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# 'Trace the Money, Seize the Fugitives': China's Other Anticorruption Battle

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## ABSTRACT

Corrupt officials fleeing abroad with ill-gotten proceeds constitute a special challenge for the Chinese government. International cooperation to seize these fugitives often encounters roadblocks due to countries' legal-political differences. By observing China's burgeoning extraterritorial anti-corruption regime, this article proposes that an anti-money laundering (AML) mindset is being embraced to 'seize the fugitives' by 'tracing the money'. This approach has three advantages: 1) de-complication by standardizing states' practices and bypassing complexities inherent in orthodox means, 2) de-politicization by circumventing sensitive political concerns through pursuing fugitives and corrupt proceeds separately, and 3) leveling the playing field by rebalancing power between requested and requesting states. In-depth case studies combined with elite interviews reveal that this AML-oriented tactic has facilitated China's capture of fugitives on foreign soils.

## Introduction

It is widely agreed that corruption occurs almost everywhere in China, from financial institutes, state-owned enterprises, the real estate industry, judiciary, and military, to resource and energy sectors.<sup>1</sup> Corruption has also undergone a transformation of nature from the involvement of low-level officials and a small amount of corrupt proceeds to complex networks involving high levels of corruption and large sums of money<sup>2</sup>. An understudied aspect of corruption in China is manifested through

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<sup>1</sup>See Andrew Wedeman, *Double Paradox: Rapid Growth and Rising Corruption in China* (Ithaca: Cornell University Press, 2012) and Minxin Pei, *China's Crony Capitalism: The Dynamics of Regime Decay* (Cambridge: Harvard University Press, 2016) for state-owned enterprises corruption; see Jiangnan Zhu, 'The Shadow of the Skyscrapers: real estate corruption in China', *Journal of Contemporary China* 21(74), (2012), pp. 243–260, Xin Sun, 'Selective Enforcement of Land Regulations: why large-scale violators succeeded', *The China Journal* 74(2), (2015), pp. 66–90, and Ting Chen and James Kai-sing Kung, 'Busting the "Princelings": the campaign against corruption in China's primary land market', *The Quarterly Journal of Economics* 134(1), (2019), pp. 185–226 for real estate corruption; see Yuhua Wang, 'Court Funding and Judicial Corruption in China', *The China Journal* 69, (2013), pp. 43–63 for corruption in courts; see Peng Wang, 'Military Corruption in China: the role of guanxi in the buying and selling of military positions', *The China Quarterly* 228, (2016), pp. 970–991 for military corruption; and Jing Vivian Zhan, 'Do Natural Resources Breed Corruption? evidence from China', *Environmental and Resource Economics* 66(2), (2017), pp. 237–259 for corruption in resource areas.

<sup>2</sup>Andrew Wedeman, 'The Intensification of Corruption in China', *The China Quarterly* 18, (2004), pp. 895–921; Yong Guo, 'Corruption in Transitional China: an empirical analysis', *The China Quarterly* 194, (2008), pp. 349–364; Kilkon Ko and Cuifen Weng, 'Structural Changes in Chinese Corruption', *The China Quarterly* 211, (2012), pp. 718–740; Jiangnan Zhu, 'Corruption Networks in China: an Institutional Analysis', in *Routledge Handbook of Corruption in Asia*, ed. Ting Gong and Ian Scott (Routledge: Taylor & Francis Group, 2016), pp. 27–41; Zheng Chang, 'Understanding the Corruption Networks Revealed in

hundreds of corrupt officials fleeing abroad with their ill-gotten proceeds every year<sup>3</sup>. Facing this type of transnational corruption, the Chinese government has become aware of the necessity and importance of winning its other anti-corruption battle, which takes place on foreign soil.

By taking advantage of the international financial system, networks, and immigration policies of foreign jurisdictions, corrupt fugitives have been able to evade domestic prosecution and launder their illicit funds worldwide.<sup>4</sup> Seizing these fugitives requires international cooperation, which often encounters roadblocks caused by national legal-political differences that render extraditions and mutual legal assistance exceptionally difficult, if not impossible, to achieve. For example, several attempts of the Chinese government to extradite corrupt fugitives in the past, such as the infamous Lai Changxing (赖昌星) of the Yuanhua (远华) smuggling case, fell into a long-time deadlock. While existing literature has well documented the great strides that China has made in curbing domestic corruption,<sup>5</sup> there is a paucity of scholarly inquiries about how China develops effective extraterritorial anti-corruption regimes.

