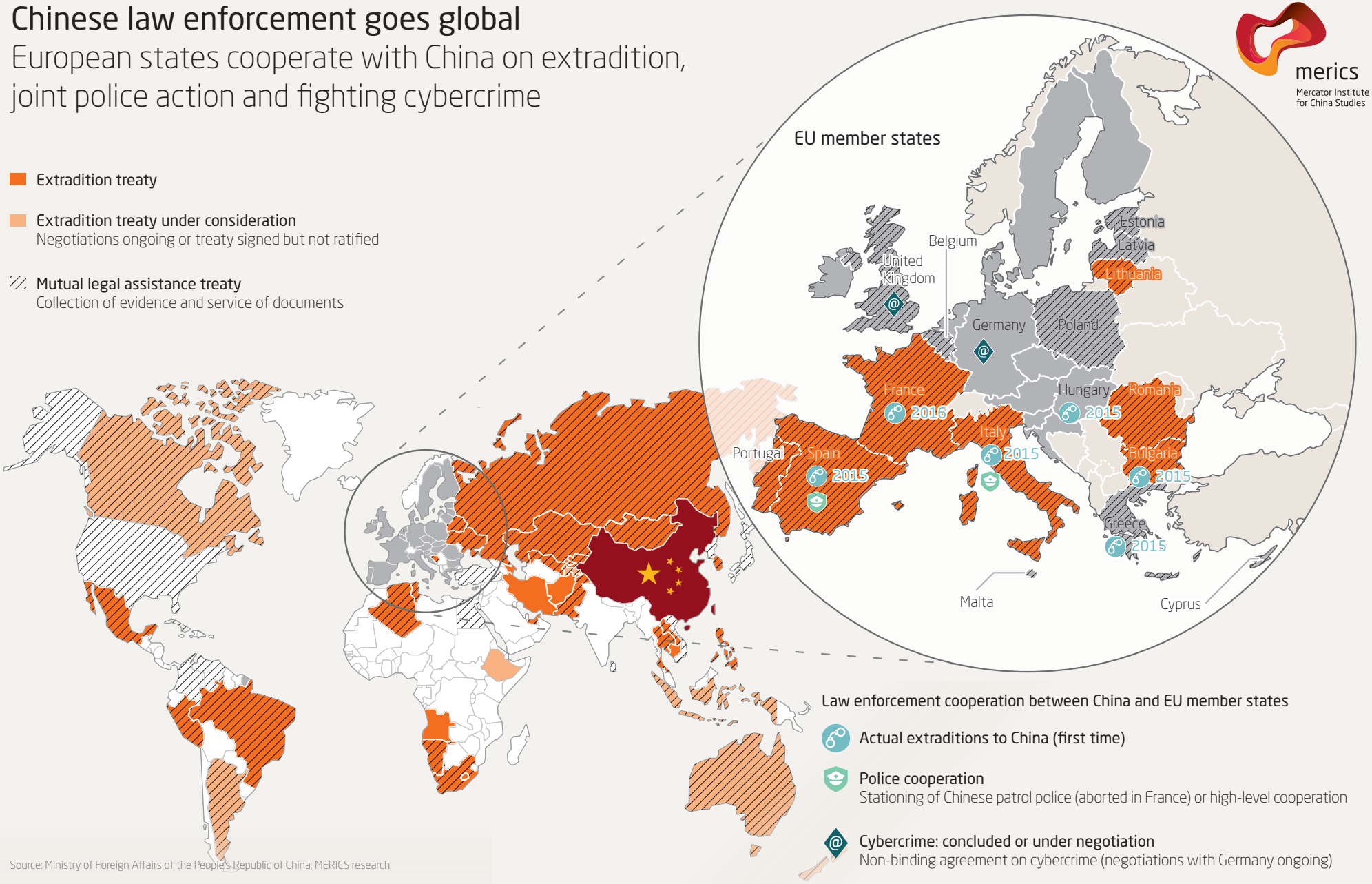
Extradition treaty

Extradition treaty under consideration
Negotiations ongoing or treaty signed but not ratified

Mutual legal assistance treaty
Collection of evidence and service of documents



Law enforcement cooperation between China and EU member states

Actual extraditions to China (first time)

Police cooperation
Stationing of Chinese patrol police (aborted in France) or high-level cooperation

Cybercrime: concluded or under negotiation
Non-binding agreement on cybercrime (negotiations with Germany ongoing)

Source: Ministry of Foreign Affairs of the People's Republic of China, MERICS research.

1. China's new focus on international law enforcement

Over the last three years, Beijing has successfully roped more and more governments into efforts to internationalize its law enforcement drive. This has entailed everything from bilateral treaties on judicial cooperation, concrete extraditions and on-the-ground police cooperation to political agreements on cybercrime and joint border patrols.

In Europe, France has been a forerunner for law enforcement cooperation (LEC) with China, responding in particular to Chinese extradition requests. For example, when Paris decided to extradite Chen Wenhua in September 2016, Chinese state-controlled media struck a celebratory tone. The mid-level official from Zhejiang province was sought back home for embezzling public funds totaling EUR 2.7 million. In China that is small fry, yet Chen's case was special: His arrest and extradition marked the first application of a Sino-French extradition treaty, which France had ratified in April 2015.

