

COMBATTING MILITARY CORRUPTION IN CHINA

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I. INTRODUCTION

On the morning of September 17th, 1894, the Chinese Beiyang fleet steamed to meet the Japanese Navy at the mouth of the Yalu river. With heavier battleships, heavier armor, and larger caliber guns, observers of the day favored the Chinese to win against the Japanese.¹ However, as the battle began, it quickly became apparent that these putative advantages were not going to be the decisive factors. While the Chinese had larger ships and guns that out-classed the Japanese warships, the Japanese ships were faster.²

As the warships closed in on each other, the Chinese ships fired what should have been devastating blows at point blank range.³ But, as one observer noted, “[w]e considered her ‘done for’ — as doubtless she would have been had we used shell — one shot, for instance, passing diagonally through the ship from one bow to the opposite quarter, doing various minor damages. *Had it been a live shell the result may be imagined.*”⁴ Instead of a live shell filled with explosives, accounts indicate the shell was filled with some inert material. Other shells in the fleet’s arsenal were simply unusable,

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¹ Benjamin A. Elman, *Naval Warfare and the Refraction of China’s Self-Strengthening Reforms into Scientific and Technological Failure, 1865-1895*, 38 MOD. ASIAN STUD. 283, 320 (2004) (The Chinese Navy of 1894 consisted of 65 large ships and 43 torpedo boats, divided into four fleets: the Beiyang, Nanyang, Fujian, and Guangdong fleets. According to one historical analysis, “[t]he Beiyang fleet . . . more or less equaled Japan’s entire fleet.”).

² Naval commentaries of the day discussed at great length the physics of artillery, noting that the larger guns used on Chinese warships could deliver ‘more metal’ in a single salvo, and that they fired with a lower velocity. This in turn, forced the trajectory of the rounds to have a higher arc when attempting to hit a target at a longer range. The result was a significantly smaller window in which they could strike the Japanese warships. Given that the Japanese warships were faster, these factors weighed against the Chinese in the initial stages of the battle.

³ Philo N. McGiffin, *The Battle of the Yalu*, 1895 THE CENTURY MAG. 585, 596, <https://www.unz.org/Pub/Century-1895aug-00585>.

⁴ *Id.* at 598 (emphasis added); see also PIOTR OLENDER, SINO-JAPANESE NAVAL WAR 1894-1895, 89 (2014) (number of dud shells).

as they were the wrong caliber for the Chinese warships' guns.⁵ At fault for the failed shots and unusable munitions were corrupt supply officers who were privately profiting from funds directed to the Beiyang fleet.

To make matters worse, two of the Chinese's supporting warships failed to engage the enemy. When the Beiyang fleet eventually regrouped after the battle at Port Arthur, the Captain of one of those ships claimed that his vessel had been disabled.⁶ However, in the investigations that followed, it was quickly revealed his statements were either false or exaggerations.⁷

By the end of the battle, four Chinese warships had been sunk and three more had been damaged. On the other side, the Japanese lost no vessels, and suffered damage to only six ships.⁸ As a result of the disastrous Battle of Yalu, the Beiyang fleet could no longer control the Yellow Sea, which contributed significantly to Chinese defeats on land, and in turn, a humiliating result to the Sino-Japanese War.⁹

The hard lessons of that battle have left deep impressions on modern Chinese military leaders. During the Battle of Yalu, corruption crippled the Chinese fleet's ability to fight through mis-supply and may have indirectly contributed to the decisions of certain warships to disengage from the battle.¹⁰ Corrupt acts also led to the failure in the individual engagement, with broader strategic ramifications. Today, what's past is prologue. In March 2014, (former) "General Gu Junshan was charged with embezzlement, bribery, misuse of state funds and abuse of power."¹¹ These charges followed a nearly

⁵ Elman, *supra* note 1, at 320 (explaining that reports also indicate that supply officers had also been padding the books, reportedly paying for a full crew complement when ships had only been at half-strength.)

⁶ McGiffin, *supra* note 3, at 596.

⁷ *Id.* ("Upon our arrival, Captain Fong claimed that his entire battery had early been disabled, and that he had been obliged to run to save his defenseless ship. But upon an examination of his battery by a detail of line and engineer officers, it was found in perfect working order, excepting the six-inch stern-chaser — the one projectile which struck his ship having passed beneath the trunnions, lifting the gun from its seat. But this shot had entered from the stern, having evidently been received after the retreat had begun — administered, it would seem, as a contemptuous parting kick from the enemy.")

⁸ OLENDER, *supra* note 4, at 89.

⁹ *First Sino-Japanese War 1894-1895*, ENCYCLOPEDIA BRITANNICA (July 25, 2018), <https://www.britannica.com/event/Sino-Japanese-War-1894-1895>.

¹⁰ David Tweed, *What's Wrong With China's Army?*, BLOOMBERG BUS. (Mar. 19, 2015, 11:35 PM) <http://www.bloomberg.com/news/articles/2015-03-19/xi-evokes-navy-defeat-by-japan-in-1894-in-quest-to-improve-pla> ("The Battle of Yalu has an earthshaking influence on both Chinese people and Chinese military forces," Major General Zhu Heping said on the sidelines of the legislative meeting in Beijing. "The primary cause for China's failures is because the corruption was deeply rooted in the military and the government at the time," said Zhu, the vice-president of the Air Force Command Academy.")

¹¹ Teddy Ng, *PLA General Gu Junshan faces court martial as prosecutors press four graft charges*, S. CHINA MORNING POST (Mar. 31, 2014, 6:25 PM), <http://www.scmp.com/news/china/article/1461810/pla-general-gu-junshan-faces-court-martial-prosecutors-press-four-graft>.

two year-long investigation which revealed that, among other things,¹² General Gu had given a 20 million RMB (\$3.25 million USD) bribe in the form of a wedding gift to General Xu Caihou's daughter in exchange for a promotion.¹³ Three months later, and under investigation himself, General Xu Caihou was expelled from the Chinese Communist Party.¹⁴ A search of General Xu's residence revealed a stash of cash and precious gems—so enormous that it filled ten trucks and weighed more than one ton.¹⁵ In an astonishing act of hubris, no attempt had been made to mask the corruption. News reports attest that the stacks of cash were marked “neatly” with the name of the soldier who had paid the bribe in exchange for a promotion.¹⁶

To make matters worse, the structure of the People's Republic of China (P.R.C.) military impedes reporting of these crimes. In one anecdote, retired General Yang “recalled that . . . a niece of [a] Communist Party's revolutionary leader . . . failed [when attempting] to report an officer who had seven cars, even though she was the head of the military's discipline inspection department [as] [s]he said those more senior than her did not allow her to report it.”¹⁷

While such high-profile anti-corruption cases are newsworthy,¹⁸ what makes these two cases worthy of discussion is that China has taken the unusual step of forwarding these charges to military courts for prosecution,

¹² See Wang Heyan, *How a PLA General Built a Web of Corruption to Amass a Fortune*, CAIXINONLINE (Jan. 16, 2014, 4:30 AM), <https://www.caixinglobal.com/2014-01-16/101013597.html> (noting that News media investigations reported other indicia of corruption, including that General Gu had received a six percent “kickback” on the military's sale of land for commercial development in Shanghai, and that the General owned more than 10 apartments in Beijing developments that had been previously owned by the military).

¹³ *Id.*

¹⁴ Teddy Ng, *Former Top General Xu Caihou to be Charged with Bribery Offences*, S. CHINA MORNING POST (Oct. 28, 2014, 11:21 PM), <http://www.scmp.com/news/china/article/1627096/former-top-general-xu-caihou-charged-bribery-offences>.

¹⁵ Reuters, *Ex-Army Leader Xu Caihou had 'a Tonne of Cash' in Basement*, S. CHINA MORNING POST (Nov. 21, 2014, 3:08 AM), <http://www.scmp.com/news/china/article/1644858/ex-army-leader-xu-caihou-had-tonne-cash-basement>.

¹⁶ Charles Clover & Jamil Anderlini, *Chinese General Caught with Tonne of Cash*, FIN. TIMES (Nov. 21, 2014, 2:19 PM), <http://www.ft.com/cms/s/0/4883f674-7171-11e4-818e00144feabdc0.html#axzz3KOJvaQJo>.

¹⁷ Nectar Gan, *Retired Generals Point to 'Horrible' Graft in PLA*, S. CHINA MORNING POST (Mar. 11, 2015, 5:37 AM), <https://www.scmp.com/news/china/article/1734592/retired-generals-point-horrible-graft-pla>.

¹⁸ *Ex-PLA Top General Xu Caihou Held in Cash for Rank Probe*, S. CHINA MORNING POST (Mar. 19, 2014, 11:26 PM), <https://www.scmp.com/news/china/article/1452749/retired-top-pla-general-xu-caihou-held-cash-rank-probe> (“Xu, 71, has been placed under *shuanggui* – a Communist Party disciplinary measure used to interrogate party members suspected of corruption – in a secretive detention centre.”); see also Xinhua, *Former PLA General's Trial Possibly in Private: Expert*, CHINA DAILY (Apr. 1, 2014, 1:59 PM), http://usa.chinadaily.com.cn/china//2014-04/01/content_17396217.htm.

instead of to civilian courts.¹⁹ These prosecutions have brought greater attention to a number of systemic concerns in the Chinese military justice system, which include interference by the chain of command in court proceedings, the “lack of legal protection for military courts” and military judges, and an inadequate legal framework to support routine operations and constrain bad actors.²⁰

Amidst public calls for open trials of senior military officers²¹ and the ambitious pledges set forth in the Communiqué of the Fourth Plenary Session of the 18th Central Committee of the Chinese Communist Party (Fourth Plenary Session Communiqué)²²—the question arises: is the Chinese system of military justice adequate to combat corruption? If not, will proposed reforms be sufficient to change the current culture of corruption and combat systemic graft?²³

This article seeks to educate United States legal advisors on the fundamental differences between the military justice system of the United States and China and to answer the question of whether China’s system of military justice is adequate to combat corruption by examining the nature of the problem, laws, regulations and institutions that comprise the Chinese military justice system, and the reforms which have been implemented. This article concludes that while the current reform agenda is one of the most comprehensive in the P.R.C.’s history, current reforms will be insufficient to combat corruption on an ongoing basis unless ethical and structural issues are addressed.

