

China's compliance with selected fields of international law

SUMMARY

China has ratified numerous legally binding international agreements. Like other countries, it has a strong incentive to commit itself in this way: international agreements are a means of binding other treaty parties; strengthening international standing; creating a favourable legal framework for trade and investment; and, such as with the 1984 Sino-British Declaration on Hong Kong, settling territorial questions.

At the same time, China has been careful to avoid making commitments in two areas in particular: questions of national security and sovereignty, where it recalls a history of mistreatment by outside powers; and human rights, where its political and cultural traditions differ considerably from those of Western democracies. China has often included reservations precluding international arbitration in the international agreements that it has ratified. One notable exception to this rule is China's membership of the WTO and conclusion of trade and investment agreements, where arbitration is such a core part of the system as to be unavoidable.

To the extent that China is accused of breaching its international commitments, these tend to concern its perceived national security interests and territorial sovereignty, as in the case of the governance of Hong Kong, and maritime and territorial rights in the South China Sea. In other areas, such as human rights and climate change agreements, China is typically careful to limit its commitments so that it does not formally breach them.



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Introduction

In October 1971, the People's Republic of China (PRC), by a majority vote of the United Nations (UN) General Assembly, replaced the Republic of China (RoC) as the representative government of China in the UN. After coming to power in mainland China in 1949, the Chinese Communist Party government of the PRC formally renounced the international agreements concluded by the RoC, and began a process of review of, and selective accession to, those treaties. With the restoration of Hong Kong and Macao to PRC control in 1997 and 1999 respectively, China adopted a practice of reserving special terms for those two territories in annexes to the international agreements it signed subsequently, in line with its treaty obligations to the governments of the United Kingdom and Portugal.

Today, China is a party to a great [number](#) of UN conventions, treaties and other international agreements. However, as China's economic, political and military importance has grown, there is increasing interest in its approach to international law, in terms of both strategy and level of compliance. China is [said](#) to take a 'functionalist' approach to international law, by contrast to the 'normative' approach favoured by European and other Western states. China's approach to international law is also [thought](#) to be informed by its historical, and often traumatic encounters with Western powers and resulting 'unequal treaties', which have engendered a suspicion of international engagements, particularly those that touch on questions of sovereignty and human rights.

Rather than exploring the Chinese tradition of legal philosophy, this briefing focuses on specific international agreements that China has entered into in the selected fields of trade, human rights, arms control, climate change, and bilateral territorial questions; and the question of the extent to which China has complied with the commitments contained in them.

China's approach to the WTO and trade agreements

[China joined the World Trade Organization](#) (WTO) in 2001, thereby [acceding](#) to the 1995 Marrakesh Agreement establishing the WTO ([WTO Agreement](#)). In doing so, it [negotiated](#) membership terms with other WTO members that were designed to take into account both its developing economy status, and the significant [role of the state](#) in its economy, which meant that upon entry it was designated a '[non-market economy](#)'. These terms comprised a bespoke mix of 'WTO-plus' commitments in the form of additional disciplines imposed on China, and 'WTO-minus' rights allowing other WTO members that imported from China to take additional protective actions against Chinese economic practices that deviated from WTO multilateral disciplines. In preparation for its accession, China also [undertook](#) domestic economic reforms to bring its economy into compliance with its 2001 WTO accession protocol.

By June 2021, 46 WTO cases had been [registered](#) with China as a respondent, all but six of them by developed economies, including the EU; and 23 cases had been registered by China as a claimant, all of them against the EU, individual EU Member States, or the United States. In its first five years as a WTO member, China took a conciliatory approach as a respondent in WTO cases, as it sought to minimise trade conflict with fellow WTO members. However, from 2006, China grew more assertive as a litigant within the WTO dispute settlement framework, apparently having used its first five years in the WTO to develop its 'litigation capacity'. China also became much more assertive as a claimant against other WTO members, emerging in 2007 as a 'forceful litigant'. Most WTO cases against China invoke the WTO's Anti-Dumping (AD) Agreement and Subsidies and Countervailing Measures (SCM). Others have been brought under the General Agreement on Tariffs and Trade (GATT), the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the General Agreement on Trade in Services (GATS) and the Agreement on Agriculture (AA). Most (but not all) WTO cases brought by China against other WTO members concern AD and SCM measures adopted by those respondent members.

