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The Role of PRC Lawyers and Law Firms in Chinese Outbound Initiatives

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Key Points:

- Central-level Chinese agencies and organizations are strongly encouraging the development of a PRC bar with foreign legal expertise (*shewai lüshi*).
- The top-down emphasis on increasing the involvement of PRC lawyers and law firms in outbound investment work highlights the need to better understand the relationship between private professionals and government policy.
- Questions remain as to the relative size and strength of PRC lawyers and law firms relative to other non-PRC options, as well as the way these lawyers conceive of their role in outbound initiatives.

In popular discussions about Chinese efforts at law and development, our focus often turns first to the states, legal doctrine (e.g. trade and investment law), and/or the institutional actors (e.g., judges and arbitration centres) involved. While each of these areas deserves attention,

another group that deserves similar levels of attention is the legal profession. Lawyers and law firms are inevitably involved in Chinese outbound investment projects from start to finish, from negotiating contracts to dispute resolution, and each phase along the way. While outbound legal work for Chinese companies has historically been awarded to non-Chinese firms, People's Republic of China (PRC) lawyers and law firms¹ are capturing a growing share of this work, especially as Chinese companies venture into less developed markets. These PRC legal professionals are increasingly relied upon to advise domestic industries, broker deals with foreign companies and states, and handle the disputes that arise in challenging foreign legal environments. If indications from national policies are taken seriously, their involvement will likely only continue to grow.

So, what kinds of professionals comprise this growing group, and how do they perceive of their role in Chinese outbound efforts? In this Research

¹ By PRC lawyers, I refer to Mainland Chinese lawyers admitted to the Chinese bar and overseen by the All China

Lawyers Association. By PRC law firms, I refer to law firms established and headquartered in Mainland China.

Brief, I introduce readers to this group of PRC lawyers and their participation in outbound investment and infrastructure development; a group I will generally refer to as “cross-border legal experts.” I first provide background information on the policies undergirding the top-down push to develop a PRC bar with foreign legal expertise. Second, I present a preliminary understanding of this group through descriptive statistics on lawyers identified by the All China Lawyers Association (ACLA) as “Belt and Road Initiative (BRI) and Cross-Border Legal Experts” (*yidai yilu kuajing liushi rencai ku*) in 2017.² Third, I look ahead with some concluding thoughts and questions.

The Policy Backdrop

Cross-border legal experts operate against the backdrop of a state-led script that actively encourages the development of foreign legal expertise among PRC lawyers and law firms. While it would be incorrect to say that the growing number of PRC lawyers with foreign legal expertise is driven *solely* by top-down policy efforts, I suggest that we should take the state’s policy emphases seriously. Below, I focus on central-level policy efforts by the Ministry of Justice (MoJ) and the ACLA,³ the two actors

directly tasked with overseeing the Chinese bar. These policies demonstrate the importance placed on the legal profession by the state, and implicate lawyers in the political dimensions of China’s outbound efforts.

Official policy efforts to cultivate a group of PRC cross-border legal experts began shortly after the 18th National Congress of the Chinese Communist Party in 2012. On August 31, 2012, the ACLA announced its intentions to expand the ability of PRC lawyers to provide foreign-related legal services.⁴ As part of these efforts, the ACLA and the MoJ jointly selected a talent pool of 300 lawyers with foreign legal expertise (*shewai liushi rencai ku*). Over four years, with training held both domestically and abroad, the program aimed to produce 120 lawyers proficient in the corporate transactional work involved in outbound investment, 150 lawyers with expertise in WTO rules and dispute settlement, and 30 lawyers specializing in energy, ocean, and air rights.⁵ In 2018, ACLA and the MoJ released an updated list of foreign legal services experts that includes 1,000 names from across all Chinese provinces.⁶ Similar to the first cohort of experts, these lawyers will receive five years of targeted training at home and

² For the full list of lawyers, see *Quanguo lvxie gongbu “yidai yilu” kuajing liushi rencai ku mingdan* [ACLA Releases the List of Names in the BRI and Cross-Border Legal Experts Talent Pool], ALL CHINA LAWYERS ASSOCIATION, <http://www.acla.org.cn/article/page/detailById/20658> (Aug. 2, 2017, 11:07 AM).