II. THE EFFECTS OF CORRUPTION ON THE MILITARY

Chinese analysts and observers have suggested that “corruption in the military is so pervasive that it could undermine China’s ability to wage

¹⁹ Chun Han Wong, *China to Prosecute Top Military Commander Over Alleged Corruption*, WALL ST. J. (Jan. 9, 2018, 8:59 AM), <https://www.wsj.com/articles/china-to-prosecute-top-military-commander-over-alleged-corruption-1515506395>

²⁰ Susan Finder, *How Should Chinese Military Courts be Reformed?*, GLOBAL MIL. JUST. REFORM (Feb. 15, 2015, 7:57 PM), <http://globalmjreform.blogspot.com/2015/02/how-should-chinese-military-courts-be.html>.

²¹ Minnie Chan, *Disgraced General Xu Caihou and Gu Yunshan Should Have Open Trial, Military Law Expert Says*, S. CHINA MORNING POST (July 9, 2014, 4:21 AM), <http://www.scmp.com/news/china/article/1549954/disgraced-generals-xu-caihou-and-gu-yunshan-should-have-open-trials>.

²² Communiqué of the 4th Plenary Session of the 18th Central Committee of the Communist Party of China, CHINA.ORG.CN (Dec. 2, 2014), http://www.china.org.cn/china/fourth_plenary_session/2014-12/02/content_34208801.htm [hereinafter “Communiqué of the Fourth Plenary Session”].

²³ For the purposes of this article, the terms military lawyer and judge advocate will be used interchangeable to refer to uniformed licensed lawyers.

war.”²⁴ In order to understand how corruption could undermine China’s “ability to wage war,” it must first be understood how corruption functions and in what ways it impacts military effectiveness. Corruption can be defined as the “misuse of public power for private gain.”²⁵ In the military context, corruption erodes a state’s defense capabilities and undermines regime legitimacy. How, and to what extent, this occurs depends greatly on the nature of the corrupt activities. Corruption can take many forms, from General Xu Caihou’s quid pro quo money for promotion scheme to embezzlement of public funds for defense expenditures. In order to understand how corruption can be countered, it must first be understood how corruption occurs and what effects those forms of corruption have on military capacity and regime legitimacy. This article will not discuss all possible forms of corruption, but rather, it seeks to articulate the consequences of certain corrupt activities on the military.

A. Negative Effect on Caliber of Armed Forces

One form of corruption in the military is the bribing of senior officers in order to obtain a promotion. Anecdotally, this is a commonly reported practice affecting the breadth of the Chinese armed forces.²⁶ Reportedly, “[e]ven just enlisting as an ordinary soldier could cost 10,000 yuan in bribes.”²⁷ This scales up the chain of command, as retired PLA Major General Yang Chunchang noted that “[e]verybody in society knows that in the PLA . . . you need to pay to join the party.” Promotions to become leaders at platoon, company, regiment and division levels all have their own price tags.²⁸ At the upper end of the spectrum, a promotion to general could cost “at least 10 million yuan (\$1.6 million [US dollars])”.²⁹

²⁴ Reuters, *China to Put Decorated General on Trial Over Corruption*, THE GUARDIAN (Oct. 28, 2014, 8:15 PM), <http://www.theguardian.com/world/2014/oct/28/china-general-xu-caihou-bribery-corruption>.

²⁵ Tor Bukkvoll, *Their Hands in the Till: Scale and Causes of Russian Military Corruption*, 34 ARMED FORCES & SOC. 259 (2008) (citing Rasma Karklins, *Institutional Approaches to Explaining Postcommunist Corruption and its Containment*, paper presented at the annual convention of the American Political Science Association of Philadelphia, Aug. 31, 2003).

²⁶ Michael S. Chase et al., *China’s Incomplete Military Transformation: Assessing the Weakness of the People’s Liberation Army (PLA)* 48-49, 62-63 (Rand, 2015), http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR893/RAND_RR893.pdf (noting that the practice has become pervasive since approximately 2005).

²⁷ Jeremy Page & Lingling Wei, *China’s Antigraft Drive Exposes Military Risks*, WALL ST. J. (Mar. 11, 2015, 7:32 PM), <http://www.wsj.com/articles/china-antigraft-drive-exposes-military-risks-1426116777>.

²⁸ Nector Gan, *Retired Generals Point to ‘Horrible’ Graft in PLA*, S. CHINA MORNING POST (Mar. 10, 2015, 10:48 PM), <http://www.scmp.com/news/china/article/1734592/retired-generals-point-horrible-graft-pla>.

²⁹ Page & Wei, *supra* note 27.

Promotions or appointments obtained by bribery circumvent any system whereby subordinates are chosen based on their “competency or compatibility.”³⁰ In this situation, military leaders and staff run a much greater risk of being “temperamentally unsuited” to their roles,³¹ may lack the requisite knowledge, skills, or experience to appropriately command or advise,³² or may simply not be compatible with a superior’s leadership style.³³ Because China’s military has largely been untested over the last several decades, there is no publicly known contemporary example for this effect. However, history is replete with examples where such unsuitable command and staff relationships have resulted in “mediocrity,” “failure,” or even defeat.³⁴ This may be because promotions or appointments that are not based on competency or compatibility increase the risk of operational error.³⁵ Such operational errors can occur because military leaders chosen for pecuniary rather than optimal reasons are unlikely to be the “right” person who can communicate a superior’s orders in a clear, concise, and speedy manner.³⁶ For example, many observers have noted that the PLA has difficulty “conduct[ing] integrated joint operations at the desired level of competence.”³⁷ While a causal connection cannot be demonstrated, this may be a collateral consequence of a military personnel system that is not selecting the best and most competent leaders and staff, or that promotes despite “insufficient educational accomplishments and levels of technical proficiency.”³⁸

B. Effect on Discipline

A military personnel system which does not select the best and most competent leaders undermines the trust in and respect for the chain of command. This is the most insidious effect, as military corruption slowly erodes the discipline, morale, and cohesiveness of armed forces—three key elements of a combat effective force.³⁹ Military discipline is more difficult to enforce when leaders are known to be corrupt, as leaders are viewed to

³⁰ John M. Vermillion, *The Pillars of Generalship*, PARAMETERS, at 2, 16 (1987), <http://www.dtic.mil/dtic/tr/fulltext/u2/a516142.pdf>.

³¹ *Id.* at 7.

³² *Id.* at 2.

³³ *Id.* at 7.

³⁴ *Id.* at 6. For a modern example, cf. Tariq Majidi, *10 Afghan Districts Under Serious Threat*, TOLO NEWS (Aug. 28, 2016), <http://prod.tolonews.com/afghanistan/10-afghan-districts-under-serious-threat>. (“[P]arliament members have said corruption within the NUG has marginalized military activities and that now important districts are under threat.”).

³⁵ *Id.* Vermillion, *supra* note 30, at 6.

³⁶ *Id.* at 5.

³⁷ Chase, *supra* note 25, at xi.

³⁸ *Id.*

³⁹ See generally Bukkvoll, *supra* note 25.

lack the ethical or moral authority to fairly and justly administer discipline. Morale may suffer as more talented and accomplished service members are passed over for promotion or placement in key positions by members willing or able to pay the requisite bribes. Under combat conditions, individual servicemembers may be more hesitant to follow orders, as their leaders lack moral authority.⁴⁰ Individual servicemembers also may not know whether their orders are motivated by a superior's financial interests or national interests. As poignantly observed by PLA General Liu Yuan, "If there really was a war . . . who would listen to your commands or risk their life for you?"⁴¹

This type of distrust is most dangerous when lives depend on the rapid execution of unquestionable orders. In a more practical, yet frightening scenario, this distrust is also dangerous when subordinates must rapidly execute orders in order to de-escalate a conflict, such as might occur in the South China Seas.⁴²

The corrosive effects of military corruption are evidenced by analysts who have discussed the Chinese military's "problems with corruption, morale, and professionalism, including difficulties accepting military discipline and maintaining operational security."⁴³

C. Depreciative Effect on Defense Expenditures

Military corruption also decreases the value of defense expenditures.⁴⁴ This decrease in value is attributable to illegal and/or unethical actions such as use of military privileges or resources for private gain, embezzlement, or could even occur by improper allocation of defense funds. In China, anecdotes catalog a wide array of illegal or abusive practices. These range from smaller-scale misuse or misappropriation offenses to unambiguous corrupt actions, such as embezzlement. Examples of reported smaller-scale practices include:

⁴⁰ See *Hobson's Choice*, WALL ST. J., May 14, 1952, ("[M]en will no longer trust leaders who feel themselves beyond accountability for what they do. And when men lose confidence and trust in those who lead, order disintegrates into chaos and purposeful ships into uncontrollable derelicts.").

⁴¹ John Garnaut, *Rotting from Within, Investigating the Massive Corruption of the Chinese Military*, FOREIGN POL'Y (Apr. 16, 2012, 10:20 PM), <http://foreignpolicy.com/2012/04/16/rotting-from-within/>.

⁴² Cf. Tor Bukkvoll, *Their Hands in the Till: Scale and Causes of Russian Military Corruption*, 34 ARMED FORCES & SOC. 259-275, 272 (2008) (Such a situation also exemplifies how corruption can complicate the relationship with foreign armed forces. At the root is the issue of predictability. Corruption alters the incentives of military leaders in largely unpredictable ways, as the controlling motivations and loyalties of units and leaders cannot be determined, and their actions are more easily misinterpreted).

⁴³ Chase, *supra* note 26, at xi (emphasis added).

⁴⁴ Bukkvoll, *supra* note 42 ("Even serious increase in military spending has little positive effect on personnel, equipment, and technological modernization when much of the new money is stolen or diverted to other uses.").

PLA officers privatizing their military-assigned housing and selling it on the open market, speeding through traffic with immunity (police will not ticket a military-plated vehicle), parking in illegal spaces, and putting military plates on their personal vehicles to avoid paying highway tolls and to enjoy free fill-ups at gas stations (military vehicles reportedly do not have to pay for gasoline).⁴⁵

Reports of larger-scale misuse or misappropriation offenses include “accepting civilian patients at military hospitals, leasing military warehouses to commercial firms, hiring PLA song and dance troupes for public events, outsourcing military construction companies, and opening military academies and institutions to public students,”⁴⁶ “kickbacks from routine logistics purchases, new arms procurement and the leasing out of PLA-controlled land to developers,”⁴⁷ and “excessive spending on entertainment, irregular granting of subsidies, embezzlement and modifying budgets without proper approval.”⁴⁸

Each of these practices discount the value of defense expenditures in different ways. Embezzlement prevents funds designated for a specific purpose from being spent on actual defense expenditures (*i.e.*, an official could siphon 1% of funds appropriated for the acquisition of (*x*) rounds of ammunition or designated for the payment of salaries).⁴⁹ These types of actions generally result in fewer resources being available for their intended military use.⁵⁰ Alternatively, it could result in the requirement of additional funds in order to sustain a particular funding outcome (in effect, devaluing defense expenditures).