As China has grown more assertive as a litigant at the WTO, it has also sought to protect itself against AD and countervailing (CV) duties claims by making the conclusion of bilateral FTAs conditional on its recognition as a market economy, as was the case in the China-New Zealand FTA signed in 2008 – China's first with a developed economy. China has now [concluded](#) 16 bilateral and multilateral free trade agreements (FTAs) (not including upgrades), as well as 145 [bilateral investment agreements](#) (BITs) (not all of them currently in force). Since 1982, China has gradually allowed further-reaching investor-state dispute settlement (ISDS) provisions to be inserted into successive generations of its BITs.¹

China has been accused of using its trading relationships, including those underpinned by FTAs, to retaliate against trading partners that challenge it in other policy areas. In 2010, China [allegedly](#) introduced a ban on rare earth metal exports to Japan, following clashes between a Chinese trawler and the Japanese coast guard in September 2010, near the disputed Senkaku/Diaoyu islands in the East China Sea; however this allegation is [disputed](#) by some analysts. (China's goods trade with Japan was not governed by any FTA at the time. Since then, both China and Japan have signed up to the Regional Comprehensive Economic Partnership, RCEP). In 2015, China concluded an FTA with Australia ([ChAFTA](#)) that provided for the phased reduction or elimination of tariffs on Australian exports of barley, sorghum, seafood, sheep meat, horticulture, dairy and beef, and also included ISDS provisions. However, in 2020, diplomatic relations between the two [deteriorated](#) sharply following questions by Australia concerning China's handling of the pandemic, as well as events in Xinjiang, Hong Kong and the Taiwan Strait. This prompted China to retaliate against Australia by imposing AD and CV duties on Australian barley, and subsequently a 200 % tariff on Australian wine.

Australia has asserted that these actions constitute a breach of tariff reduction commitments and trade remedy provisions in ChAFTA.² Chapter 15 of ChAFTA contains state-to-state dispute settlement provisions, but, with China having [ignored](#) requests for minister-level bilateral discussions, Australia has chosen to prosecute both cases via the WTO, with reference to WTO agreements. As of 28 May 2021, a panel had been established (in other words, approved but not yet constituted) for Claim [DS598](#) on anti-dumping and countervailing duty measures on barley from Australia. As of 22 June 2021, Australia was still waiting for China to respond to its request for consultations on claim [DS602](#) against China on Anti-Dumping and Countervailing Duty Measures on Wine from Australia.

In January 2020, China concluded a 'Phase One' [Economic and Trade Agreement](#) with the Trump administration in the United States. It is not clear that the agreement is [compliant](#) with China's WTO commitments, given that it obliges China to purchase set quantities of US exports, potentially discriminating against other trading partners as a result. China pledged to buy US\$200 billion in US exports over the course of 2020 and 2021, but has so far fallen far short of this target. Some analysts [say](#) that the impact of the pandemic explains only part of this shortfall, and that the agreement was inherently flawed.

As a participant in the WTO, and in its bilateral and multilateral trade negotiations, China has sought to further economic integration while protecting its domestic policy space to liberalise at its own pace and develop on its own terms. Consequently, it has been [accused](#) of complying with the letter, but not always the spirit, of its international trade agreements – in other words, doing the minimum to address the barrier identified by its trading partners, without introducing systemic reform to address the source of the problem. Other observers have described China's compliance with its WTO commitments as 'mixed' or 'complicated'. EU and US [criticisms](#) of China's trade practices and level of compliance with WTO rules include 'level playing field' concerns: insufficient [access](#) to the Chinese market for foreign investors, intellectual property theft, and forced technology transfer – while Chinese investors enjoy comparatively favourable access to EU markets; subsidies and other unfair advantages enjoyed by Chinese companies, including its large state-owned enterprises (SOEs), that are said to lack of transparency and cause over-production that depresses world prices; and China's [retention](#) of 'developing economy' status within the WTO system, which allows it special and differential treatment, yet is belied by decades of rapid economic growth. However, some

analysts [argue](#) more work needs to be done to quantify the alleged external harm caused by Chinese trading practices.

It is not clear that, by itself, the volume of dispute settlement cases involving China at the WTO reveals much about China's respect for international trade law, since orderly dispute settlement is, by design, a core part of the multilateral trading system. Moreover, China's willingness to accept international dispute settlement in trade matters contrasts with its reluctance to do the same in other sensitive areas, such as territorial integrity and sovereignty, national security, and human rights (see below).

China's approach to international human rights law

Western [governments](#) and pressure [groups](#) accuse China of numerous human rights abuses, in some cases involving breaches of the international treaties to which the country is party. The most recent high-profile case is that of the reported persecution of the [Uyghur ethnic minority](#) in the Xinjiang Uyghur Autonomous Region, [allegedly](#) subject to forced cultural assimilation, forced sterilisation, mass detention and coercive labour policies. In March 2021, the EU, the United Kingdom, the United States and Canada together imposed [sanctions](#) against selected Chinese officials in connection with the reports. China [rejects](#) the allegations made by Western governments concerning its policies towards its Uyghur minority, and asserts that it is merely seeking to develop the Xinjiang region economically, in line with a 'right to develop' that should be given equal recognition in international human rights discourse.