³ While ACLA is sometimes described as the Chinese equivalent of the American Bar Association, ACLA has far tighter ties with the state than this analogy suggests. ACLA’s Charter, for instance, notes how it should firmly support Xi Jinping and the leadership of the CCP, and how it is overseen by both the Party and the Ministry of Justice. Rachel E. Stern and Lawrence J. Liu, *The Good Lawyer: State-Led Professional Socialization in Contemporary China*, LAW & SOCIAL INQUIRY (forthcoming).

⁴ Liu Zhijun, *Dali pozhan shewai lvshi fuwu lingyu zhuoli peiyang shewai liushi rencai* [Vigorously Expanding Foreign Legal Services and the Training of Lawyers with Foreign Legal Expertise], ALL CHINA LAWYERS ASSOCIATION, <http://www.acla.org.cn/article/page/detailById/12385>, (Sept. 3, 2012, 12:42 PM).

⁵ Lina Zengmin, *Zhuoli peiyang gao sushi shewai liushi rencai* [Vigorously Training High-Quality Lawyers with Foreign Legal Expertise], ALL CHINA LAWYERS ASSOCIATION, <http://www.acla.org.cn/article/page/detailById/16192> (Sept. 3, 2012, 01:34 PM).

⁶ Tu Tian & Chen Shu, *Sifabu: Wu nian nei peiyang 1000 ming shewai liushi lingjun rencai* [Ministry of Justice: Training 1000 Foreign Legal Experts Over 5 Years], CHINA DAILY, http://www.chinadaily.com.cn/interface/toutiaonew/53002523/2018-01-03/cd_35430937.html (Jan. 3, 2018, 10:34 AM).

abroad to further hone their foreign legal expertise.

The ACLA and the MoJ have been especially vocal about their role specifically in advancing the BRI. In 2016, the ACLA put forward a program for PRC lawyers' involvement in the BRI that is organized around five general principles (*Zhongguo lishi fuwu yidai yilu zhanlve jianshe xiangmu*).⁷ First, lawyers should serve as good legal advisers to the government. Second, lawyers should promote positive economic and trade exchanges. Third, lawyers should help Chinese companies go out, and defend their rights and interests abroad. Fourth, lawyers should be promoters of the rule of law with Chinese characteristics. And fifth, lawyers should be the “boots on the ground” implementing BRI projects, establishing legal practices abroad, and working with and learning from local legal service providers in host countries.

As BRI-specific efforts gain momentum, the ACLA has also produced a number of reports and books on BRI legal service provision, and has recognized lawyers who are especially adept at handling BRI projects. One such publication is a book series on BRI legal services and dispute resolution called “Foreign Legal Experts in Action” (*shewai lishi zai xingdong*). Another major ACLA publication on BRI is the “Legal Environment Reports for Countries Along the BRI” (*yidai yilu yanxian guojia falü huanjing guobie baogao*). Compiled into two large tomes, the Legal Environment Reports were co-written by domestic and foreign lawyers and touch on a number of legal issues in

43 countries, ranging from investment law to labor law to intellectual property rights. Simultaneously with the release of the Legal Environment Reports in August 2017, ACLA announced its “BRI and Cross-Border Legal Experts” talent pool to recognize individuals who contributed to writing the reports and who can serve as go-to BRI legal service providers.