Misuse or misappropriation decreases the value of defense expenditures by resulting in an inefficient allocation of resources, such as is exemplified by the leasing of military warehouses to commercial firms, or by inhibiting resource maintenance (in this case, human capital) in the form using military medical resources to accept civilian patients or to hire out military

⁴⁵ Chase, *supra* note 26, at 48-49.

⁴⁶ Minnie Chan & Liu Zhen, *China's President Xi Jinping Wants 'PLA Inc' to Stop its Song and Dance, Plans End for Profit-Making Activities*, S. CHINA MORNING POST (Nov. 27, 2015, 11:58 PM), <https://www.scmp.com/news/china/policies-politics/article/1884377/xi-wants-pla-inc-return-its-proper-role>.

⁴⁷ Andrew Wedeman, *PLA Inc.: Xi's Anti-Corruption Campaign Puts Heat on China's Military*, WORLD POLITICS REV. (Dec. 3, 2014), <https://www.worldpoliticsreview.com/articles/14574/pla-inc-xi-s-anti-corruption-campaign-puts-heat-on-china-s-military> (“After 1998 such opportunities were concentrated in three areas: kickbacks from routine logistics purchases, new arms procurement and the leasing out of PLA-controlled land to developers.”).

⁴⁸ Charles Clover, *China's Military Goes to War on Corruption*, FIN. TIMES (July 6, 2015), <https://www.ft.com/content/62c7cb6c-23c0-11e5-9c4e-a775d2b173ca>.

⁴⁹ See Kevin J. O'Brien & Neil J. Diamant, *Contentious Veterans: China's Retired Officers Speak Out*, 41 ARMED FORCES & SOC. 563 (2015).

⁵⁰ *Id.*

entertainers.⁵¹ Unlike embezzlement, the issue in these activities is not necessarily the activities themselves, as there could be legitimate reasons to do any of these activities. For example, if a military hospital is not working at capacity, accepting civilian patients could provide experience and funds that could be leveraged to support military readiness. Likewise, sending military entertainers out to civilian forums could support civil-military relations. Where the practices become inappropriate, unethical or criminal, however, is when the use of these resources is for private gain or occurs at the expense of their intended use. Examples of such inappropriate conduct include accepting civilian patients over military patients or hiring out military entertainers at the expense of meeting military morale and recreation requirements.⁵²

“Kickbacks” also misallocate defense expenditures. For instance, when an official directs defense expenditures to an ineffective enterprise for personal gain (*i.e.*, to a company that might produce sub-par quality supplies or charges at a higher-than-market rate) it can result in an inefficient allocation of resources (*i.e.*, purchasing too many of a particular supply in order to receive a kickback, but not enough of the appropriate supplies), thereby decreasing military readiness.

D. Detrimental Effect on International Relations

Corruption also complicates relationships with foreign militaries, as misconduct by one military force could engender negative feelings which are generalized by the host-nation public towards other foreign military forces. Under other circumstances, corruption can also bring into question the effectiveness of command and control mechanisms over Chinese forces. It may also “[weaken] the bonds of trust between American and Chinese military officials since there will be lingering doubts of whether the officer in charge today will be clamped in chains tomorrow.”⁵³ The argument follows that under those circumstances, military officials “might not have the connections to keep an isolated incident from escalating into a larger conflagration.”⁵⁴

By the same token, military corruption also makes it difficult to accurately assess a nation’s soft power. Inaccurate assessments of power results in different reactions from foreign powers. Hypothetically, a state

⁵¹ James Mulvenon, *PLA Divestiture 2.0: We Mean It This Time*, 50 CHINA LEADERSHIP MON. (2016), <https://www.hoover.org/sites/default/files/research/docs/clm50jm.pdf>.

⁵² *Id.*

⁵³ Aki Peritz, *3 Ways a Corrupt Chinese Military Hurts the U.S.*, U.S. NEWS & WORLD REP. (Apr. 16, 2014), <http://www.usnews.com/opinion/blogs/world-report/2014/04/16/how-chinas-military-corruption-hurts-the-us> (“even a corrupted Chinese army can still be dangerous and lethal.”).

⁵⁴ *Id.*

that appears strong by foreign powers may make a strategic choice to demonstrate power parity. This may present a greater “threat” than was intended, leading to a greater potential for miscalculation and kinetic conflict. In the Chinese context, analysts have traditionally couched the military aspect of China’s soft power by discussing proxy statistics, such as that it possesses the “world’s second-largest military budget (\$131.6 billion in the 2014 official budget), largest standing armed forces, scores of new advanced weapons, a navy that is sailing further and further out into the western Pacific Ocean and occasionally into the Indian Ocean, and a modest aircraft carrier.”⁵⁵ However, a recent RAND report notes that estimates based on these types of figures may overestimate the PLA’s actual combat capabilities, given the level of corruption and its effects.⁵⁶

Domestically, corruption can have negative effects on state stability, as military corruption decreases a regime’s legitimacy in the eyes of its citizens.⁵⁷ This has engendered greater debate on whether the armed forces should be held to higher ethical standards.⁵⁸ The fundamental proposition is that in order to be worthy of being entrusted with the means of violence, the military should be held to higher ethical and moral standards.⁵⁹ This is particularly important in China given the historical reverence for the military during China’s revolution,⁶⁰ and the significant role that the military plays in politics.⁶¹ When military leaders fail to live up to those standards, it decreases the popular standing and support for the military.⁶²

While this article contends that military corruption lowers armed forces’ combat effectiveness and undermines regime legitimacy, one must be circumspect as to the practical consequences in peacetime. As a starting point, at least one retired general, Major General Luo Yuan, who has warned

⁵⁵ David Shambaugh, Opinion, *The Illusion of Chinese Power*, BROOKINGS.EDU (June 25, 2014), <https://www.brookings.edu/opinions/the-illusion-of-chinese-power>.

⁵⁶ Chase, *supra* note 26.

⁵⁷ O’Brien, *supra* note 49 (“In China, few issues have a greater impact on regime legitimacy than corruption.”).

⁵⁸ See Carl Ficarrotta, *Are Military Professionals Bound by a Higher Moral Standard?*, 24 ARMED FORCES & SOC., 59-75 (1997).

⁵⁹ Richard M. Swain & Albert C. Pierce, *THE ARMED FORCES OFFICER*, 43, 44, 49-54 (2017), http://ndupress.ndu.edu/Portals/68/Documents/Books/AFO/Ch-4_AFO.pdf?ver=2017-04-18-134814-803.

⁶⁰ Cf. Ben Lowson, *What Every Chinese People’s Liberation Soldier Knows (Part 2): Epic PLA Battles of History*, THE DIPLOMAT (May 3, 2016), <http://thediplomat.com/2016/05/what-every-chinese-peoples-liberation-army-soldier-knows-part-2-epic-pla-battles-of-history>.

⁶¹ Michael Kiselycznyk & Phillip C. Saunders, *Civil-Military Relations in China: Assessing the PLA’s Role in Elite Politics*, CHINA STRATEGIC PERSP., INST. FOR NAT’L. STRAT. STUDIES, NAT’L DEF. U. (Aug. 2010), <http://ndupress.ndu.edu/Portals/68/Documents/stratperspective/china/China-Perspectives-2.pdf>; but cf. Peter Mattis, *The PLA Puzzle in Chinese Politics*, CHINA POL’Y INST. POL’Y PAPER 2015: NO. 8, U. NOTTINGHAM (2015), <https://www.nottingham.ac.uk/iaps/documents/cpi/policy-papers/cpi-policy-paper-2015-no-8-peter-mattis-.pdf>.

⁶² Bukkvoll, *supra* note 42.

about the consequences of military corruption believes that it is “yet to be widespread.”⁶³ Moreover, the effects of corruption may not be apparent when loss-of-life is not anticipated. For example, military forces employed in the dispute over the South China Sea are unlikely to change their behavior when interacting with foreign vessels, regardless of whether their enlisted or officer leaders obtained their positions by bribery.⁶⁴ Those sailors are more likely to be concerned with how they accomplish their missions and how they will advance their careers than they will be concerned with immediate loss of life scenarios. Even if that should be an issue, certainly nationalism will drive some sailors to act regardless of the senior leaders’ corruption.

Yet, that is exactly the reason that corruption in the military is so insidious. Only when the risk of loss-of-life is at play will many of the consequences become apparent. Only then will a soldier or sailor ask the question posed by retired PLA Major General Luo Yuan: “Which soldier will be willing to sacrifice for a corrupt officer, or to fight a battle for a corrupt officer? That corrupt officer has his own private coffer; how will he risk his own life for the country?”⁶⁵

Strategists may contend that such distrust inures to other nations’ benefit. But that argument is misguided, as military corruption creates unseen weaknesses that can be exploited by non-state actors, makes conflict difficult to deter,⁶⁶ and undermines our ability to contain volatile situations.⁶⁷ Therefore, due to its inherent uncertainty, corruption in China’s military benefits no one.

III. PURPOSE AND FUNCTION OF MILITARY JUSTICE IN CHINA

The point of proper accommodation between the meting out of justice and the performance of military operations—which involved not only the fighting, but also the winning of wars—is one which no one [has] discovered. I do not know of any expert on the subject—military or civilian—who can be said to have the perfect solution.⁶⁸

There are two essential departing points in any discussion of Chinese military law: first, Chinese military courts are structurally and procedurally

⁶³ Gan, *supra* note 28.

⁶⁴ See Sydney J. Freedberg, Jr., “‘We’ve Got to Continue to Engage’ China: CNO Richardson” BREAKING DEF. (Sept. 12, 2016, 1:25 PM), <http://breakingdefense.com/2016/09/weve-got-to-continue-to-engage-cno-richardson-on-china>.

⁶⁵ See Gan, *supra* note 28.

⁶⁶ See Peritz, *supra* note 53.