Although five other EU member states have also started to extradite so-called "economic fugitives" to China at Beijing's request since early 2015, there has been almost no European debate on this development and most other aspects of European LEC with China. Whereas in Canada, New Zealand and Australia pending extradition treaties with China are the subject of heated public debates due to concerns about the death penalty, torture, and the lack of access to a fair trial in China, Europe's public has remained largely indifferent to Beijing's growing role in global LEC. European governments have engaged with China individually without making use of the leverage that could come with a coordinated European approach.

2. Domestic campaigns, external threats and global expectations as a driving force for China

The globalization of China's law enforcement is motivated by three main factors: the necessity to extend anti-corruption and counter-terrorism campaigns abroad to make them successful at home, the growing exposure of Chinese citizens and investments to international crime and terrorism, and the Chinese government's push for global governance participation and recognition as a 'responsible great power'.

2.1 GLOBALIZING DOMESTIC ENFORCEMENT CAMPAIGNS

Since Xi Jinping assumed power, China has massively stepped up efforts to combat corruption and terrorism at home. But these efforts face difficulties because many suspects have fled overseas and China lacks sufficient international enforcement capabilities. Beijing therefore systematically tries to expand domestic enforcement campaigns beyond its borders to eliminate "safe havens" for individuals sought by the Chinese authorities.

The prime example is the campaign to root out corruption and enforce party discipline. Since the 18th Party Congress, the Central Commission for Discipline Inspection (CCDI) has spearheaded the most resolute anti-corruption drive in decades, with purportedly over one million people sanctioned within China since 2013. As part of the campaign, Beijing launched the external operations "Fox Hunt" and "Skynet" in 2014 and 2015 to track down "economic fugitives", a euphemism for Chinese officials living abroad who are accused of corruption back home.

The logic of internationalizing domestic law enforcement also applies to the counter-terrorism campaign: After the suicide attack on Tiananmen Square (2013) and reports about Uighur militants joining the terrorist group IS (2015), China first reinforced domestic security measures and then redoubled efforts to repatriate (mainly) Uighur suspects from Southeast and Central Asia.[1] China's new Counter-Terrorism Law, in force since 2016, allows for the first time for the conduct of counter-terrorism operations abroad.[2]

China has also internationalized its crackdown on civil liberties. Within China, political activists and human rights lawyers were arrested in high numbers in July 2015. Then Beijing expanded the campaign by putting pressure on dissidents abroad to come back and hand themselves in or at least remain silent on political issues. The exiled journalist Chang Ping, who lives in Germany, was among those who exposed such tactics in March 2016 when he talked openly about the harassment of his family members back home. Moreover, renditions and forced repatriations have also gone up in recent years, especially from Southeast Asia.[3] At the same time, the number of Chinese asylum seekers has risen considerably.[4]

2.2 PROTECTING CITIZENS AND ASSETS ABROAD

As China becomes a global economic power, the number of Chinese entrepreneurs, workers and tourists abroad is rising sharply. Many end up in unstable regions where they (and Chinese commercial assets) are exposed to civil unrest, terrorism, and anti-Chinese sentiment, for instance over environmental and labor issues related to Chinese investment projects. This has led to domestic calls for better protection of Chinese citizens and assets abroad, and Beijing seems responsive to such demands.

The exposure of Chinese nationals and assets is especially acute in Eurasia and Pakistan where China promotes transnational connectivity through its "Belt and Road Initiative" along the old Silk Road. Recent attacks on the Chinese embassy in Bishkek, Kyrgyzstan, and several Chinese-led infrastructure projects in Pakistan highlight these security risks.

But Chinese citizens were also killed in terror attacks in Bamako, Mali, and at Brussels Airport.

Moreover, with Uighur extremists allegedly receiving training, fighting experience and instructions abroad,[5] China might have to deal with militant returnees – similar to the situation in several European countries, the U.S. and Australia, where returning extremists from the Syrian Civil War pose a threat.

Finally, Chinese citizens are exposed to non-political forms of crime abroad. In France, for example, Chinese tourists were repeatedly victims of high-profile robberies. These caused public outrage at home and increased pressure on the Chinese government to better protect its citizens abroad.

2.3 RESPONDING TO GROWING INTERNATIONAL EXPECTATIONS

Under President Xi, China has adopted a more active foreign policy posture. Beijing wants to participate more actively in global governance, expand its influence and be recognized as a "responsible great power". This approach explicitly includes cooperation with Western countries, including EU member states, on issues that matter to them, such as counter-terrorism and the fight against cybercrime. Beijing understands that it has to accommodate calls for cooperation on matters outside its own priority list.

EU member states and EU institutions have identified four key areas for LEC with China: cyber, drug trafficking, the composite issue of illegal migration, people smuggling and human trafficking, and counterterrorism.[6] Not surprisingly, Western demands for greater Chinese cooperation are most pronounced on criminal activities that appear to originate from Chinese soil: on cybercrime, for example, China-based perpetrators are said to account for about a third of all cyber-attacks worldwide.[7] This issue is crucial to Western businesses and institutions which have suffered record numbers of attacks over the past three years. On drug trafficking, American and European governments seized on a new UN Office on Drugs and Crime (UNODC) report, that singled out China as the world's new synthetic drug wholesaler, to urge Beijing to step up counter-trafficking efforts.[8]

The extent of China's willingness to cooperate on issues of Western interest reflects domestic "red lines": Beijing has lately been more responsive on commercially motivated cyber espionage and to requests to close down synthetic drug production networks. Joint on-the-ground police operations against human trafficking in Europe also indicate potential for further cooperation. But prospects are less bright on issues such as terrorism and money laundering. Progress on fighting terrorist financing is possible, but finding common ground on counter-radicalization measures remains difficult because China refuses to be drawn into debates about its judicial system and its policies on ethnic and religious minorities. On money laundering and fiscal transparency, China's willingness to cooperate remains hampered by the fact that Chinese elites' extensively use tax havens themselves for storing their families' wealth.