This goal of cultivating a group of PRC cross-border legal experts is not limited to organizations overseeing the bar. The MoJ, the Ministry of Foreign Affairs (MFA), the Ministry of Commerce (MOFCOM), and the State Council collectively issued a set of opinions on the development of China's foreign legal services at the end of 2016 (*guanyu fazhan shewai falü fuwu ye de yijian*).⁸ These opinions lay out the state's ongoing commitment to creating a “large-scale,” “strong” and “high-quality” team of domestic lawyers with foreign legal expertise that will contribute to BRI projects, help Chinese companies “go out” (*zou chuqu*), and support Chinese diplomatic efforts. In addition to outlining a government strategy, the opinions also call on “relevant professional associations” (*xiangguan hangye xiehui*) and “lawyer associations” (*lishi xiehui*) to support state-led efforts.

A Descriptive Look at the ACLA's “BRI and Cross-Border Legal Experts” Talent Pool

The above policies draw out a tight connection between Chinese outbound investment initiatives and the legal profession. From the perspective of Chinese policymakers at least, outbound legal work is not only a lucrative practice area, but also

⁷ *Zhongguo lishi fuwu “yidai yilu” zhanlve jianshe xiangmu qidong* [Chinese Attorney Begin BRI Strategic Construction Project], *Fenghuang gang caijin* [I-FENG FINANCE], http://finance.ifeng.com/a/20160918/14884905_0.shtml (Sept. 18, 2016, 10:22 AM).

⁸ *Shouquan fabu: Guanyu fazhan shewai falü fuwu ye de yijian* [Authorized Release: Opinions Concerning the Development of Foreign Legal Services], XINHUA NEWS, http://www.xinhuanet.com/politics/2017-01/09/c_1120275357.htm (Jan. 9, 2017, 6:21 PM).

a means of participating in Chinese foreign policy efforts. In light of the political overtones overlaying outbound legal work, better understanding how (if at all) China's cross-border legal experts perceive of their role in these state-led initiatives holds both theoretical and practical significance for those interested in the connections between politics, professionals, and/or Chinese outbound investment. One place to begin understanding this role is through examining those who actually participate in these projects. Opportunities to participate—whether in politics or private business—are seldom evenly distributed across society, and the backgrounds of those involved offer an understanding of who has access to these opportunities and the mind-sets they bring to their work.

While I leave a more thorough unpacking of PRC cross-border legal experts to later writings, a look at the 84 PRC lawyers officially recognized by ACLA as “BRI and Cross-Border Legal Experts” offers some preliminary insights. My original database of biographical information suggests that the “BRI and Cross-Border Legal Expert” is a highly-educated male with extensive foreign experience (mostly in developed regions), and strong ties to the state and the Chinese Communist Party (CCP).⁹ The majority of “BRI and Cross-Border Legal Experts” work in Beijing, Shanghai, or Guangdong (54.2 percent), while

Gansu, Guizhou, Hainan, Hunan, Jilin, Jiangxi, Ningxia, Qinghai, Shandong, and Shanxi are not represented. While the exclusion of many provinces may not be surprising given the small number of honorees, it is perhaps more surprising that so many lawyers practice at the same law firm. At the time of the recognition, nine lawyers worked for Zhonglun and its various branches, five for Jintiancheng, and four each at Duan Duan and Grandall. A handful of lawyers have even moved to these law firms since 2017, with two moves to Zhonglun, three moves to Grandall, and one move to Jintiancheng—further consolidating the strength within these firms.

As expected, all but one lawyer had a firm page that noted the lawyer's foreign legal expertise, with the majority working in corporate practice areas like international investment, M&A, and banking, as well as a good number with arbitration and dispute resolution experience in specific practice areas like labor or property law. For most lawyers, international expertise meant expertise in dealing with developed, Western countries. Using the G20 and G7 as rough proxies for development, only 42 and 51.9 percent of BRI lawyers mentioned experiences with non-G20 and non-G7 countries, respectively.¹⁰ Another sign of their international bona fides, the overwhelming majority of “BRI and Cross-Border Legal Experts” hold advanced degrees (88 percent), with most of

⁹ The BRI Legal Experts database contains biographical data for the 84 Chinese attorneys formally recognized by the ACLA as “BRI and Cross-Border Legal Experts” in 2017. Biographical information is drawn from two main sources: (1) lawyers' online law firm profiles, and (2) write-ups about the lawyers in the ACLA online yearbook. I supplement the data with news articles describing the experts or media interviews with the experts, when available. Despite variation in how much information was available for each lawyer, I collected consistent data on gender, educational background, areas of specialization, and involvement with local bar associations. For lawyers in Beijing and Shanghai, I

also have perfect information on their party affiliations. Note that I was only able to collect information on 83 of the 84 lawyers, since I could not find Wang Lei on the Yingke firm website, nor via Google or Baidu searches.