⁶⁷ *Id.*

⁶⁸ *Uniform Code of Military Justice: Hearing Before a Subcomm. of the Comm. on Armed Services*, 81st CONG. 597 (1950) (testimony of Sec. of Def. James Forrestal, H. Comm. on Armed Services, Subcomm. No. 1).

different—notably with wider jurisdiction over civil matters than American military courts. Second, Chinese military law is predicated on a different philosophy regarding the role of law.⁶⁹ As noted by one Chinese general:

[T]he PLA has emphasized the concept of indoctrination and political education of service members much more than that of punishments, either disciplinary or penal. The Chinese proverb[s] of ‘learn from past mistakes to avoid future ones, and cure the illness to save the patient’ [are] well known and accepted by each level of commanders and judges.⁷⁰

By comparison, American military justice is designed to “promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.”⁷¹ Chinese military justice contrasts with American military justice in China’s emphasis on “indoctrination and political education” and its lower emphasis on punishment.⁷² Phrased another way, Chinese military justice has a greater distinction between “discipline” and “punishment.”⁷³ Or, it could be said that Chinese military justice favors rehabilitation (for political stability reasons), over retribution or deterrence.⁷⁴ This is a key distinction between the United States and P.R.C. systems, one which under the right circumstances, has the potential to influence motivations and incentives to change the way that military actors behave. Assuming that P.R.C. forces will react to the same motivations and influences as U.S. forces leads the practitioner to fall prey to a mirror-image fallacy, in which the practitioner assumes that PLA forces will react in the same manner as US forces. However, the difference in purpose of military, reinforced by their military justice system, could potentially alter actions.

⁶⁹ Cf. KATE E. BLOCH & KEVIN C. McMUNIGAL, *CRIMINAL LAW: A CONTEMPORARY APPROACH* 40-58 (2005) (In other words, P.R.C. military justice places less emphasis on ‘retribution’ and greater emphasis on ‘rehabilitation.’).

⁷⁰ Zhang Chi Sun, *Chinese Military Law: A Brief Commentary on Captain Rodearmel’s Article*, 129 MIL. L. REV. 31, 33 (1990). Cf. “The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.” MANUAL FOR COURTS-MARTIAL, UNITED STATES, I-1 (2012 ed. 2012) [hereinafter *MCM*] (“The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.”).

⁷¹ *MCM*, *supra* note 70.

⁷² See Zhang, *supra* note 70. See generally, David C. Rodearmel, *Military Law in Communist China: Development, Structure and Function*, 119 MIL. L. REV. (1988).

⁷³ See David A. Schlueter, *The Military Justice Conundrum: Justice or Discipline?*, 215 MIL. L. REV. 1 (2013).

⁷⁴ See generally Zhang, *supra* note 70.

The emphasis in China on the military as a political unifier, which holds the CCP and the nation together, remains a theme that continues to reverberate through contemporary military law policy.⁷⁵ For example, the Decision on Major Issues Concerning Comprehensively Deepening Reforms stated that “[t]he People’s Liberation Army must be loyal to the CPC, [and] be able to win and be persistent with its good traditions.”⁷⁶ This is only possible, according to the Communiqué of the Fourth Plenum, when the leadership of the CCP is “a core and fundamental requirement for ruling the military according to the law.”⁷⁷

IV. SOURCES OF CHINESE MILITARY LAW AND REGULATIONS

Chinese military law authorities begin with the P.R.C. Constitution. Article 5 states that, “All State organs, *the armed forces*, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and other laws . . . No organization or individual is privileged to be beyond the Constitution or other laws.”⁷⁸

Authority flows from the Constitution through laws passed by the National People’s Congress, and further down administrative regulations adopted under the authority of those laws. The primary authority for further laws and regulations governing the P.R.C. military is the Military Service Law of the People’s Republic of China, which subjects members of the Chinese armed forces to the jurisdiction of both civilian and criminal law, as well as to disciplinary regulations promulgated by the Standing Committee of the NPC and the Central Military Commission.⁷⁹

⁷⁵ Susan Finder, *Ruling the PLA According to Law: An Oxymoron?*, 15 CHINA BRIEF 9-13 (2015), https://jamestown.org/wp-content/uploads/2015/11/CB_15_21_-_3.pdf?x87069. Cf. Editorial, *CPC Command of Military Must be Upheld*, GLOBAL TIMES (Nov. 3, 2014), <http://www.globaltimes.cn/content/889665.shtml> (In a state where the primary political party is indistinguishable from the government, the leadership of the party over the military may seem like a foregone conclusion. However, there is a contrary viewpoint: that the “military belongs to the country”, i.e., that the military derives its authority from the people, and not necessarily the party. This roundabout way of suggesting a separation between the origins of CCP sovereignty and military power is denigrated precisely because it attacks the concept that the military exists, in part, for “indoctrination and political education”, in patriotic terms.

⁷⁶ China Daily, *The Decision on Major Issues Concerning Comprehensively Deepening Reforms in brief*, CHINA.ORG.CN (Nov. 16, 2013), http://www.china.org.cn/china/third_plenary_session/2013-11/16/content_30620736.htm.

⁷⁷ See Finder, *supra* note 75.

⁷⁸ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA Mar. 14, 2004, art. 5., http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm.

⁷⁹ Military Service Law of the People’s Republic of China (1998), http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1383961.htm (hereinafter “MSL”). (Article 1 of the Military Service Law states that derives its authority from Article 55 of the P.R.C. Constitution and makes no explicit reference to Article 5 of the P.R.C. Constitution. However, Article 55 does state that “It is the honourable duty of citizens of the People’s Republic of China to perform military service and join the militia *in accordance with law*.” Logically, other provisions

Article 6 The active servicemen and reservists must abide by the Constitution and the law, and shall perform their duties and at the same time enjoy their rights as citizens; their rights and duties resulting from their joining the military service shall be specified separately in military regulations in addition to the provisions of this Law.⁸⁰

Article 7 Active servicemen must abide by the rules and regulations of the army, faithfully discharge their duties and always be ready to fight for the defence of the motherland.⁸¹

While most military discipline is administered under the delegated regulatory authority of Articles 6 and 7, several crimes or breaches of conduct are deemed so serious that they are specified separately. These include crimes such as desertion,⁸² “draft dodging,”⁸³ obstruction of military activities,⁸⁴ and certain corrupt or fraudulent activities.⁸⁵

Article 65 Any State functionary or armyman who, in military service work, commits any of the following acts, if the case is serious enough to constitute a crime, shall be investigated for criminal liability according to law; if the case is not serious enough to constitute a crime, he shall be given administrative sanction:

- (1) taking bribes;
- (2) abusing his power or neglecting his duty; or
- (3) engaging in malpractices for selfish purposes through accepting or sending unqualified recruits.⁸⁶

In addition to the Military Service Law, the NPC and the Standing Committee have passed at least eleven other “defense and army-building laws and legality-related decisions.”⁸⁷ In addition, the State Council and the

of the P.R.C. Constitution which would apply include Article 5 and Article 54, which states “It is the duty of citizens of the People’s Republic of China to safeguard the security, honour and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.”).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² MSL, *supra* note 79, at art. 62.

⁸³ MSL, *supra* note 79, at art. 61.

⁸⁴ MSL, *supra* note 79, at art. 64.

⁸⁵ Other regulations issued by the Standing Committee of the NPC governing the structure and organization of the military also buttress these provisions by establishing military specific penalties for crimes, such as providing for the loss of rank. *See* Regulations on the Military Ranks of PLA Officers.

⁸⁶ MSL, *supra* note 79, at art. 65.

⁸⁷ *China’s National Defense*, INFO. OFF. ST. COUNCIL, PEOPLE’S REPUBLIC OF CHINA (1998), <http://fas.org/nuke/guide/china/doctrine/cnd9807/NationalDefense-4.html#2>. The White Paper highlights the following non-exhaustive list: (1) National Defense Law of the P.R.C., (2) Military

CMC have jointly issued more than 40 administrative laws and regulations governing the military.⁸⁸ Independently, the CMC has issued somewhere between 70 and 224 additional regulations.⁸⁹ Expanding on these authorities, the P.R.C. notes that “[t]he various general departments, services and arms and military area commands have drawn up 1,000-some items of military rules and regulations.”⁹⁰ Unfortunately, these regulations, including ethical and financial regulations, continue to contain numerous “vague” and “unclear” provisions which have hindered the prosecution of military officials for ethical misconduct.⁹¹

For example, Professor Zhang Jiantian describes a situation involving the application of military commercial divestiture rules implemented in 1998.⁹² Following those regulations, the military issued an explanatory regulation entitled, “Approach to Military Culture Gratuitous Service Management” whereby military performing arts groups could participate in privately sponsored events as long as the private sponsor was providing at least twenty percent of the costs.⁹³ As a result, military personnel became highly engaged in theatrical performances, advertising, and even corporate sponsorships.⁹⁴ This type of conduct became so notorious, that additional governmental regulations were enacted to prohibit this activity.

Likewise, Professor Zhang noted that technical differences in regulations can be manipulated for the benefit of commercial interests. For example, while governmental regulations require a tender to be re-tendered

Facilities Protection Law of the P.R.C., (3) Civil Air Defense Law of the P.R.C., (4) Law on the Reserve Officers of the P.R.C., (5) the Garrison Law of the Hong Kong Special Administrative Region of the P.R.C., (6) Military Service Regulations Pertaining to PLA Officers in Active Service, and (7) Regulations on the Military Ranks of PLA Officers.

⁸⁸ *Id.* The White Paper highlights the following: (1) the Regulations on National Defense Transportation, (2) Regulations on Conscription Work, (3) Regulations on Militia Work, and (4) Military Service Regulations Pertaining to PLA Soldiers in Active Service.

⁸⁹ *Id.* (Again, the White Paper notes the (1) Regulations of the PLA Headquarters, (2) Regulations on Political Work in the PLA, (3) Logistics Regulations of the PLA, (3) Routine Service Regulations of the PLA, (3) Discipline Regulations of the PLA, and (4) Drill Regulations of the PLA.); *see also* WHITE PAPER 2010 (Yao Jinling ed., 2017), http://eng.mod.gov.cn/publications/2017-04/11/content_4778206_5.htm.

⁹⁰ *China's National Defense*, *supra* note 87 (While this reference is dated, it also demonstrates the length of time during which military legislative reform has been pursued, and the efforts to establish a more robust system in the absence of NPC legislative action).

⁹¹ Clover, *supra* note 48 (“The People’s Liberation Army said it had found in the regulations 69 loosely worded areas it termed ‘vague’ and ‘unclear’, and which experts said meant misappropriation of funds often went unpunished.”).

⁹² *See also* Liu Zhen, *China’s Military to Scrap Paid-For Public Shows by PLA Song and Dance Troupes As it Bids to Create Leaner, More Professional Armed Forces*, S. CHINA MORNING POST (Nov. 27, 2015, 3:09 PM), <http://www.scmp.com/news/china/diplomacy-defence/article/1884133/chinas-military-scrap-paid-public-shows-pla-song-and>.

⁹³ Zhang Jiantian, *Zhang Jiantian: Military Laws and Regulations of How to Review?*, CAIXIN (Nov. 7, 2014, 11:01 AM), <http://special.caixin.com/2014-11-07/100748023.html>.