3. China is willing to use whatever tool is necessary

China is developing a toolbox that allows it to effectively globalize its law enforcement agenda. In a multi-pronged strategy of bi- and multilateral LEC, Beijing takes legal as well as diplomatic steps, and expands inter-agency and on-the-ground cooperation. Three parts of the Chinese toolkit deserve particular attention, as they demonstrate both the complexity and current focus of Beijing's approach.

3.1 BUILDING A GLOBAL EXTRADITION NETWORK

Repatriating crime suspects is currently the priority of China's LEC efforts. In July 2014, the Ministry of Public Security launched the high profile "Operation Foxhunt" to track down and repatriate "economic fugitives" and their assets abroad.[9] This police-led campaign was broadened with the launch of "Operation Skynet" in 2015 that brought in the Supreme People's Procuratorate and the People's Bank of China to collectively push for a comprehensive global law enforcement network including new extradition treaties.

Historically, China has relied on case-by-case diplomatic negotiations, especially with like-minded countries, to achieve extraditions. These negotiations have been easily skewed by power asymmetries, making extraditions a matter of political bargaining. One recent example of extraditions without formal treaty procedures was Afghanistan's hand-over of several suspected Uighur militants in 2015.[10]

During the current hunt for "economic fugitives", however, the Chinese government has realized that it needs to cooperate more closely with those Western democracies many wealthy Chinese suspects have fled to. These countries are traditionally wary of China's judicial system and require treaty guarantees that extradited suspects will not be subject to the death penalty or torture. Consequently, Beijing has sought to expand its network of formal extradition treaties from the paltry 34 it had in 2015 and to shift the focus to striking deals with liberal democracies. The recent extradition treaty ratifications with France and Italy, the signing of a treaty with Australia, which is to be tabled for ratification in 2017, and the beginning of negotiations with Canada and New Zealand were milestones for Beijing. China's party-state media covered these diplomatic efforts extensively, oscillating between praising progress in securing Western cooperation[11] and criticizing Western countries' perceived unwillingness to cooperate due to what the media call "human rights excuses" and "double standards"[12].

To support formal extradition efforts, China also pushes for judicial cooperation through 'mutual legal assistance treaties' (MLATs).[13] These treaties allow prosecutors and judges to request the collection of evidence and to familiarize themselves with the other country's legal system. They help build trust, facilitate work on the mounting number of cases with an international dimension and often precede extradition treaties.

China also tries to make better use of existing multilateral institutions to support its drive to find, arrest and extradite suspects that have fled the country. In one month alone, in April 2015, China added its "100 most wanted" corruption suspects to Interpol's Red Notices list, which serves to inform other states about arrest warrants and to request their assistance. This is a massive increase compared to only 500 Red Notices issued for Chinese citizens in the 30 years before.

3.2 EXPANDING BORDER AND INTELLIGENCE COOPERATION

China has responded to the threat of transnational terrorism by applying a multi-level approach. At home, it has passed new anti-terror and national security laws in 2015 that increase funding for special counter-terrorism forces and border control agencies and create a legal basis for operations abroad.

China's external cooperation has focused on its neighborhood but is gradually expanding. Beijing has recently signed joint border cooperation agreements, including the provision of equipment, training and funding, with Pakistan, Vietnam and Kyrgyzstan. It has also conducted joint border patrols with these countries. Similar to its long-standing intelligence cooperation on counter-terrorism with Pakistan, China has also enhanced cooperation with strategically significant countries like Turkey, Iran or Saudi-Arabia, all states where Chinese citizens could either be targeted or receive "jihadist" training.

To protect Chinese citizens and financial interests abroad, the PRC has also started to enlist other states' help. As part of the Sino-Pakistani cooperation agreement Pakistan provides police and military personnel to protect Chinese laborers working on projects that are part of the Sino-Pakistan Economic Corridor. China also increases its own police presence abroad. Police liaison officers have been deployed to Chinese embassies and consulates in increasing numbers to improve access to local authorities and monitor the security needs of Chinese citizens. In Rome and Milan Chinese officers even patrolled popular tourist spots alongside their Italian colleagues in 2016. A similar program in France had been negotiated in 2014 but was cancelled last minute by the French side.[14]

3.3 CYBER AGREEMENTS AND HIGH-LEVEL POLICE COOPERATION

To demonstrate good will in areas that are primarily of interest to partners in Europe and North America, such as cybercrime and human and drug trafficking, China uses non-binding bilateral agreements, dialogue mechanisms, and on-the-ground police cooperation.

Responding to Western initiatives, Beijing reached political agreements on cybercrime with the U.S. and the UK in 2015.[15] Another such deal with Germany is in the works. These agreements try to address (mostly state-sponsored) commercial cyber espionage, (mostly private) phishing and other cyber-attacks, as well as terrorist financing. An EU-China Legal Affairs Dialogue and a U.S.-China High-Level Dialogue on Cybercrime and Related Issues were set up, the U.S.-China Joint Liaison Group on LEC shifted its focus to cyber issues and drug trafficking. In 2016, the U.S. and China held their third Counterterrorism Dialogue.