China's approach to international human rights law is informed by its cultural tradition, which differs in important ways from the Western one, as well as by its historical experience with Western powers. An important element of Chinese culture and, increasingly, its modern political tradition is the Confucian ethical tradition, which privileges social order and hierarchy, and imposes collective rights and obligations, by contrast to the individual rights posited by the Western tradition of Enlightenment and formal democratisation.³ On top of this, some academics trace a link between contemporary international legal norms, including those relating to human rights, and the era of European imperial ascendancy, when Europe's colonial powers applied a self-serving 'standard of civilisation' to legitimate the exercise of their own extraterritorial rights and the rights of their subjects abroad, while dismissing the rights of other cultures they deemed inferior. On this account, from the perspective of the Chinese government, contemporary Western criticisms of China's human rights record (and of its territorial ambitions – see below) are said to be equally self-serving and hypocritical.⁴ This charge of double-standards was echoed in 2020, when Chinese state media [rejected](#) criticisms of Chinese policy on Hong Kong by pointing to the Trump administration's handling of racial unrest in the US.

China's 1982 [constitution](#) does formally recognise human rights, as a result of amendments made in 2004: Article 33 of the constitution affirms that 'the State respects and preserves human rights'. Articles 34 to 49 provide for a range of civil, political and occupational rights, including freedom of speech, of the press, of assembly, of association, of procession, and of demonstration. At the same time, these freedoms are qualified by a collective responsibility set out in Article 51: 'Citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the State, of society or of the collective, or upon the lawful freedoms and rights of other citizens'. As noted above, the responsibility to 'society' or to the collective are fundamental to the Chinese philosophical tradition. It is not clear what legal recourse Chinese citizens have to assert their constitutional rights, since Chinese courts cannot apply constitutional law directly, nor can they adjudicate on the consistency of other statutes with the constitution.⁵

There are a number of international [treaties](#) between UN members on human rights, which, once ratified or acceded to by a state, are considered binding, with compliance monitored by a special UN committee established for that purpose.⁶ China is a [signatory](#) to the UN Universal Declaration of Human Rights (UDHR), and to several important international human rights treaties, including the

International Covenant on Civil and Political Rights ([CCPR](#)), the International Covenant on Economic, Social and Cultural Rights ([CESCR](#)), and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ([CAT](#)). However, while it has ratified the CESCR and the CAT, China has chosen not to ratify the CCPR since signing it in 1998, despite [calls](#) by international human rights groups to do so.⁷ The decision to ratify the CESCR but not the CCPR may signify a cultural and political preference for economic and social rights over individual ones.⁸

China has adopted a 'wary', tactical approach to human rights commitments, partly because of a perceived incompatibility between its own cultural and political traditions and those of the West. At the same time, it is motivated by a desire to burnish its international reputation, deflect criticism and encourage international economic integration, albeit on its own terms. China (like Russia and the United States) is [not a party](#) to the Rome Statute establishing the International Criminal Court (ICC), and it has made extensive use of reservations when ratifying international human rights treaties, specifically precluding international arbitration in the International Court of Justice or elsewhere: this is true, for example, of China's reservations on Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide ([CPPCG](#)), on Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination ([CERD](#)), on Article 29(1) of the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)), and on Article 30(1) of the CAT, all of which concern international arbitration. China also made a reservation declaring that it does not recognise the competence of the Committee against Torture as provided for in Article 20 of the CAT, and with regard to Article 8.1 of the CESCR, limiting the labour rights therein in line with its domestic labour laws.⁹

Table 1 – Selected UN human rights treaties to which China is a State party

UN treaty	Date of signature	Date of ratification or accession	Reservation?
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	12 Dec 1986	04 Oct 1988	Yes: Articles 20; 30(1)
International Covenant on Civil and Political Rights (CCPR)	5 Oct 1998		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Jul 1980	4 Nov 1980	Yes: Article 29(1)
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)		29 Dec 1981 (accession)	Yes: Article 22
International Covenant on Economic, Social and Cultural Rights (CESCR)	27 Oct 1997	27 Mar 2001	Yes: Article 8.1
Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)	20 Jul 1949	18 Apr 1983	Yes: Article IX

Data sources: [Office of the UN High Commissioner for Human Rights](#); [UN Treaty Collection](#).

Similarly, China has ratified only four of the eight core international labour conventions of the International Labour Organization (ILO): the [Equal Remuneration Convention](#), the [Discrimination \(Employment and Occupation\) Convention](#), the [Minimum Age Convention](#), and the [Worst Forms of Child Labour Convention](#), [arguably](#) because they are compatible with its own socialist legal tradition – yet there are [questions](#) about China's enforcement of even these conventions. China has not ratified the [Forced Labour Convention](#), the [Freedom of Association and Protection of the Right](#)

to [Organise Convention](#), the [Right to Organise and Collective Bargaining Convention](#), or the [Abolition of Forced Labour Convention](#).