⁹⁴ *Id.*

if there are less than three bidders, the CMC has made an exception when national security, state secrets, or other ‘special’ circumstances are involved, so that two or more bidders is sufficient.⁹⁵ While Professor Zhang does not say so, it is not difficult to imagine circumstances where secrecy, valid or not, permits this rule to be abused to the benefit of an unscrupulous official.

Thus, there is no single “Organic Law of Military Justice” akin to the U.S. Uniform Code of Military Justice, which defines the full scope of criminal conduct and the procedures for conducting criminal proceedings within the military system. However, there is an extensive system of laws and regulations designed to create what the P.R.C. calls “a military legal system with Chinese characteristics.”⁹⁶ Unfortunately, these laws and regulations are highly prone to differences in interpretation and application.

V. PRE-REFORM STRUCTURE OF CHINESE MILITARY LEGAL SYSTEM

Laws and regulations are not only enforced by the chain of command, but by military courts. This section discusses the structure and relationship between military courts and other governmental branches prior to the military reforms enacted in early 2016. It is not yet clear how, or if, the reorganization will change the military court system. However, an analysis of the court system as it has been constituted prior to reform efforts is important to understand the challenges faced by military prosecutors and the courts themselves, as well as how any reforms may affect the courts functioning in the future.

Chinese military courts are standing courts organized under the cognizance of the Organic Law of the People’s Courts and the Organic Law of the People’s procuratorates—they are not ad hoc courts formed under the authority of a convening authority as in the U.S. system.⁹⁷ Chinese military courts are courts of special jurisdiction,⁹⁸ but they hold jurisdiction over both criminal cases and certain civil cases.⁹⁹

⁹⁵ *Id.*

⁹⁶ *China’s National Defense*, *supra* note 87 (Those familiar with China will readily recognize the phrase “with Chinese characteristics.” In this, as in most contexts, it is not clear what is intended to be the similarities to other systems, and what are intended to be the differences. However, at the time, the P.R.C. noted that “China also lays stress on bringing it into line with the international military-related treaties and agreements that China has acceded to, so as to make China’s military laws consistent in content with international legal norms and practices.”).

⁹⁷ Daria Wollschlaeger, *OTJAG’S China Initiatives: Past, Present, Future*, ARMY LAW., DA-PAM 27-50-308 (1998).

⁹⁸ *Legal System of China*, PKULAW.CN, <http://en.pkulaw.cn/Legal/index.aspx> (last visited Oct. 25, 2018).

⁹⁹ *wǒguó jūnshì fǎyuàn jìn 20 nián gòng shěnjié yīshěn mínshì ànjiàn 2500 duō jiàn*, Xinhua (Sept. 16, 2012, 8:42: PM), http://news.xinhuanet.com/legal/2012-09/16/c_113095477.htm (military courts handle civil cases, a trial of nearly two decades, involving the military in a timely manner to

The hierarchy of Chinese military courts closely resembles that of the civilian legal system. Like the civilian judicial system, the military legal system consists of military courts and procuratorates (prosecutors).¹⁰⁰ Military courts and procuracies are organized on three levels. The highest level consists of the Military Court of People's Liberation Army and its respective Procuratorate.¹⁰¹ Principally, the PLA Court is responsible for trying: "first-hearing cases involving crimes committed by individuals above the division commander level, . . . foreign-related criminal cases, [and] . . . second-hearing cases, verification and review of cases involving the death penalty."¹⁰²

The intermediate level, most frequently referred to as the 'higher level', are courts constituted "for military regions, for each armed service within the PLA (including the navy and air force) and for each general department (unified staff, political, and logistical departments supporting all branches of the PLA."¹⁰³ These courts are principally responsible for trying "first-hearing cases involving crimes committed by individuals at the deputy division commander and regiment level[,] . . . cases that may involve the death penalty and cases under their jurisdiction as authorized or designated by superior military courts[, and] . . . cases appealing or protesting rulings or verdicts passed by lower courts."¹⁰⁴

The lowest level consists of "primary level" courts and procuracies, and are organized according to military provincial districts. These primary level

resolve civil disputes, safeguard the legitimate rights and interests of the troops and the legitimate rights and interests of the local parties, and promote comprehensive military construction and maintenance of civil-military relations and harmonious play an active role.).

¹⁰⁰ This article will not discuss the structure of the Chinese military court system in detail. Rather, this discussion is designed to give a perfunctory understanding of the system in order to provide context to the philosophy underlying Chinese military law, for those unfamiliar. For a more detailed discussion of the structure of Chinese military courts, see Zhang, *supra* note 70.

¹⁰¹ For additional insight into the hierarchy and structure of the Military Court of the People's Liberation Army, see Susan Finder, *Clearing the Backlog of Civil Disputes in the Chinese Military Courts*, SUPREME PEOPLE'S CT. MONITOR (Mar. 8, 2014), <http://supremepeoples-courtmonitor.com/2014/03/08/clearing-the-backlog-of-civil-disputes-in-the-chinese-military-courts/> ("[T]he PLA military Court . . . is under the Political Department of the Central Military Commission, and under the Supreme People's Court."); *The National Court Organization*, CHINA.ORG.CN, http://www.china.org.cn/features/state_structure/2003-05/20/content_1065040.htm (last visited Nov. 30, 2014) ("A military court consists a president, a vice president, two tribunals each with a presiding judge and a vice presiding judge, judges and clerks. Each of the military courts of various area commands, branches of the armed services and army groups consists of a president, judges and clerks.") and Zhang, *supra* note 71 at 35 ("The rank of the President of the Military Court of the PLA corresponds to the Vice President of the Supreme People's Court, and that of the Chief Procurator corresponds to the Deputy Chief of the Supreme People's Procuratorate.").

¹⁰² China Internet Information Center, *Organization and Responsibilities of the People's Courts, China's Judiciary*, CHINA.ORG.CN, <http://www.china.org.cn/english/Judiciary/31280.htm> (last visited Oct. 12, 2018).

¹⁰³ Zhang, *supra* note 70, at 35.

¹⁰⁴ China Internet Information Center, *supra* note 102.

judicial organs also exist for navy fleets, air force regions, and missile bases. These courts are principally responsible for trying: “cases involving crimes committed by individuals under the battalion commander level[,] first-hearing cases that may involve a penalty up to life imprisonment[, and] . . . first-hearing cases under its jurisdiction as authorized or designated by superior military courts.”¹⁰⁵

Chinese Military Court System¹⁰⁶

First Level of Military Court	Military Court of the PLA (as a branch of the General Political Department)
Second Level of Military Court	Military Court in Headquarters of the MAC, Navy, Air Force, Second Artillery Force, People’s Armed Police Force (as a branch of the political department of the corps)
Basic Level of Military Court	Military court in Combined Corps, Provincial Commands, Fleet, Air Force Command of MAC, Provincial Headquarters of the People’s Armed Police Force (as a branch of the political department of the corps)

The Chinese military courts are unusual in that they are under the “dual leadership” of both the Supreme People’s Court and the political department of the military.¹⁰⁷ For example, the Supreme People’s Court does issue administrative orders (“circulars”) that apply to PLA Military Court.¹⁰⁸ This description, however, tends to suggest a greater supervisory role with the Supreme People’s Court than appears to exist in practice. Instead, they are best described as “attached to the armed forces,” as they were constituted as

¹⁰⁵ *Id.*

¹⁰⁶ Table from Zhiping Zeng, Visiting Scholar, UC Hastings (on file with author); see also Mark Stokes & Russell Hsiao, *The People’s Liberation Army General Political Department: Political Warfare with Chinese Characteristics*, PROJECT 2049 INST., at 20 (Oct. 14, 2013), https://www.project2049.net/documents/PLA_General_Political_Department_Liaison_Stokes_Hsiao.pdf.

¹⁰⁷ Susan Finder, *Further Thoughts from the Experts on China’s Military Courts*, GLOBAL MIL. JUST. REFORM (Apr. 17, 2016), <http://globalmjreform.blogspot.com/2016/04/further-thoughts-from-experts-on-chinas.html>.

¹⁰⁸ *Circular of the Supreme People’s Court on the Prohibition of Judges Who are in Service from Acting as Arbitrators*, CHINA INT’L ECON. & TRADE ARB. COMMISSION (July 13, 2004), <http://www.cietac.org/index.php?m=Article&a=show&id=2420&l=en>.

a component of the Political Works Department.¹⁰⁹ Under the Political Works Regulations, which identified the primary responsibilities of the Political Works Department, the Political Works Department was responsible for the supervision of the military courts and the military procuratorate.¹¹⁰ Thus, the PLA military court and procuratorates were two separate second-level departments within the General Political Works Department.¹¹¹

This dual existence had created some tension, as military courts are formally formed under the legal authority of the SPC, but are dependent on the military for personnel and finances.¹¹² This tension is exemplified in even simple regulations, such as those for ranking judges, which are reported to have been issued in 2004. These administrative rules, jointly issued by the Supreme People's Court and the Political Works Department, have been difficult to implement.¹¹³

VI. THE IMPETUS FOR MILITARY JUSTICE REFORM

Amidst a series of scandals involving public and political figures, the Third Plenary Meeting of the 18th Central Committee in 2013 identified corruption as a key issue and issued a call to action for the CCP to:

[I]mprove a system that combats and prevents corruption, promote political integrity, and see to it that officials are honest, the government is clean, and political integrity is upheld. In this regard, the plenum proposed forming a scientific and effective mechanism to check and coordinate power, being more innovative in creating mechanisms and institutions to combat corruption, and having systemic rules to improve work style.¹¹⁴

At the time, this was largely focused at the CCP writ-large, as the Decision on Major Issues Concerning Comprehensively Deepening Reforms discussed this issue in terms of “[e]nhanc[ing] innovative systems for

¹⁰⁹ Finder, *supra* note 107 (Chinese military courts are standing courts organized under the cognizance of the Organic Law of the People's Courts and the Organic Law of the People's procuratorates—they are not ad hoc courts formed under the authority of a convening authority as in the U.S. system.).

¹¹⁰ Article 17 (10-11), *People's Liberation Army Political Work*, CENTRAL MILITARY COMMISSION (Sept. 13, 2010), http://www.360doc.com/content/10/0918/21/53332_54703368.shtml.

¹¹¹ Stokes & Hsiao, *supra* note 106 at 17.

¹¹² Finder, *supra* note 107.

¹¹³ Junshi fayuan zuzhi fa chutai nan de zhengjie yu duice (军事法院组织法出台难的症结与对策) [Difficulties in the Introduction of the Organic Law of Military Court and Countermeasures], CHINALAWINFO (Nov. 26, 2015), <http://article.chinalawinfo.com/ArticleFullText.aspx?-ArticleId=93669>.