China also engages in concrete police cooperation in areas such as human and drug trafficking. For example, in April 2016, the People's Armed Police prominently cooperated with Spanish police forces to break up a human trafficking ring, arresting 29 suspects in Spain.[16] On drug trafficking, China's Narcotics Control Bureau recently agreed to share evidence with the U.S. Drug Enforcement Agency, in return for the latter's aid in training Chinese officers on financial aspects of the drug trade.

4. China's approach to international law enforcement: comply, control, challenge, circumvent

The PRC's new and active role has a significant impact on norms and practices of international LEC. While there is no clear-cut, all-encompassing "Chinese approach", China's flexible behavior can be broken down into four key categories.

4.1 COMPLY: CHINA IS EAGER TO JOIN ESTABLISHED FRAMEWORKS

Beijing increasingly complies with demands for cooperation on transnational organized crime. Doing so in areas low on the domestic priority list is a way to gain influence and recognition in the West, overcome reluctance to cooperate on extradition requests, and incentivize the protection of Chinese citizens and assets abroad.

Beijing has intensified its diplomatic efforts to become an indispensable pillar of international law enforcement. China already ratified UN conventions on transnational organized crime (UNCTOC), corruption (UNCAC) and terrorist financing in the 2000s and has been more compliant with reporting mechanisms under these treaties than many other states.[17] But since 2014 Beijing has also supported UN Security Council Resolutions on cutting off support for foreign terrorist fighters (Resolution 2178) and authorizing the interception of vessels smuggling migrants (Resolution 2240).[18] In addition, China concluded bilateral extradition and judicial cooperation treaties that conform with UN model treaties and entered many bi- and multilateral dialogue mechanisms.[19]

4.2 CONTROL: CHINA USES ITS INFLUENCE TO SET THE AGENDA AND SHAPE NEW FIELDS

China strengthens its position in multilateral institutions to gain influence and to direct the focus of global law enforcement.[20] Faced with a set of mostly Western-created international LEC mechanisms, China now tries to use and adjust them to its own advantage.

Firstly, Beijing's drive to establish extradition as the tool of choice in international LEC leads to a focus on punitive rather than preventive measures to combat crime. The strong emphasis on prosecution neglects the political and socio-economic root causes of corruption, terrorism and organized crime and collides with efforts by UN bodies[21] and transnational organizations[22] to promote preventive approaches aimed at strengthening institutions, increasing transparency and empowering local communities. Under China's growing influence the focus is also shifting to intergovernmental cooperation on multilateral conventions (e.g. UNCTOC, UNCAC) and is moving away from the multi-stakeholder approach that international non-governmental organizations have promoted over the last two decades.[23]

Secondly, China selectively shapes the agenda of multilateral bodies like the G20, APEC or Interpol to promote extradition and asset recovery. APEC's Beijing Declaration on Fighting Corruption from November 2014 closely follows Chinese policy priorities,[24] as does the declaration on anti-corruption cooperation issued by the G20[25] at the September 2016 summit in Hangzhou. China also strives to gain greater influence within multilateral institutions, for instance at Interpol. This is evident in the appointment of the Vice Minister of Public Security, Meng Hongwei, as Interpol's new president in November 2016, the recent decision to significantly increase the number of Chinese officers seconded to Interpol headquarters, and China's role as host of the organization's general assembly in 2017.[26]

Thirdly, China tries to shape the new policy area of tackling cybercrime. Beijing's controversial role in cyber espionage and its crucial position in fighting cybercrime lead Western countries to seek political agreements on cyber issues. During that process, however, they inadvertently allow China to promote its authoritarian model of "cyber-sovereignty". Herein, the cyberspace is just as much a part of a nation's sovereign domain as its physical territory. Non-government actors have no role in the Chinese concept, censorship is accepted, and 'cybercrime' comprises not just criminal activities but also a wide array of political offenses.[27]

4.3 CHALLENGE: CHINA SHIFTS DEFINITIONS AT THE HEART OF LEC

China's efforts to reshape the international fight against crime intensify an ongoing debate within international institutions over the definition and interpretation of norms and concepts. Beijing, for example, uses extremely broad definitions of "corruption" and "terrorism" – highly contested terms anyway – and tries to garner international support for its approach.

The CCP's campaign against "corruption" targets not only graft and embezzlement, but also "immoral behavior" or infringements of party discipline – transgressions that would not be punished as crimes in most other countries. "Terrorism", in turn, has been defined by the 2015 Counter-Terrorism law as referring to *"propositions and actions that create social panic, endanger public safety, violate person and property, or coerce national organs or international organizations [...]"* (Art. 3). This definition is vague and can be understood to include non-violent "separatist" activities deemed to endanger "public safety". China's approach obfuscates how much of the thrust to repatriate fugitives is due to a broader crackdown on political dissent and how much is linked to concrete terrorist threats. Both factors often seem to go hand in hand, especially when Uighur suspects are concerned.