As a result of these reservations and the country's selective approach to international commitments, other governments [appear](#) to have limited legal recourse to hold China to its international obligations, other than periodic reviews by treaty bodies and public and peer government pressure. The Office of the UN High Commissioner for Human Rights has issued numerous [statements](#) of concern about the human rights situation in different parts of China, but cannot force China to cooperate with its investigations. China has also [become](#) more adept at building coalitions of countries in the UN Human Rights Council to head off criticism of its policies.

China's approach to international disarmament and arms control agreements

Arms control and non-proliferation

On 6 July 2020, China acceded to the 2013 Arms Trade Treaty ([ATT](#)), designed to control cross-border conventional arms transfers and prevent weapons from being used to commit human rights abuses, fuel conflict, or commit crimes. Signed by the Obama administration in the US, the treaty was never [ratified](#) by Congress, and the Trump administration expressly distanced the US from it. Initially China was reluctant to join the treaty, and focused instead on limiting its scope. It appeared to object to the principle of regulating how client governments use the arms they purchase, in line with its advocacy of the principle of non-interference, particularly with regard to human rights issues. However, with the arrival of the Trump administration, China [appeared](#) to view accession to the treaty as an opportunity to polish its multilateral credentials. Moreover, as China has grown to become an increasingly important [security actor in Africa](#), not just as an arms exporter, but also in the form of Chinese citizens (including UN peacekeepers) and assets located there, the country has a growing interest in using arms exports to protect its people and investments there.

China is the world's [fifth largest](#) arms exporter after the US, Russia, France and Germany, predominantly to clients in Asia and Africa; although a [lack of transparency](#) in its data frustrates detailed analysis. Moreover, as China only acceded to the ATT relatively recently, it is too early to assess whether it is complying with the treaty.

China [ratified](#) the Convention on the Physical Protection of Nuclear Material ([CPPNM](#)) in 1989, while declaring that it would not be bound by Article 17(2) of the convention, regarding dispute settlement procedures. China ratified the Treaty on the Non-Proliferation of Nuclear Weapons ([NPT](#)) in 1992. Like the United States, China has signed (in 1996), but not ratified, the Comprehensive Nuclear Test Ban Treaty ([CTBT](#)). China also ratified, in 1984, the Biological Weapons Convention (BWC), as well as, in 1997, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ([CWC](#)). In November 2000, China made a non-binding, non-treaty political commitment to the US to adhere to the principles of the voluntary Missile Technology Control Regime ([MTCR](#)). The US [asserts](#) that China has failed to respect that commitment. China is not a member of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but it has ['largely aligned'](#) its policies with Wassenaar. In October 2020, China adopted an [Export Control Law](#), one of whose statutory objectives is to strengthen China's compliance with its international non-proliferation obligations.

China [conducted](#) its first nuclear test in 1964, and since then has built up a modest nuclear weapons arsenal (in comparison to the US and Russia) with the aim of maintaining a minimal deterrent against foreign nuclear powers, and subject to the principle of 'no first use' that the Chinese government first declared in 1964. It is in the process of modernising its nuclear capability, having, by 2021, built an [estimated](#) 350 warheads. The Trump administration sought to [engage](#) China in negotiations to renew the 2010 New Strategic Arms Reduction Treaty (New START) nuclear arms control agreement with Russia, but China [rejected](#) the invitation, arguing that both the US and Russia should drastically

reduce their own nuclear stockpiles (estimated in 2021 at 5 550 and 6 225, respectively) before asking China to do the same. In July 2021, it was [reported](#) that China appeared to be expanding its arsenal of intercontinental ballistic missiles (ICBMs), though it is not clear that this amounts to a breach of any of China's treaty obligations. China has also declined to join the Intermediate-Range Nuclear Forces Treaty (INF Treaty), [apparently](#) because this would limit its military options with respect to Taiwan and other intermediate-range targets in East Asia.