¹⁰ Given the number of member states of the EU, the presence of stand-alone EU member states in the G7 and G20, and variation in development among EU member states, I count most EU countries as non-G20 and non-G7 here. Even then, the number of “BRI and Cross-Border Legal Experts with non-G7 and non-G20 experience is still quite low.

them pursuing graduate-level education abroad (60.6 percent).

“BRI and Cross-Border Legal Experts” also have strong political credentials. About 68 percent of these ACLA-recognized individuals hold leadership positions at some level of the bar association, and about 20 percent serve as People’s Congress or People’s Political Consultative Congress deputies. Although information on membership in the CCP is not widely available, websites for the Beijing and Shanghai ACLA have directories with party membership for every lawyer in those cities. 50 percent of honorees from Beijing are CCP members and 58.3 percent of honorees from Shanghai are CCP members, both of which exceed the proportion of CCP lawyers among the entire lawyer population and for each city respectively.¹¹

Looking Ahead

A continued focus on China’s growing group of cross-border legal experts raises a number of important questions worthy of further consideration. At the level of the individual cross-border lawyer, interested observers should keep close tabs on the size and influence of this relatively nascent group of lawyers. While indications suggest that this group is growing rapidly, policy aspirations may not always translate into concrete results. Moreover, interest should be paid to the size and strength of PRC

cross-border legal experts relative to the non-PRC options that Chinese companies have. In other words, how is Chinese outbound investment and development work distributed among the various domestic and international legal service providers available?

In addition to thinking about PRC cross-border legal experts in relation to their work and the profession, observers should also pay attention to whether and how these lawyers tie their work to broader state-led foreign policy goals. While cross-border legal experts are private lawyers in private firms, this brief has highlighted the political context that they exist in. The state’s top-down approach to developing foreign legal expertise among the Chinese bar serves as a state-led script that intimately links legal practice and expertise to government policies and service to the nation. Whether Chinese lawyers themselves also acknowledge or act closely in accordance with this script remains an important micro-level question, especially as it pertains to macro-level debates about whether China’s outbound efforts are part of a broader grand strategy to export Chinese institutions and ideals.

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¹¹ As of year-end 2017, 32 percent of all Chinese lawyers were CCP Members. *Woguo dangyuan lishi renshu yi tupo 11.7 wan ren [Number of Party Lawyers Exceeds 117,000]*, XINHUA NEWS, http://www.xinhuanet.com/legal/2018-07/02/c_1123067118.htm (July 2, 2018, 04:04 PM). 29.8 percent of Beijing lawyers were CCP members as of year-end 2017. *Beijing shi sifa ju: Jiaqiang lishi hangye dangjian [Beijing Ministry of Justice: Improving Party-Building Among the Legal Profession]*, VOICE OF CHINA,

http://china.cnr.cn/gdgg/20181214/t20181214_524449875.shtml 1 (Dec. 14, 2018, 12:22 PM). As of year-end 2016, 41.6 percent of Shanghai lawyers were CCP members. Wu Xinxie, *Zhili daoxiang: Lishi hangye dangjian de shidai dingwei yu kongjian pozhan—yi Shanghai weili [Governance Guidance: Time and Space for Party-Building Among the Legal Profession – Taking Shanghai as an Example]*, VOICE OF CHINA, http://www.qstheory.cn/llqikan/2018-07/20/c_1123156809.htm (July 20, 2018, 08:46 PM).