The Shanghai Cooperation Organization (SCO) allowed China to take a first step towards internationalizing its definition of terrorism in 2001. Back then SCO members adopted the Shanghai Convention that fully endorsed China's "Three Evils" doctrine, i.e. the conflation of terrorism, separatism and extremism.[28] Today's efforts go further: Since November 2014, the SCO's 'Regional Anti-Terrorist Structure' (RATS) has stepped up cooperation with and attempts to influence the UN Counter-Terrorism Committee and Interpol. An Interpol-RATS Memorandum of Understanding, for example, facilitates stays of RATS liaison officers with Interpol.[29]

4.4 CIRCUMVENT: CHINA IGNORES NORMS IF NECESSARY

On its domestic priority issue, extradition, Beijing is prepared to forego formal extradition proceedings, when it is either expedient or such proceedings are not an option. With Thailand's apparent consent, for instance, Chinese special ops forcibly returned journalist Li Xin, who went missing in Thailand in January 2016 and suddenly reappeared in Chinese police custody in early February. Even without host countries' consent, China has used covert Ministry of Public Security operations abroad, for example in Canada, to pressure Chinese citizens into returning to China.[30] The level of coercion and the types of threats used in these covert operations, euphemistically called "persuasions" by the Chinese side remain nebulous, nonetheless these activities have drawn harsh criticism from the U.S. and Canada, including threats to suspend further cooperation with Chinese authorities. Whether that backlash will prompt Beijing to change its strategy will be an important indicator of China's willingness to respect international norms when a central domestic policy goal is at stake.

Yet the most far reaching measures are extradition treaties that leave out and thereby undermine established legal norms. This most prominently concerns the non-refoulement principle, a key element of international refugee law that prohibits extradition to a state where the individual in question might face the death penalty or torture. However, when counterparts are willing, China negotiates treaties that

fail to contain legally binding safeguards concerning non-refoulement, as is envisaged, for example, in the UN Model Treaty on Extradition. Instead, Beijing gives merely diplomatic assurances that those extradited will get a fair trial, will not be tortured or suffer capital punishment. Such diplomatic assurances have been accepted when extraditing asylum-seekers (e.g. from Kazakhstan in 2011) and refugees (e.g. from Thailand in 2015).[31] This is highly problematic given China's judicial system where human rights abuses remain commonplace.

5. A more unified Europe could work with China on common threats without giving up standards

Over the last three years, Europe has become the focus of China's LEC drive, and European governments have greatly expanded cooperation (see Figure 1, page 8). This trend is likely to continue and could accelerate in the future. Yet there appears to be no cohesive European approach to working with China on LEC. This leads to concerns over a number of LEC issues.

5.1 EUROPEAN STATES HAVE EMBARKED ON A 'HIGH RISK, LOW YIELD' PATH

France is the first EU member state so far that has executed two extraditions to China within a short period of time. The second one went ahead before it was possible to assess China's sustained compliance with treaty guarantees given to the first extradited suspect. Similarly, negotiations between China and Germany on a non-binding agreement on cybercrime and espionage continue although there are conflicting accounts on whether Beijing has actually complied with its obligations under existing similar deals with the UK and the United States.

European governments have a clear interest in LEC with China. Europe stands to gain from police cooperation against people smuggling and human trafficking rings, synthetic drug producers, cyber criminals, and global money laundering. Economic interests also play a part: Italy's decision to allow China to station patrol officers in popular tourist sports like Milan and Rome was likely driven by desires to remain attractive to Chinese tourists concerned about their safety in Europe.

But the bilateral approaches taken by European governments put crucial legal principles at risk without yielding much in return. The main danger of watering down core elements of the European human rights regime has not been sufficiently addressed. The prohibition of the death penalty, torture or inhuman or degrading punishment, and the extradition to a state where there is a serious risk thereof are enshrined in the Charter of Fundamental Rights of the European Union (CFREU). In LEC with China, that Charter might be undermined as well as the right to a fair trial and other principles concerning criminal and criminal procedure law. In addition, through cyber agreements with liberal democracies, Beijing gains a wider platform to promote its vision of cyber sovereignty and its idea of state-driven cyber governance, which fundamentally clashes with European views on cyber governance mechanisms. It is unclear, however, what Europeans get in return. EU member states are themselves at least partly responsible for this lack of clarity. They neither provide enough resources for monitoring Chinese behavior nor exchange information on a systematic basis.

The Chinese judicial system not only violates most of the above-listed legal principles, but the ongoing crackdown on dissidents and minorities, including forced public confessions, make gradual improvement in the near future rather unlikely. Therefore, extradition treaties that contain clauses prohibiting the death penalty and inhumane treatment are hardly sufficient to protect European legal principles. Following up on individual cases is also extremely difficult.

Aside from general concerns, there is a specific European dimension to extraditions to China: other EU nationals are not protected from extradition to China under the existing bilateral treaties. For example, while a French citizen cannot be extradited under the Sino-French extradition treaty, a German citizen arrested in France would not enjoy the same protection. The absence of safeguard clauses in many mutual legal assistance treaties creates an additional risk that European authorities might inadvertently assist in judicial cases involving torture or the death penalty. Finally, counterterrorism cooperation with China could compromise EU member states' commitment to religious freedom and non-discrimination of minorities because of China's very broad definition of religious extremism and its conflation with terrorism.