UN sanctions on North Korea

Since October 2006, North Korea has [conducted](#) six nuclear tests, most recently in September 2017, when it tested what it claimed was its first thermonuclear weapon, triggering an earthquake measuring 6.3 on the Richter scale. The tests defy a series of nine major sanctions [resolutions](#) adopted by the UN Security Council (UNSC) since 2006, designed to pressure the country into abandoning its nuclear weapons programme and re-joining the NPT. The last UNSC decision to strengthen sanctions on North Korea was adopted in December 2017, in response to the most recent test. In line with its policy of non-interference regarding issues not central to its own national security, China has [sought](#) to prevent UN attempts to censure North Korea over human rights abuses. However, since October 2006, it has joined other UNSC members in voting to impose sanctions on North Korea over its nuclear weapons programme, most recently with UNSC resolution [S/RES/2397](#) in December 2017, while insisting on targeting sanctions in a way that does not threaten the economic viability of an allied regime. China's approach to the sanctions is also informed by its 'no war, no instability and no nuclear weapons' policy for the Korean Peninsula, which has sometimes necessitated trade-offs between these three objectives.

It is [not clear](#) to what extent China has faithfully and energetically implemented the sanctions regimes that it has itself endorsed. In December 2020, the Trump administration in the US [accused](#) China of 'flagrant' violations. China-inserted loopholes in the regime that were designed to frustrate nuclear weapons development specifically, while avoiding weakening the North Korean regime, may be difficult to implement in practice (owing, for example, to the impossibility of tracking how the North Korean government spends revenue from exports in targeted and non-targeted sectors). In April 2020, a UN [report](#) on the sanctions concluded that North Korea had succeeded in increasing trade in coal and oil products, with the collusion of China's shipping industry. In addition, patchy data, China's decentralised administration, and corruption among border officials, may all [undermine](#) China's enforcement of the sanctions, without this being a deliberate policy of the central government in Beijing. Nevertheless, uncertainty about whether the Chinese government intends to undermine its own sanctions, or whether instead it is institutionally and administratively incapable of enforcing them effectively, may itself be worth considering when assessing China's compliance with other international agreements.

China's approach to international climate agreements

China's ecological challenges and ambitions first gained world-wide attention in 2008. In the run-up to the 2008 summer Olympic Games, global media were full of [reports](#) about air pollution in Beijing. Only a few months later, in November 2008, the country announced a major stimulus [programme](#) to fight the effects of the global financial crisis, with considerable fiscal means dedicated to the promotion of renewable energies, particularly solar panels. Although China [became](#) the largest emitter of CO₂ in absolute terms as early as 2005, with its per capita emissions [surpassing](#) those of the EU (but still behind the US) in 2013, the country maintained its [traditional line](#) that as a developing country it had contributed little to global warming, and therefore refused to make major international commitments on climate policies.

This, however, appeared to change in September 2016, when the US and China jointly [announced](#) their ratification of the Paris [Agreement](#) ahead of the G20 summit in Hangzhou, China. Under that agreement, parties are legally obliged to set more ambitious targets periodically, but there is no legal obligation to meet those targets. Furthermore, the compliance mechanism as provided by

[Article 15](#) has been [described](#) as 'largely toothless', though others [point out](#) that the agreement is meant to function on the basis of '[peer pressure](#)' and the conviction that worsening climate conditions will convince public opinion and governments that decisive action is necessary.

The table below summarises the pledges made by China in its first submission of its National Determined Contribution (NDC) as of 3 September 2016:

CHINA		Summary of pledges and targets	
PARIS AGREEMENT	Ratified	Yes	
	2030 unconditional target(s)	Peak CO2 emissions latest by 2030 Non-fossil share: 20% in 2030 Forest stock: + 4.5 billion m ³ by 2030 compared to 2005 Carbon Intensity: -60% to -65% below 2005 by 2030 [33–47% above 2010 by 2030 excl. LULUCF for peaking and non-fossil targets] [36–53% above 2010 by 2030 excl. LULUCF for carbon intensity targets]	
	Coverage	Economy-wide	
	LULUCF	Unclear how LULUCF is included	
COPENHAGEN ACCORD	2020 target(s)	Carbon intensity: -40% to -45% below 2005 by 2020 Non-fossil share of energy supply: 15% in 2020 Forest cover: +40 million ha by 2020 compared to 2005 Forest stock: + 1.3 billion m ³ by 2020 compared to 2005 [26% above 2010 by 2030 excl. LULUCF for non-fossil target] [26–37% above 2010 by 2030 excl. LULUCF for carbon intensity targets]	
	Condition(s)	None	
	LONG-TERM GOAL(S)	Long-term goal(s)	Carbon neutrality before 2060 (announced)

Source: [China update](#), Climate Action Tracker, 21 September 2020.

The 2020 target on carbon intensity was [achieved](#) in late 2017, and in 2019 the share of non-fossil sources in the total energy supply [reached](#) 15.3 %, one year ahead of the 2020 target. In December 2020, China announced [more ambitious targets](#), which have yet to be submitted officially in the form of an updated NDC. However, the new, 14th, five-year plan indicates that Chinese leaders consider ecological challenges to be paramount: while in contrast to previous plans, the 14th plan does not directly set annual targets for economic growth rates up to the end of the plan's horizon (2025), one [analysis](#) suggests that more than half the plan's binding targets relate to environmental objectives. As the criteria for the evaluation of officials now [focus](#) more on sustainability, there is a strong incentive for all levels of government to reach the new plan's targets.