¹¹⁴ *Communiqué of the Third Plenary Session of the 18th Central Committee of the Communist Party of China*, CHINA.ORG.CN (Jan. 15, 2014), http://www.china.org.cn/china/third-plenary_session/2014-01/15/content_31203056.htm.

identifying corruption.”¹¹⁵ However, this “innovation” was to be internally focused, as:

Anti-corruption responsibility belongs to the Party committee, with the commission for discipline inspection being responsible for supervision. Ensure that the Central Commission for Discipline Inspection sends discipline inspectors to central-level Party and government organs and exercises unified management.¹¹⁶

These early stages of the anticorruption campaign did not explicitly connect anticorruption efforts with military law reform. However, the Communiqué of the Third Plenary Meeting of the 18th Central Committee did address the issue of general military reform. In that Communiqué, the Central Committee laid out their objective, stating that:

[W]e will endeavor to resolve the prominent problems that constrain the development of national defense and the armed forces . . . and build a system of modern military forces with Chinese characteristics. For [our] endeavor in this regard, the tasks listed include *deepening the adjustment and reform of the military administrative setup and staffing*, [and] *promoting adjustment and reform of military policies and systems* . . .¹¹⁷

References to the administrative structure of the military foreshadowed military re-structuring, which commenced in 2015.¹¹⁸ Underlying those reforms, however, was the stated objective of “[b]uilding people’s forces that obey the Party’s command”¹¹⁹ – a key tenet of Chinese military justice policy.

The drive for military justice reform may have reached an apex during the 2014 Communiqué of the Fourth Plenary Session, in which the CCP made an explicit connection between national defense strategies and the military law reform. In the 2014 Communiqué, the CCP directly addressed the issue of reforming military law, stating that:

We need to intensify our efforts to practice law-based, strict governance of the armed forces, build a sound law-based military system with Chinese characteristics, and increase the level of rule of law in the development of

¹¹⁵ China Daily, *The Decision on Major Issues Concerning Comprehensively Deepening Reforms in brief*, CHINA.ORG.CN (Nov. 13, 2013), http://www.china.org.cn/china/third_plenary_session/2014-01/15/content_31203056.htm

¹¹⁶ *Id.*

¹¹⁷ Communiqué of the Third Plenary Session, *supra* note 114 (emphasis added).

¹¹⁸ Cal Wong, *China Reduces and Restructures Army*, THE DIPLOMAT (May 1, 2017), <https://thediplomat.com/2017/05/china-reduces-and-restructures-army/>.

¹¹⁹ Xi Jinping, *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era*, CHINADAILY.COM.CN (Nov. 4, 2017), http://www.chinadaily.com.cn/china/19thcpnational-congress/2017-11/04/content_34115212.htm.

national defense and the armed forces in order to achieve the Party's goal of strengthening the military under the new conditions.¹²⁰

The idea that “the rule of law is [a] national security interest” was further explained by the military press, which noted that for China, “national defense and military reform has entered a crucial period and deep waters, involving national defense and army deep interest and institutional structures, profound, unprecedented complexity,”¹²¹ and that to “deepen defense and military reform with Chinese characteristics the socialist system of self-improvement and development of the military”¹²² China would have to improve its system of military laws and regulations in order to further advance its strategic objectives of improving its ability to conduct joint operations.

While the logic is not fully drawn out, these documents clearly identify that military law reform is an essential component to break China’s ceiling in joint operations capabilities, due in part to corrupt logistics operations and a system of personal patronage across the ranks.

Since the 2014 Communique, there has been little direct discussion of military justice reform. However, there continue to be two overarching policy themes which could be used by those seeking reform. First, there is the emphasis on broader judicial reform, and second, the emphasis on continued reform of Party, government, military and people’s organizations. For example, the 2014 Communique emphasized that:

We must improve the system for ensuring independent and impartial exercise of judicial and procuratorial powers in accordance with the law; develop a system of record keeping, reporting, and accountability to deal with intervention in judicial activities by officials, especially in the handling of cases; and establish a sound mechanism for protecting judicial officers in performing their legally mandated duties. . . .¹²³

[W]e must channel great energy into raising the levels of political integrity and professional competence and ethics of the rule of law professionals, and

¹²⁰ *Communique of the 4th Plenary Session of the 18th Central Committee of the CPC*, CHINA.ORG.CN (Dec. 2, 2014), http://www.china.org.cn/china/fourth_plenary_session/2014-12/02/content_34208801.htm [hereinafter “Communique of the Fourth Plenary Session”].

¹²¹ Gao Peng. *iiianchi vi fazhi siwei he fazhi fangshi tuidong guofang he jundui gaige (坚持以法治思维和法治方式推动国防和军队改革)* [Adhere to the rule of law and the rule of law way of thinking to promote the national defense and army reform], *LIBERATION ARMY DAILY* (July 21, 2014, 8:11 AM), www.mod.gov.cn/policy/2014-07/21/content_4523330.htm.

¹²² *Id.*

¹²³ Communique of the Fourth Plenary Session, *supra* note 120.

strive to develop a contingent of professionals devoted to the socialist rule of law and loyal to the Party, the country, the people, and the law. . . .¹²⁴

We need to raise the level of *competence* of legal service providers, prompt lawyers to become more self-motivated and resolute in following the path of socialist rule of law with Chinese characteristics. . . .¹²⁵

This language suggests that there is an implicit recognition of the value of independent legal advice, which places an emphasis on “self-motivated” and “ethical” lawyers and rule of law professionals.¹²⁶ Such principles are also important in the military context, as:

National defense and military reform is an important part of a comprehensive reform [and] . . . the use of the rule of law must uphold the rule of law way of thinking and promoting defense and military reform as an important principle to ensure the rule of law on the reform track step by step, in order to focus on a comprehensive and systematic manner.”¹²⁷

The other recurring theme is the emphasis on institutional reforms involving the Party, government, military and people’s organizations.¹²⁸ These reform efforts have resulted in broad civilian and military reorganizational changes, which have also involved some changes in the Chinese military justice system.

VII. PROPOSED & IMPLEMENTED REFORMS IN THE MILITARY

Since 2014, two significant documents have expounded upon the principles discussed in the Communiques. In 2015, the Central Military Commission announced a policy paper entitled “Deeply Promoting Administering the Military According to Law and Administering the Military Strictly Under the New Situation.”¹²⁹ The text of this “Military Law Reform Decision” is not publicly available, although a summary of its thirty-five key points was released.¹³⁰ Broadly, those can be broken down into several key areas: institutional reforms, cultural reforms, and personnel reforms.

The most numerous reforms identified involved institutional reforms. These included both changes in both command and control institutions and

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See Gao, *supra* note 121.

¹²⁸ Xinhua, *19th CPC Central Committee 3rd Plenum Issues Communiqué*, CHINA DAILY (Mar. 1, 2018, 1:37 AM), <http://usa.chinadaily.com.cn/a/201803/01/WS5a96e8c8a3106e7dcc13eb69.html>.

¹²⁹ Finder, *supra* note 75.

¹³⁰ *Id.*; see also China Military Network, *Deeply Advancing the Rule of Law and Strictly Administering the Army Under the New Situation*, 71.CN (Apr. 22, 2015, 10:49 AM), <http://www.71.cn/2015/0422/810872.shtml>.

military justice institutions. Reforms affecting the command and control of forces included re-evaluation of CMC structural organization,¹³¹ establishing a hierarchy of permissible authorities for forces at different levels,¹³² and “establishing a military legal advisory system.”¹³³ The document also provided for significant military justice system reforms, including developing laws and regulations to support a rules-based military regulatory system,¹³⁴ military judicial authorities with independent prosecutorial powers,¹³⁵ and clarified military law enforcement roles.¹³⁶

The necessary cultural reforms included: establishing codes of conduct for military personnel,¹³⁷ and “striving to achieve a fundamental change from the practice of relying solely on administrative orders to the administration according to law”¹³⁸ to ensure a “rigorous and efficient military system with Chinese characteristics.”¹³⁹

The document also identified critical personnel reforms, including: establishing a system of strict accountability,¹⁴⁰ “building a team of high-quality military legal personnel,”¹⁴¹ and providing for military law training in military academies.¹⁴²

Despite the breadth of these reforms, the document also emphasizes the cornerstone tenet of Chinese military justice—which emphasizes the value of military law as a means of ensuring Party leadership in both philosophy and force.¹⁴³

In 2016, the Central Military Commission released its “Opinions on Deepening National Defense and Military Reform.”¹⁴⁴ This document presented the military reform agenda through the year 2020. In the 2016 CMC Opinions, the CMC identified “adherence to the rule of law” as one of the six basic principles of the opinion.¹⁴⁵ The 2016 CMC Opinions also addressed a number of practical issues in military law, including:

¹³¹ Finder, *supra* note 75, at 8.

¹³² *Id.* at 12.

¹³³ *Id.* at 23.

¹³⁴ *Id.* at 9-11.

¹³⁵ *Id.* at 24.

¹³⁶ *Id.* at 14.

¹³⁷ *Id.* at 18.

¹³⁸ *Id.* at 3.

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.* at 20.

¹⁴¹ *Id.* at 27.

¹⁴² *Id.* at 31.

¹⁴³ See generally Zhang, *supra* note 70.

¹⁴⁴ CMC Opinions on Deepening National Defense and Military Reforms [中央军委关于深化国防和军队改革的意见], XINHUA (Jan. 1, 2016, 6:47 PM), http://www.xinhuanet.com/mil/2016-01/01/c_1117646695.htm [hereinafter 2016 CMC Opinions].

¹⁴⁵ *Id.* (“Adhere to the rule of law. Give full play to the leading and normative role of the rule of law in reform, make major reforms in accordance with the law, coordinate reforms and legislation, focus on the use of laws and regulations to solidify reforms, and promote reforms on the rule of law.”);

- “Fully implementing the principle of administering the military according to law and strictly administering the military. . .”
- “[I]mproving the way of administering the military, and realizing the fundamental transformation from the practice of relying solely on administrative orders to the administration according to law, from the way of relying solely on habits and experience to the work of relying on laws and regulations.”
- “Improving the military legal system and military legal advisory system,”
- “[R]eforming the military judicial system and mechanism,”
- “[I]nnovating the discipline inspection and supervision system and inspection system,”
- “[I]mproving the audit system,”
- “[I]mproving the military legal personnel management system,”
- “[E]stablishing and improving the organizational legal system and procedural rules,” and
- “[C]omprehensively improving the national defense and military level of legalization.”