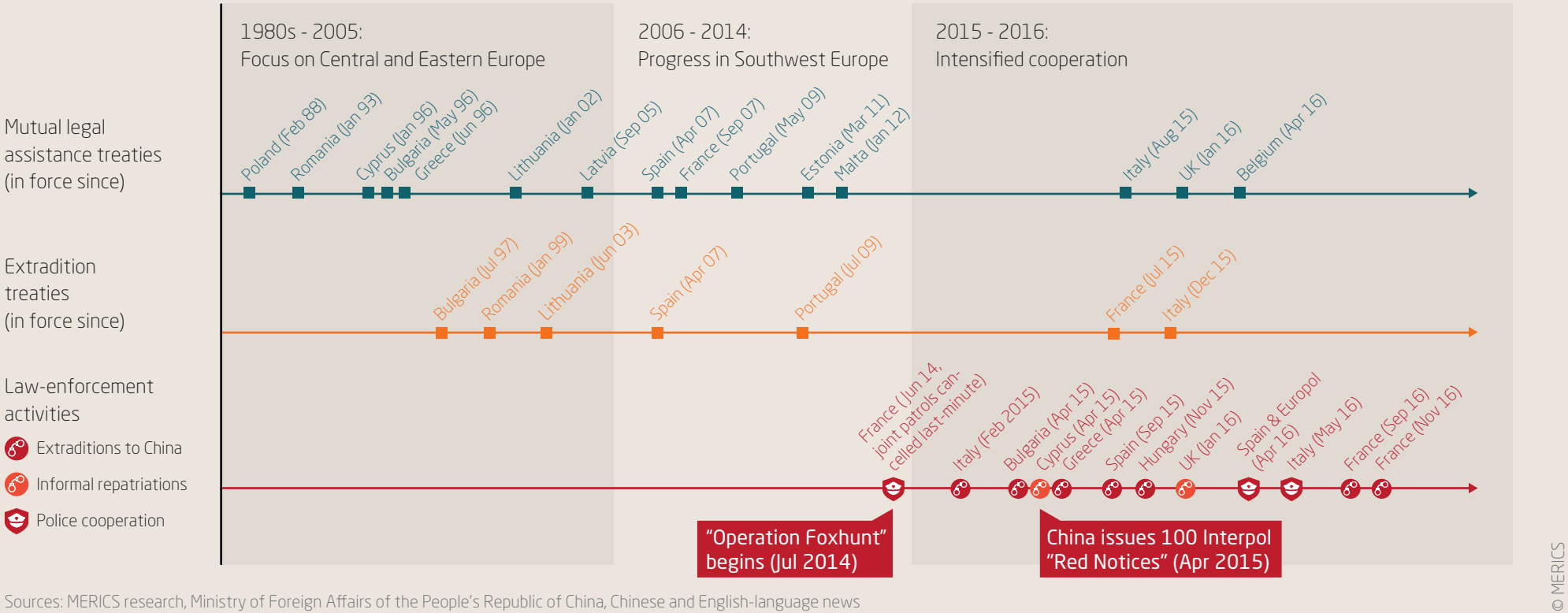
All these risks are not outweighed by commensurate benefits. Chinese support for European police forces and Europol in the fight against transnational organized crime is still limited. It remains unclear whether China will adhere to the cyber agreement with the UK and what Beijing can actually do to help fight terrorism that affects Europe. Moreover, it is not clear whether closer cooperation with China will end secretive activities abroad. For instance, Beijing did not refrain from an opaque repatriation (apparently by exerting pressure) from the UK in 2016 without formal extradition procedures, despite London's engagement strategy including a new MLAT and the afore-mentioned cyber agreement.[32]

5.2 COORDINATION AMONG LIBERAL DEMOCRACIES CAN HELP DELIVER BETTER RESULTS

China's pivotal role for global law enforcement makes cooperation inevitable and potentially mutually beneficial. However, only awareness of China's differentiated strategy, a joint approach by leading European states, and coordination with like-minded third countries can mitigate risks to EU members' strategic interests. European countries should not forego the possibility of cooperating with China to make the world safer,

EU member states unilaterally cooperate with China on law enforcement

Timeline of Chinese-Euopean law enforcement cooperation



Sources: MERICS research, Ministry of Foreign Affairs of the People's Republic of China, Chinese and English-language news

Figure 1

but they have to defend core European principles in the process. European governments should welcome and facilitate Beijing's compliance with and support for UN Security Council resolutions and the ratification of multilateral LEC treaties. Europe should also push for further cooperation and confidence-building measures with Europol and European national police forces.

Leading European states need to be aware of China's growing agenda-setting power. They should uphold multi-stakeholder approaches, which involve civil society actors, in international treaty implementation processes. It is also necessary to greatly increase transparency and avoid a narrow focus of international anti-corruption efforts on prosecution instead of preventive institution-building.

Governments in Berlin, Paris and London share a strategic interest in retaining influence to shape international law enforcement. Common threat perceptions with China regarding transnational terrorism, and Beijing's growing need to protect citizens and assets worldwide, provide a window of opportunity for closer cooperation. Authorities should cooperate in areas such as the fight against terrorist financing and begin to share certain intelligence, if the usage of such information for monitoring dissidents and minority activists can be safely excluded. Crucially, however, European states have to resist Chinese attempts to redefine "terrorism" within international institutional frameworks.

On cyber issues, European coordination and cooperation with other like-minded countries, like the U.S. or Australia, can tilt the balance of power in negotiations and allow the European side to shape cyber agreements

with China according to its open, multi-stakeholder models. Such an approach could also create incentives for Beijing to comply with European expectations regarding commercial espionage.

European governments and suitable international partners like Canada need to achieve a common level of awareness and act in concert to defend international norms that risk being undermined by Beijing's new policies. European countries should not allow China to use power asymmetries; they should attach costs to Chinese covert "persuasion" activities and make it clear that clauses on the death penalty and torture in the Franco-Sino extradition treaty are not sufficient to allay concerns over China's judicial system.