Compared to the early 2000s, China's approach to international climate diplomacy has changed considerably, and China has complied with the requirements of the Paris Agreement (although the formal submission of the – already announced – new 2020 targets is overdue). The [main global criticism](#) regards in particular the still considerable importance of fossil fuels in China's energy plans and the support given to coal plants via its external infrastructure and connectivity initiative, the Belt and Road Initiative (BRI). China's policies on climate change are to a considerable degree [driven by domestic concerns](#), but international partnerships and peer pressure also play an important role. It remains to be seen how the rapidly evolving international context will influence China's fight against climate change.

China's bilateral territorial disputes and international law

China versus the Philippines in the South China Sea

China has made disputed claims, in terms of both territory and maritime rights, to large swathes of the [South China Sea](#): the site of hundreds of islands, banks and other maritime features; a major trade and energy supply route and one of the world's busiest sea lines of communication (SLOCs); a

source of rich but depleting fishing stocks and significant proven and estimated oil and gas deposits; an area with deep water useful for the development of Chinese naval power; and an increasingly militarised space in the context of growing Sino-US strategic rivalry. Uncertainty about rights in the region is in part a legacy of World War II, and the loss of, and competing claims to, former Japanese territory there.

China's claims in the South China Sea, which it [says](#) derive from historic precedent first asserted by the RoC, take the form of a 'nine dash line' that runs close to the borders of all the other neighbouring states, and sweeps up the majority of the sea, including its most important maritime features: the Pratas Islands (occupied by Taiwan, but claimed by China) in the north-east; the Paracel Islands (occupied by China, but claimed by Vietnam and Taiwan) to the west; the Macclesfield Bank (unoccupied, but claimed by China and Taiwan) as well as the Scarborough Shoal (unoccupied, but claimed by China, Taiwan and the Philippines) in the centre; and the Spratly Islands in the sea's south. The case of the Spratly Islands is the most complex: they are occupied in part by China, Malaysia, the Philippines, Taiwan, and Vietnam, but claimed in their entirety by China, Taiwan and Vietnam, and in part by Brunei, Malaysia, and the Philippines. China's claims are the most extensive of all the sea's bordering states, and contested in the form of multiple overlapping claims by the other states. China, Vietnam and the Philippines have also reclaimed land and [built](#) military facilities of varying degrees of [sophistication](#) on some of the occupied islands and reefs.

In 1996, China ratified the 1982 United Nations Convention on the Law of the Sea ([UNCLOS](#)), which sets out criteria and an arbitration mechanism for resolving conflicting maritime rights claims, but not territorial disputes specifically. China's rival claimants in the region have also ratified UNCLOS. UNCLOS introduced new rules for determining the economic rights linked to specific maritime features, which China incorporated into its 1992 [Law](#) on the Territorial Sea and the Contiguous Zone as well as its 1998 [Law](#) on the Exclusive Economic Zone, while continuing to maintain its more extensive 'nine dash line' claims. While China did not expressly rule out international arbitration when ratifying UNCLOS, in practice it has [resisted](#) attempts to have its conflicting claims in the South China Sea adjudicated by international tribunals. This contrasts with the approach taken by Malaysia and Indonesia, and Malaysia and Singapore, which brought UNCLOS cases before the International Court of Justice in 2002 and 2008 respectively, ultimately complying with the ICJ rulings.

In 2002, China, together with the Association of Southeast Asian Nations (ASEAN), signed the [Declaration](#) on the Conduct of Parties in the South China Sea, thereby committing to the peaceful resolution of disputes through negotiation. However, China (along with other signatories) has since violated this commitment, for example by forcibly expelling the Philippines from the Scarborough Shoal. In January 2013, the Philippines became the first South China Sea state to initiate [arbitral proceedings](#) against China, at the Permanent Court of Arbitration (PCA) in The Hague, under UNCLOS Annex VII. China dismissed the Philippines' case, and refused to participate in the proceedings, instead issuing a [position paper](#) arguing that the PCA tribunal set up to hear the case lacked jurisdiction. The PCA ruled against China, determining, inter alia, that there was no legal basis under UNCLOS for China's 'nine dash line' claims, and that China had encroached on the Philippines' rights. Several other countries, including the United States (which has not itself ratified UNCLOS) and Japan, have called on China to comply with the ruling, but China continues to reject its validity and force, and to advance its maritime and territorial claims in the South China Sea.