Notably, the 2016 CMC Opinions were not as detailed as the 2015 document. Nor did the 2016 CMC Opinion provide a target completion date for military justice reforms as it did in many other target areas of reform.¹⁴⁶

In addition to these policy documents and statements of principles, several major reforms have been announced. In November 2014, it was announced that the Auditing Office was moved from the PLA Logistics Department to the Central Military Commission.¹⁴⁷ This move was designed to prevent officials in the Logistics Department from interfering in investigations of potential misconduct related to defense acquisitions and financial operations. In January 2015, it was announced that both the president of the PLA Military Court and the senior military prosecutor would be promoted to the rank of Major General (equivalent to the commander of a major military command).¹⁴⁸ These promotions appear intended to reinforce the authority of the military judicial system and help limit potential interference from officers who were of higher or equal ranks. At the same time, a Political and Law (Legal Affairs) Commission was formed as part of

see, e.g., Table 7 in Joel Wuthnow & Phillip C. Saunders, *Chinese Military Reforms in the Age of Xi Jinping: Drivers, Challenges, and Implications*, 10 CHINA STRATEGIC PERSPECTIVES, at 1, 50 (2017), <http://ndupress.ndu.edu/Portals/68/Documents/stratperspective/china/ChinaPerspectives-10.pdf>.

¹⁴⁶ Wuthnow & Saunders, *supra* note 145.

¹⁴⁷ *China Media: Military Corruption*, BBC (Nov. 7, 2014), www.bbc.com/news/world-asia-china-29947544.

¹⁴⁸ Susan Finder, *Why Was the Head of the PLA Military Court Promoted?*, GLOBAL MIL. JUST. REFORM (Jan. 15, 2015, 9:27 PM), <http://globalmjreform.blogspot.com/2015/01/why-was-head-of-pla-military-court.html>.

the PLA's military restructuring.¹⁴⁹ This Commission would be one of sixteen committees replacing the General Staff, General Political, General Logistics and General Armaments departments, with the purpose of “establishing regulations and legal norms,” ““prevent[ing], investigat[ing], and deal[ing] with’ criminal activities in the military.”¹⁵⁰ Lastly, in May 2016, reports identified a new rule designed to reduce military involvement in commercial activities in military hospitals, performance groups, and publishing houses.¹⁵¹

VIII. ASSESSING THE EFFECTIVENESS OF CURRENT PLA MILITARY LEGAL REFORMS

Observers should not forget that China's current military anticorruption campaign is not the country's first. In 1996, President Jiang Zemin criticized the military for corruption and nepotism, and began emphasizing adherence to a higher standard of ethical conduct.¹⁵² The previously unheeded calls for change within the military by senior Chinese leaders, including Generals Zhang Wannian and Wang Ke, eventually resulted in the separation of many commercial activities from military operations—as directed by Jiang Zemin, acting under his authority as Chairman of the CMC.¹⁵³

This not-so-distant history provides two interesting parallels to the present anticorruption campaign in the military. First, former President Jiang Zemin and current President Xi Jinping (as well as other senior Chinese military leaders both past and present) have employed highly similar rhetoric.¹⁵⁴ Second, the military anticorruption campaign of the late 1990s began by making an example of several high-profile cases involving senior officers and officials.¹⁵⁵ As of October 2016, China File reported that forty-five “tigers” within the military have been investigated, expelled/arrested, or sentenced for corruption in the current anticorruption campaign.¹⁵⁶ These

¹⁴⁹ Phoenix Kwong, *Ex-security Head in China Takes on New Political Job*, S. CHINA MORNING POST (Jan. 30, 2016, 10:25 PM), <http://www.scmp.com/news/china/diplomacy-defence/article/1907542/ex-security-head-china-takes-new-political-job>.

¹⁵⁰ Wuthnow & Saunders, *supra* note 145, at 64.

¹⁵¹ Zhao Lei, *New Rule Targets Military Corruption*, CHINA DAILY (May 9, 2016, 8:02 AM), http://www.chinadaily.com.cn/china/2016-05/09/content_25146008.htm.

¹⁵² James Mulvenon, *To Get Rich Is Unprofessional: Chinese Military Corruption in the Jiang Era*, 6 CHINA LEADERSHIP MONITOR 21 (2003), http://media.hoover.org/sites/default/files/-documents/clm6_jm.pdf.

¹⁵³ *Id.*

¹⁵⁴ Compare *id.* at 22 with *China's Xi Says Military Must Resist 'Corrosion' of Corruption*, REUTERS.COM (Aug. 19, 2018, 7:03 AM), <https://www.reuters.com/article/us-china-politics-defence/chinas-xi-says-military-must-resist-corrosion-of-corruption-idUSKCN1L40D7>.

¹⁵⁵ *Id.*

¹⁵⁶ *Catching Tigers and Flies*, CHINAFILE.COM, <https://anticorruption.chinafile.com/#> (last visited Oct. 25, 2018) (Click on “Military” in the “Sector” section); for a description of the infographic, see

numbers have included two Generals, five Lieutenant Generals, thirty-four Major Generals and one Senior Colonel.¹⁵⁷ However, given the similarities between these campaigns, the question arises whether the current campaign is going to be any more effective than the last campaign under President Jiang Zemin.

The issue of effectiveness has led some to question whether the motives underpinning this anticorruption campaign are political, designed to consolidate the power of senior Chinese leaders, such as President Xi Jinping.¹⁵⁸ However, untangling any such motivation is particularly difficult in China, as “[g]iven the way in which the party is constituted, any personnel decision has political implications.”¹⁵⁹ Yet, in these limited circumstances, the political and altruistic anti-corruption motivations of Chinese leaders may not be mutually exclusive, as some observers have noted that: “[t]he case against General Xu could serve to deter official graft while helping Mr. Xi tighten his hold on the party,”¹⁶⁰ while other military analysts have posited that:

[President Xi Jinping’s] goal . . . is to transform a service larded with pet projects and patronage networks into a leaner fighting force more adept at projecting power abroad and buttressing party rule at home, while strengthening his own authority over the army.¹⁶¹

In Chinese terminology, this might be phrased as seeking a better grasp on the “knife handle,” or in other words, ensuring Communist Party leadership over the military.¹⁶² Nevertheless, prosecution of corrupt acts by senior-level in the military is valuable and these prosecutions are an essential component to demonstrate that no one is above the law.

Barreda et al., *Visualizing China’s Anti-Corruption Campaign*, CHINAFILE (Jan. 21, 2016), <http://www.chinafile.com/infographics/visualizing-chinas-anti-corruption-campaign>.

¹⁵⁷ *Id.*

¹⁵⁸ Jon S.T. Quah, *Hunting the Corrupt “Tigers” and “Flies” in China: An Evaluation of Xi Jinping’s Anti-Corruption Campaign (November 2012 to March 2015)*, 2015 CONTEMPORARY ASIAN STUDIES SERIES 1, <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1224-&context=mscas>.

¹⁵⁹ Chris Buckley, *China’s Antigraft Push Snares an Ex-General*, N.Y. TIMES (June 30, 2014), http://www.nytimes.com/2014/07/01/world/asia/china-moves-against-one-of-its-top-leaders.html?module=Search&mabReward=relbias%3Ar%2C%7B%22%22%3A%22R1%3A17-%22%7D&_r=0 (quoting Prof. M. Taylor Fravel).

¹⁶⁰ *Id.*

¹⁶¹ Johnathan Ansfield, *Leader of China Aims at Military with Graft Case*, N.Y. TIMES (Mar. 31, 2014), http://www.nytimes.com/2014/04/01/world/asia/chinese-military-general-charged-in-graft-inquiry.html?_r=0.

¹⁶² David Bandurski, *Meeting Mr. “Hot Phrase”*, CHINA MEDIA PROJECT (Feb. 6, 2015), <http://cmp.hku.hk/2015/02/06/38107/> (Hot Phrase #12, “January 20, 2015, Xi Jinping said these words at the National Conference on Politics and Law. The “knife handle” is an expression used by Mao Zedong in 1926 to address the question of who should bear weapons and who they should be used against.”).

To bolster the value of this anticorruption campaign beyond politics, Chinese military law experts have suggested that efforts could be aided by public trials when the subject matter does not involve military secrets.¹⁶³ Such public trials would be in consonance with the Supreme People's Court's efforts to make court proceedings more accessible.¹⁶⁴ Likewise, public trials and public reporting of outcomes increase the deterrence value of prosecutions, and shows service members that their rights are respected when accused of misconduct. In turn, this can strengthen trust and respect for the chain of command. They can also have a positive effect on the rule of law, demonstrating to the broader civilian public that the military is not above the law.

In order for current anticorruption efforts to be effective, the other reforms identified by the CMC in 2015 and 2016 should be implemented. Statutes and regulations should be updated to prescribe the authority of military organizations, codify the "role, affiliation and structure" of the military judiciary,¹⁶⁵ and the rights of service members. Systems for independent reporting or external reporting should be established and reinforced. While some structural changes have been made, it is not clear whether a service member's report of misconduct could be blocked by a superior or whether the service member could avoid reprisal if a report is attempted.¹⁶⁶

Prior to re-organization, the Discipline Inspection Department was designed to meet this objective, acting akin to an inspector general in support of "the CMC's Discipline Inspection Commission [by] investigating corruption and other improprieties."¹⁶⁷ But based on its structural position within the Political Department it was unclear whether it could investigate allegations fully without interference by the chain of command. Post-reorganization, the Political and Law (Legal Affairs) Committee may face the same challenges. The service members most likely to be aware of corrupt activities may be in the intermediate and lower levels of the chain of command. Absent supporting reforms protecting service members against reprisal, military personnel may remain hesitant to divulge information on superiors who control so many aspects of their lives and careers.

Re-organization of audit offices may also face similar challenges. While repositioning audit offices may grant additional autonomy and prevent

¹⁶³ Chan, *supra* note 21.

¹⁶⁴ Susan Finder, *Cameras in the Chinese Courts*, SUPREME PEOPLE'S CT. MONITOR (July 22, 2016), <https://supremepeoplescourtmonitor.com/2016/07/22/cameras-in-the-chinese-courts/>.

¹⁶⁵ Susan Finder, "The Chinese Military Legal Framework Must be Improved", GLOBAL MIL. JUST. REFORM (May 20, 2014), <http://globalmjreform.blogspot.hk/2014/05/the-chinese-military-legal-framework.html>.

¹⁶⁶ See Gan, *supra* note 28.