China's strong domestic interests in combatting crime and corruption offer a united EU leverage in negotiations for a potential EU-China extradition treaty. Overall, a concerted European approach should be pointedly cautious and patient and clearly identify troubling issues in the Chinese judicial system.

Law enforcement cooperation is crucial to global security. China is in the course of shaping this field in significant and long-lasting ways. Leading European states need to be aware of this development, remain open and transparent about their own steps in this area and coordinate their responses if they want to harness the potential of Chinese contributions while retaining influence and protecting the achievements of the past.

1 | Tanner, Murray Scot and James Bellacqua (2016). "China's Response to Terrorism". June. https://www.cna.org/CNA_files/PDF/IRM-2016-U-013542-Final.pdf. Accessed: January 9, 2017.

2 | National People's Congress (2016). "中华人民共和国反恐怖主义法" (Counter-Terrorism Law of the People's Republic of China). January 25. http://npc.people.com.cn/n1/2016/0125/c14576-28083014.html. Accessed: January 9, 2017.

3 | The forced repatriations of journalist Li Xin and Hong Kong bookseller Gui Minhai from Thailand in January 2016 illustrate this even more direct threat to dissidents abroad, see: Time (2016), "China's Search for Dissidents Has Now Expanded to Foreign Countries." January 18. http://www.chinaaid.org/2016/01/time-chinas-search-for-dissidents-has.html. Accessed: January 9, 2017.

4 | According to UNHCR figures, the number of asylum-seekers from China has increased from 7,746 in 2010 to an astounding 57,680 in 2015, see: Office of the United Nations High Commissioner for Refugees (UNHCR) (2015). "UNHCR Population Statistics Database - Asylum Seekers".2015. http://popstats.unhcr.org/en/asylum_seekers. Accessed: January 9, 2017.

5 | Official accounts on terrorism in China should be regarded with caution, but there have been several videos produced by Chinese-speaking members of IS, specifically targeting a Chinese audience and threatening the PRC. See also: http://thediplomat.com/2015/12/isis-releases-chinese-language-propaganda-video/

6 | Council of the European Union (2016). "Council Conclusions EU Strategy on China 2016." July 18. http://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf. Accessed: January 9, 2017.

7 | British Banking Association (2015). "Cybercrime Top 10 countries where attacks originate." February. https://www.bba.org.uk/wp-content/uploads/2015/02/red24+Cybercrime+Top+10+countries+where+attacks+originate+-++2015.pdf. Accessed: January 9, 2017.

8 | United Nations Office on Drugs and Crime (UNODC) (2016). "World Drug Report 2016." May. https://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf. Accessed: January 9, 2017.

9 | Ministry of Public Security of the People's Republic of China (2014). „公安部部署开展"猎狐2014"缉捕在逃境外经济犯罪嫌疑人专项行动" (Special Operations to arrest suspects of economic crimes that have fled abroad since the launch of "Operation Foxhunt 2014" by the Ministry of Public Security). July 22. http://www.mps.gov.cn/n2254314/n2254487/c4917126/content.html. Accessed: January 9, 2017.

10 | Reuters (2015). "Afghans arrested Chinese Uighurs to aid Taliban talks bid: officials". February 20. http://www.reuters.com/article/us-afghanistan-taliban-china-idUSKBN0LO18020150220?utm_source=Sailthru&utm_medium=email&utm_term=%2AAf-Pak%20Daily%20Brief&utm_campaign=2014_The_South_Asia_Daily%202.23. Accessed: January 9, 2017.

11 | The opening of extradition treaty negotiations with Canada in September 2016, first extraditions from Italy, France or Hungary as well as repeated case-by-case extraditions from the US were all widely celebrated in Chinese party-state media – contrasting with the limited echo to these cases especially in European partner countries.

12 | China Digital Times (2016). "Human Rights an "Excuse" for Harboring Suspects?" June 13. http://chinadigitaltimes.net/2016/06/china-condemns-foreign-protection-corruption-fugitives/. Accessed: January 9, 2017.

13 | Four of the five MLATs on criminal matters concluded since 2014 were with European states, including the UK and Italy.

14 | In 1998, China sent out its first liaison officer, stationing him in the US. In 2008, Beijing had only 5 such officers, but since then it has expanded its network of liaison officers to cover 31 countries (Ping, H. E (2008). "The measures on combating money laundering and terrorism financing in the PRC." Journal of Money Laundering Control 11(4): 320-330; Wei Zhezhe 魏哲哲 (2016). "驻外警务联络官"在行动 ("Police liaison officers stationed abroad" in action). February 3. http://legal.people.com.cn/n1/2016/0203/c42510-28106138.html. Accessed: January 9, 2017. http://www.mps.gov.cn/n2255079/n4242954/n4841045/n4841050/c5212359/content.html)

15 | Foreign & Commonwealth Office United Kingdom of Great Britain and Northern Ireland (2015). "UK-China Joint Statement on building a global comprehensive strategic partnership for the 21st Century." October 22. https://www.gov.uk/government/news/uk-china-joint-statement-2015. Accessed: January 9, 2017

16 | Europol (2016). "29 arrests in Spain as result of joint operation targeting traffickers in human beings for sexual exploitation." April 22. https://www.europol.europa.eu/newsroom/news/29-arrests-in-spain-result-of-joint-operation-targeting-traffickers-in-human-beings-for-sexual-exploitation. Accessed: January 9, 2017.

17 | Lewis, Margret K. (2007). "China's Implementation of the United Nations Convention against Transnational Organized Crime." Asian Journal of Criminology 2(2): 179-193.