Maritime and territorial disputes in the East China Sea

In addition to its maritime and territorial disputes with south-east Asian neighbours in the South China Sea, China also contests rights in the [East China Sea](#), vis-à-vis Japan, which in turn also disputes such rights with South Korea. There, too, the three parties' UNCLOS-derived maritime claims to exclusive economic zones (EEZ) partly overlap.¹⁰ The disputed areas are: Dokdo/Takeshima which is administered by South Korea and claimed by Japan; and Senkaku/Diaoyu, which are administered by Japan and claimed by China and Taiwan. As is the case in the South China Sea, the post-WWII settlement of Japan's territorial losses complicates the resolution of the competing claims. Japan

nationalised the Senkaku/Diaoyu islands in 2012 in the face of Chinese protests, and has made EEZ claims which it says are based on UNCLOS. China also bases its claims on UNCLOS, and has responded to Japanese policy by declaring an air defence identification zone encompassing the disputed area, and patrolling the area with law-enforcement vessels. While all three parties purport to base their territorial claims on UNCLOS principles, neither bilateral dispute has been officially referred to international arbitration.

Hong Kong and the Sino-British Declaration

On 19 December 1984, the PRC and the United Kingdom (UK) signed the [Sino-British Joint Declaration on the Question of Hong Kong](#), an international agreement registered at the United Nations. The declaration provided for the transfer from the UK to the PRC of sovereignty over the British colony of Hong Kong on 1 July 1997, but also stipulates that the PRC will grant Hong Kong a 'high degree of autonomy' and leave its social and economic systems and lifestyle unchanged for a period of at least 50 years, i.e. until the year 2047. Article 3(3) of the declaration guarantees that 'the Hong Kong Special Administrative Region [HKSAR] will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged'. Article 3(5) provides that 'rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the [HKSAR]'. Article 3(12) states that 'the above-stated basic policies ... will be stipulated, in a Basic Law of the [HKSAR] ..., and they will remain unchanged for 50 years'.

The declaration's provisions are informed by the principle of '[one country, two systems](#)' formulated by China's then-leader Deng Xiaoping, according to which the newly constituted HKSAR would essentially be a self-governing part of China, on the basis of its own 'mini-constitution', the [Basic Law](#), to which the declaration was annexed. PRC sovereignty, legislation and decision-making with regard to the HKSAR would be limited to foreign and defence affairs.

The colonial political system in Hong Kong bequeathed by the UK in 1997 had recently been democratised, with the first direct elections to the [Legislative Council](#) ('LegCo'), the city's parliament, taking place in 1991, complementing an independent judiciary applying the common law system and guaranteeing a range of democratic freedoms enjoyed in the UK, but not in mainland China. Nevertheless, there were limits to Hong Kong's pre-handover democracy: a UK-appointed governor remained the president of Hong Kong's Executive Council, and thus its head of government, up to handover in 1997. Under the Basic Law that governs the post-handover HKSAR, the same democratic freedoms are guaranteed ([Article 27](#)), and laws must be adopted by the democratically elected LegCo. At the same time, the Executive Council is now headed by a chief executive [chosen](#) by a group of election colleges representing a small minority of the HKSAR electorate; and formally appointed by the PRC government in Beijing. [Article 45](#) of the Basic Law states that 'the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures'. Democratic activists in Hong Kong see this article, as well [Article 26](#) of the Basic Law, which guarantees HKSAR permanent residents 'the right to vote and the right to stand for election in accordance with law', as a de facto guarantee against interference by Beijing in the selection of candidates for the office either of LegCo member or of chief executive.

In its six-monthly [report](#) on Hong Kong for the period July to December 2020, the British government identified 'three clear breaches' of the 1984 declaration, and declared China to be in a 'state of ongoing non-compliance' with the declaration. The first, declared on 1 July 2020, followed the imposition of a new [National Security Law](#) on Hong Kong, bypassing the LegCo, and [said](#) to violate Hong Kong's 'high degree of autonomy and independent judicial authority' as provided for in the declaration. The UK declared a further breach on 12 November 2020 following the introduction of new rules for disqualifying elected legislators, and a [third](#) in March 2021, in response to further moves by China to limit the criteria for LegCo candidates to 'patriots'. The only prior

instance in which the UK declared a breach of the declaration was in [February 2016](#), following the alleged abduction by the Chinese authorities of Lee Po, a bookseller and British national, from Hong Kong to the Chinese mainland.