¹⁶⁷ Stokes & Hsiao, *supra* note 106 at 19.

intermediary influence from the chain of command, their function may be frustrated if they are not provided with adequate tools to accomplish their mission. While the situation in the military is not known, Chinese banks and corporations have notoriously kept multiple sets of books for review by government officials or foreign entities, which belie their true financial positions.¹⁶⁸ Given the natural secrecy of military procurement and the nascent level of Chinese accounting ethics, it may be unusually difficult to detect corruption.¹⁶⁹ If not already in practice, these auditing authorities should consider developing financial disclosure requirements for officers of a certain grade or in certain positions under their new organizational authority. This would allow auditing offices to detect and deter other types of corruption not occurring directly through institutional channels. It would also align with the CMC's objective of guiding agencies and departments according to the law, improving supervision and conducting inspections.

Furthermore, while the CMC has identified the need to establish a military legal advisory system and equip it with high-quality military legal personnel, it has not identified how their advisory authority will be established within the military command and control structure. In the U.S., military legal advisors frequently have independent chains of command or are organized in a manner that allows the legal advisor to directly advise the principal commander to avoid influences of intermediary steps in the chain of command. While largely effective in the U.S. context, this system may not be effective in the Chinese military due to the political philosophy upon which the Chinese military legal system is based.

One rationale as to why P.R.C. leaders may be hesitant to adopt reforms providing for external review of conduct and independent chains of command is that, in theory, such independence could provide a means of undermining the absolute authority of the Chinese Communist Party, by providing an alternative means of questioning party decisions. Yet, from an external perspective, it seems highly unlikely these reforms would foment such dissent that it would undermine the authority of the Chinese Communist

¹⁶⁸ THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, THE WORLD BANK, *Annex E, CHINA: AN EVALUATION OF WORLD BANK ASSISTANCE*, 74 (2005) ("Banks' head offices had little oversight and virtually no control over their own branches, which often kept two sets of books, one for the head office and central authorities and another for the local authorities, which exerted de facto control over local branches."); See Floyd Norris, *The Audacity of Chinese Frauds*, N.Y. TIMES: BUS. DAY (May 26, 2011), <http://www.nytimes.com/2011/05/27/business/27norris.html>; see also Cynthia Koons, *Skepticism on China's Nonperforming Loans*, WALL STREET J. (Dec. 3, 2013, 10:00 PM), <http://www.wsj.com/articles/SB10001424052702304355104579235084041750444>.

¹⁶⁹ Peter Wang, *Military Corruption in China: The Role of Guanxi in the Buying and Selling of Military Positions*, 228 CHINA Q. 970 (2016), <https://hub.hku.hk/bitstream/10722/227432/1/Content.pdf>.

Party in any practical way.¹⁷⁰ However, the concern over this issue is palpable, as President Xi Jinping stated on January 20th, 2015, during a National Conference on Politics and Law that “[We must] foster and create a politics and law corps that respects the Party, respects the nation, respects the people and respects the law, ensuring the knife handle is grasped firmly in the hand of the Party and the people.”¹⁷¹ Regardless of the exact systems or rules which are adopted, the effectiveness of the legal advisory system should be evaluated based on its ability to provide independence of legal advice, prevent conflicts of interest between legal officers’ personal and professional capacities, and ensure adherence to a defined code of ethics.

IX. LEGAL REFORM IN SUPPORT OF THE P.R.C.’S STRATEGIC GOALS

Military justice reform also addresses international objectives in addition to domestic concerns. Analysts have noted the goal of these reforms, is in part, “to transform a service larded with pet projects and patronage networks into a leaner fighting force more adept at projecting power abroad.”¹⁷²

However, to accomplish this shift towards power projection, the P.R.C. acknowledged that military reform would require more than just modernization and development of new equipment. Rather, it would require improving military theories, strategic management, improving logistics, “cultivating new-type military personnel” and “intensifying efforts in running the armed forces with strict discipline and in accordance with the law.”¹⁷³ The 2015 China’s Military Strategy white paper expanded on this principle:

Aiming at strengthening the revolutionization [sic], modernization and regularization of the armed forces in all respects, China will innovate and develop theories and practice in relation to running the armed forces in accordance with the law, establish a well-knit military law system with

¹⁷⁰ Josh Chin & Brian Spegele, *China Signals Greater Oversight of Military, Media*, WALL ST. J. (Oct. 28, 2014, 11:59 AM), <http://online.wsj.com/articles/china-signals-greater-oversight-of-military-media-1414508534>

¹⁷¹ See Bandurski, *supra* note 162.

¹⁷² Johnathan Ansfield, *Leader of China Aims at Military with Graft Case*, N.Y. TIMES (Mar. 31, 2014), <http://www.nytimes.com/2014/04/01/world/asia/chinese-military-general-charged-in-graft-inquiry.html>

¹⁷³ See generally Zhang, *supra* note 70.

Chinese characteristics, so as to elevate the level of the rule by law of national defense and armed forces building.¹⁷⁴

The recognition that a disciplined military is a critical component of developing a nation's soft power internationally marks a significant transition in thinking about the use of function of military forces.

For example, China's new military base in Djibouti has stimulated significant discussion regarding its strategic implications for the region and China's ambitions globally.¹⁷⁵ Nominally, this facility is just a "logistics facility for resupplying Chinese vessels on peacekeeping and humanitarian missions."¹⁷⁶ However, this facility could also be used to support the Chinese strategic objectives of protecting Chinese investments, international trading routes, and protecting power overseas.¹⁷⁷ What is not discussed, however, is the degree of discipline exercised by those forces and how that can add or detract from the strategic value of such installations.

In Africa, there are reports that Chinese enterprises and Chinese nationals have engendered negative feelings in African nations in which they have invested.¹⁷⁸ Whether accurate or not, there is an impression that Chinese infrastructure projects in the region have resulted in high costs to host nations, with limited local-national employment, and sometimes poor citizen relationships to host-nation citizens.¹⁷⁹

As China begins to establish more military installations overseas, it is not clear whether they have accounted for the effect that permanently or semi-permanently deployed forces can have on international relationships. If

¹⁷⁴ Chinese Ministry of National Defense, *China's Military Strategy*, USNI NEWS (May 26, 2015, 12:13 PM), <https://news.usni.org/2015/05/26/document-chinas-military-strategy>.

¹⁷⁵ See, e.g., Sarah Zheng, *China's Djibouti Military Base: 'Logistics Facility', or Platform for Geopolitical Ambitions Overseas?*, S. CHINA MORNING POST (Oct. 17, 2017, 10:20 AM), <https://www.scmp.com/news/china/diplomacy-defence/article/2113300/chinas-djibouti-military-base-logistics-facility-or>.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Jonathan Kaiman, *China-Africa Relations Hurt by Bad Chinese Behavior, Says Ambassador*, THE GUARDIAN (Jul. 17, 2014, 6:06 AM), <https://www.theguardian.com/world/2014/jul/17/chinese-ambassador-tanzania-china-africa-relationship-ivory-smuggling-counterfeit>; David Pilling, *Chinese Investment in Africa: Beijing's Testing Ground*, FIN. TIMES (Jun. 13, 2017), <https://www.ft.com/content/0f534aa4-4549-11e7-8519-9f94ee97d996> (Discussing feelings of resentment but also noting survey results finding Chinese influence "somewhat" or "very" positive.).

¹⁷⁹ See Ariel Gandolfo, *Chinese Investment in Africa – Where Do the Jobs Go?*, CSIS PROSPER (June 17, 2015), <https://csisprosper.com/2015/06/17/chinese-investment-africa-jobs/>; Economist Intelligence Unit, *Perceptions of Chinese Investment in Playing the Long Game: China's Investment in Africa*, MAYER BROWN (2014), https://www.mayerbrown.com/files-/Publication/4189bfee-0710-4614-af4f-7344189b6cef/Presentation/PublicationAttachment/1593bcb4-d17d-4d27-a120-cd72c7ecd73b/MB-Economist-Intelligence-Unit-Report-2014_ENFinalLR.PDF; *Trying to Pull Together*, THE ECONOMIST (Apr. 20, 2011), <http://www.economist.com/node/18586448>.

the “bad habits” of the Chinese military follow their forces overseas as they reportedly have in the civilian sphere, then China may run the risk of engendering the same feelings of mistrust and resentment from their military forces.¹⁸⁰ In turn, this could negatively impact their relationships with foreign countries. Depending on the nature of what misconduct might occur, this could also have broader ramifications for the United States or other regional security organizations if the host government or local populations generalize the actions of one foreign military force with another. Thus, the lack of effective military justice reform in China may also have second-order or third-order effects on U.S. security objectives.

X. CONCLUSIONS

Current military justice reform efforts are some of the most significant since the P.R.C. was founded. The current anticorruption campaign has shed new light on corrupt practices in the military and provided an opportunity to revisit institutional challenges in China’s military. Since 2015, the CMC’s discussion of necessary military justice reforms has provided a detailed roadmap to improve China’s military justice system.

However, nearly five years after these reform efforts began, little definitive action appears to have been taken. Those actions that have been reported are largely “top-down” institutional reorganizations. The question remains open as to whether these “top-down” reforms will be sufficient to provide cognizable improvements in Chinese military justice in terms of controlling corruption or improving the quality of Chinese forces. As China proceeds with these reforms, it has repeatedly emphasized the value of political indoctrination in the military and importance of Party control over the military. However, the inconvenient truth is that a degree of independence is essential to reporting, investigation and prosecution of illegal or unethical conduct. While legal authorities in the military will never be fully independent (nor should they be), they must provide for a system that addresses misconduct in an objective manner and permits sufficient “channels for even low-ranking personnel to report bad conduct without fear of reprisal.”¹⁸¹

As the P.R.C. seeks to reshape its military justice system, simply making examples of high level officers engaged in corruption is not enough to create lasting change.¹⁸² No number of pariahs can compensate for an

¹⁸⁰ Kaiman, *supra* note 178.

¹⁸¹ James Joyner, *The U.S. Military’s Ethics Crisis*, THE NATIONAL INTEREST (Feb. 13, 2014), <https://nationalinterest.org/commentary/the-us-militarys-ethics-crisis-9872?page=2%2C1>.

¹⁸² *Symposium: A Cautionary Tale: Ten Major Flaws in Combating Corruption*, 10 SW. J.L. & TRADE AM. 269, 281 (2003) (“Many corruption fighters make the mistake of believing that the different types of corruption can be tackled in the same way. The theory is that simply stopping individual

inherent lack of trust in the chain of command, nor will it guarantee the type of cultural and ethical changes across the entirety of China's forces necessary to support its strategic objectives. As China expands its strategic footprint, the actions of Chinese forces will increasingly affect U.S. security concerns. Thus, the development of Chinese military justice reforms will remain an important ongoing concern.

acts of corruption will result in the elimination of institutionalized corruption. Unfortunately, the solution is not that simple.”)