18 | UN Security Council (2014). "United Nations Security Council Resolution 2178." September 24. http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf
Accessed: January 9, 2017; UN Security Council (2015). "United Nations Security Council Resolution 2240." October 9. http://www.un.org/press/en/2015/sc12072.doc.htm. Accessed: January 9, 2017.

19 | At least in extradition treaty negotiations with ‚difficult' Western partners, China appears to accept most demands regarding specific safeguards for the sake of overcoming Western qualms, as the French example has shown, see: Assemblée Nationale (2015). "Rapport fait au nom de la commission des affaires étrangères sur le projet de loi, autorisant la ratification du traité d'extradition entre la République française et la République populaire de Chine." March 18. http://www.assemblee-nationale.fr/14/rapports/r2668.asp#P253_68714. Accessed: January 9, 2017.

20 | This is of course no specifically Chinese behaviour – other countries, the US in particular, have tried to control and use international law enforcement instruments for their own domestic ends long before, and have had much more influence on the priorities of international bodies so far. Prime examples include the US-led coalition in the global fight against terrorism after 2001, and again the US in internationalising its fight against corruption following the 1977 *US Foreign Corrupt Practices Act*.

21 | See for example: UN Action to Counter Terrorism. http://www.un.org/en/counterterrorism/. Accessed: January 9, 2017.

22 | Transparency International (2015). "Tackle instability and terrorism by fighting corruption." February. http://www.transparency.org/news/feature/tackle_instability_and_terrorism_by_fighting_corruption. Accessed: January 9, 2017.

23 | For instance, Chinese opposition to more comprehensive anti-corruption approaches and international efforts to increase government accountability has hampered the implementation of UNCAC, with Beijing both rejecting a binding peer-review mechanism and boycotting the UNCAC civil society review mechanism.

24 | APEC (2014). "Beijing Declaration on Fighting Corruption - 26th APEC Ministerial Meeting 2014." November 7. http://mddb.apec.org/Pages/search.aspx. Accessed: January 9, 2017.

25 | G20 (2016). "G20 Leaders' Communique Hangzhou Summit." September 6. http://www.g20chn.org/English/Documents/Current/201609/t20160906_3395.html. Accessed: January 9, 2017; Transparency International (2016). "G20, China, corruption and asset recovery." September 2. http://www.transparency.org/news/feature/g20_china_corruption_and_asset_recovery. Accessed: January 9, 2017.

26 | Interpol (2015). "INTERPOL General Assembly approves blueprint for Organization's future." November 5. http://www.interpol.int/News-and-media/News/2015/N2015-180.Accessed: January 9, 2017; BBC (2016). "Chinese official Meng Hongwei to head Interpol." November 10. http://www.bbc.com/news/world-asia-china-37932927. Accessed: January 9, 2017.

27 | The remarkable international resonance of the second „World Internet Conference" in Wuzhen in December 2015 has been a testament to Beijing's capacity to promote its model multilaterally. The international acceptance of 'cyber sovereignty' would de facto legitimize Chinese online censorship practices and the criminalization of online behavior of whatever sort, see: Xinhua (2015). "2nd World Internet Conference concludes with initiative". December 18. http://news.xinhuanet.com/english/2015-12/18/c_134931582.htm. Accessed: January 9, 2017.
The SCO has also fully signed up to the Chinese visions, which are now also actively promoted via UN mechanisms, inter alia by the active pursuit of leading positions for Chinese nationals in the International Telecommunication Union (ITU).

28 | In principle, a single tweet by a Chinese dissident issued in a SCO country could be viewed as a terrorist act under China's anti-terrorism law and enable Chinese authorities to legally claim the extradition of this individual under the SCO's extradition framework, see: Human Rights in China (HRIC) (2011). "Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization." March. http://www.hrichina.org/en/publications/hric-report/counter-terrorism-and-human-rights-impact-shanghai-cooperation-organization. Accessed: January 9, 2017.

29 | Interpol (2014). "International Cooperation Agreements - Memorandum of Understanding between the International Criminal Police Organisation (Interpol) and the Executive Committee of the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organisation (SCO-RATS)." November 6. https://www.interpol.int/About-INTERPOL/Legal-materials/International-Cooperation-Agreements/Regional-Organizations. Accessed: January 9, 2017.

30 | National Post (2015). "Chinese police run secret operations in B.C. to hunt allegedly corrupt officials and laundered money." March 5. http://news.nationalpost.com/news/canada/chinese-police-run-secret-operations-in-b-c-to-hunt-allegedly-corrupt-officials-and-laundered-money. Accessed: January 9, 2017.

31 | Human Rights in China (HRIC) (2011). "UN Human Rights Committee Raises Concern over the Shanghai Cooperation Organization in Its Review of Kazakhstan." July 29. http://www.hrichina.org/en/content/5507. Accessed: January 9, 2017; Guardian (2015). "UN condemns Thai repatriation of Chinese dissidents." November 17. https://www.theguardian.com/world/2015/nov/17/un-condemns-thailand-repatriation-chinese-dissidents. Accessed: January 9, 2017.

32 | The Telegraph (2016). "Beijing says corruption suspect ‚persuaded' to return from UK to China." January 14. http://www.telegraph.co.uk/news/worldnews/asia/china/12098865/Beijing-says-corruption-suspect-persuaded-to-return-from-UK-to-China.html. Accessed: January 9, 2017.

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