China [maintains](#) that under 'one country, two systems', it is responsible for Hong Kong's foreign and defence policy, and that the National Security Law is a means of guarding against foreign subversion in the absence of LegCo legislation in this area. China has [dismissed](#) the UK's accusations as an unwarranted attempt to interfere in its internal affairs, on the basis of a historical agreement with no practical bearing on the political situation in Hong Kong today (though [others](#) in the Chinese government have re-affirmed China's commitment to the declaration, and to the principle of 'one country, two systems'). Some observers [contend](#) that China's attitude to the declaration is partly informed by sensitivities regarding the historical context in which Hong Kong was ceded to Great Britain in the first place, under the 1842 Treaty of Nanking: the concession followed the First Opium War, in which the British navy defeated Chinese government attempts to regulate the trade of opium on Chinese territory. This paved the way for a 'century of humiliation' (the historical understanding of which is said to be a 'cardinal principle of the Chinese Communist faith') in which outside powers used both armed force and punitive treaties to dictate terms to China, and is [viewed](#) by China as a demonstration of Western powers' willingness to couch the naked pursuit of their own interests in the language of international norms and principles.¹¹

It is not clear what options the UK has to enforce the provisions of the 1984 declaration, having declared China to be non-compliant. While the declaration states that it is equally binding on both parties, it contains no enforcement or dispute provisions.¹² The Vienna Convention on the Law of Treaties, to which both the UK and China are parties, [provides](#) for the suspension of the operation of a treaty in the event that it is breached, but it is not obvious that this would help Britain enforce the terms of the 1984 declaration. Some observers [conclude](#) that in the absence of clear legal remedies, the issue has become one of 'discourse power' within the UN system, with a larger number of states ([not including](#) any EU Member States) backing China's view of Hong Kong as an internal matter. The UK has taken some [steps](#) in response to the alleged breaches of the declaration: it has provided for a new immigration route for British Nationals (Overseas) passport holders in Hong Kong, offering [refuge](#) for millions of Hongkongers. The UK has also suspended indefinitely its extradition treaty with Hong Kong, extended an arms embargo on mainland China dating from the 1989 Tiananmen Square massacre, to cover Hong Kong; and has issued joint statements on Hong Kong with international partners via the UN Human Rights Council and the Group of Seven (G7). On 18 June 2020, the European Parliament adopted a [resolution](#) calling on the EU and Member States to file a case against China in the ICJ for breach, through its National Security Law, of both the Sino-British declaration and the ICCPR. Parliament reiterated this call in a separate [resolution](#) adopted on 8 July 2021.

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ENDNOTES

- ¹ Y. Li and C. Bian, '[China's Stance on Investor-State Dispute Settlement: Evolution, Challenges, and Reform Options](#)', *Netherlands International Law Review*, 2020.
- ² The stance of the Chinese government, as articulated by the government-controlled English-language publication *Global Times*, is that Australia was the first to breach the terms of ChAFTA by discriminating against Chinese investors on security grounds. See J. Xie and J. Chi, '[It's Australia, not China that's violating free trade deal, analysts say, urging China to resort to international courts](#)', *Global Times*, 17 December 2020.
- ³ For a discussion of China's approach to international human rights, see [Die Volksrepublik China und der internationale Menschenrechtsschutz](#), Wissenschaftlicher Dienst des Deutschen Bundestages (research service of the German Bundestag), 10 June 2020 (author(s) not published); on the Chinese Communist Party's relatively recent embrace of Confucian principles to strengthen its political legitimacy, see R. McGregor, *The Party: The Secret World of China's Communist Rulers*, Allen Lane, 2010, pp. 32-33.
- ⁴ See P. Chan, '[China's Approaches to International Law since the Opium War](#)', *Leiden Journal of International Law*, Vol. 6 November 2014.
- ⁵ S. Guo, '[Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects](#)', *Chinese Journal of International Law*, Vol. 8(1), 2009, p. 161.
- ⁶ For an explanation of the procedure for consenting to, signing and ratifying international agreements, see the United Nations [Treaty Handbook](#), 2012 edition.
- ⁷ Ratification would require approval by China's National People's Congress. See V. Yu, '[Petition urges NPC to ratify human rights treaty in China](#)', *South China Morning Post*, 28 February 2013.
- ⁸ S. Sceats and S. Breslin, [China and the International Human Rights System](#), Chatham House, October 2012..
- ⁹ See above: 'Die Volksrepublik China und der internationale Menschenrechtsschutz', Wissenschaftlicher Dienst des Deutschen Bundestages.
- ¹⁰ For an explanation of the difference between maritime and territorial disputes, see B. Strating, [Maritime and Sovereignty Disputes in the East China Sea](#), National Bureau of Asian Research, 9 February 2021.
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- ¹² For a review of possible options under international law for enforcing the terms of the 1984 Sino-British declaration, see S. Shen, '[The Sino-British Joint Declaration and International Law: Is there a role for international courts in upholding the Sino-British Joint Declaration on Hong Kong?](#)', *The Diplomat*, 9 September 2020.

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