Drawing on the insights that corruption and money laundering are 'a related and self-reinforcing phenomenon, [because] corruption proceeds are disguised and laundered by corrupt officials to be able to spend or invest such proceeds,'<sup>6</sup> and trailblazing works of Shams, Sharman, and Chaikin,<sup>7</sup> this article proposes that an anti-money laundering (AML) approach and practices can be more proactively incorporated into the agenda of a state's transnational corruption control. Three major mechanisms through which AML strengthens extraterritorial anti-corruption governance are *de-complication*, *de-politicization*, and *leveling the playing field*. The new paradigm conceptualized here as 'trace the money, seize the fugitives' (擒贼先擒赃), which shifts from a fugitive-oriented approach that views the issues of fugitives and proceeds as an inseparable one to a dual-pronged tactic. Equal emphasis is placed on pursuing fugitives and recovering proceeds in that the confiscation of proceeds can fuel the success of capturing fugitives. By dissecting compelling cases of China's recent extraterritorial anti-corruption development after the 18th Party Congress, conducting elite interviews with 12 professionals, officials, and researchers specializing in AML or working on the seizure of overseas fugitives in China, and analyzing a self-collected small dataset of the returned fugitives, the authors show how anti-corruption and AML regimes can join forces in practice.

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the Current Chinese Anti-Corruption Campaign: a social network approach', *Journal of Contemporary China* 27(113), (2018), pp. 735–747; and Yuen Yuen Ang, *China's Gilded Age: The Paradox of Economic Boom and Vast Corruption* (New York: Cambridge University Press, 2020).

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<sup>3</sup>Jiangnan Zhu, 'Out of China's Reach: Globalized Corruption Fugitives', *The China Journal* 86, (2021), pp. 90–113.

<sup>4</sup>Alexander Cooley and Jason C. Sharman, 'Transnational Corruption and the Globalized Individual', *Perspectives on Politics* 15(3), (2017), pp. 732–753.

<sup>5</sup>See Xuezhi Guo, 'Controlling Corruption in the Party: China's Central Discipline Inspection Commission', *The China Quarterly* 219, (2014), pp. 597–624; Ling Li, 'Politics of Anticorruption in China: Paradigm Change of the Party's Disciplinary Regime 2012–2017', *Journal of Contemporary China* 28(115), (2019), pp. 47–63; Andrew Wedeman, 'Anticorruption Campaigns and the Intensification of Corruption in China', *Journal of Contemporary China* 14(42), (2005), pp. 93–116; Hualing Fu, 'Wielding the Sword: President Xi's New Anti-Corruption Campaign', in *Greed, Corruption, and the Modern State*, ed. Susan Rose-Ackerman and Paul Felipe Lagunes (Edward Elgar Publishing, 2005), pp. 134–158; Jiangnan Zhu, Huang Huang, and Dong Zhang, 'Big Tigers, Big Data': learning social reactions to China's anticorruption campaign through online feedback', *Public Administration Review* 79(4), (2017), pp. 500–513, Hanyu Xiao, Ting Gong, Chilik Yu, Wen-Jong Juang and Baishun Yuan, 'Citizens' Confidence in Government Control of Corruption: an empirical analysis', *Social Indicators Research* 152, (2020), pp. 877–897; Li Li and Peng Wang, 'From Institutional Interaction to Institutional Integration: the National Supervisory Commission and China's new anti-corruption model', *The China Quarterly* 240, (2019), pp. 967–989; Lin Zhu, 'Punishing Corrupt Officials in China' *The China Quarterly* 223, (2015), pp. 595–617; Ting Gong, Shiru Wang and Hui Li, 'Sentencing Disparities in Corruption Cases in China', *Journal of Contemporary China* 28(116), (2019), pp. 245–259.

<sup>6</sup>World Bank, 'Strengthening World Bank Group Engagement on Governance and Anticorruption', last modified 14 March 2017 date accessed January 52,022, <http://www1.worldbank.org/publicsector/anticorrupt/corecourse2007/GACMaster.pdf>.

<sup>7</sup>Heba Shams, 'The Fight Against Extraterritorial Corruption and the Use of Money Laundering Control', *Law and Business Review of the Americas* 7(1), (2001), pp. 85–133; Jason C. Sharman and David Chaikin, 'Corruption and Anti-Money-Laundering Systems: putting a luxury good to work', *Governance* 22(1), (2009), pp. 27–45.

This article draws attention to the recent paradigm shift in China's anti-corruption regime, which used to be largely inward-looking. The administration under President Xi Jinping has shown an unparalleled resolve to expand China's anticorruption purview to pursue overseas fugitives and recover stolen assets. Sensing the constraints of its authoritarian politico-legal systems when reaching out to other countries for collaboration, the Chinese government has learned to embrace a more globalized mindset by utilizing AML measures to make breakthroughs in furthering anticorruption initiatives. This article also broadens the scope of the current literature on corruption control that focuses primarily on domestic occurrences. While far from extolling AML as a panacea, this research calls for the incorporation and application of the AML approach to uprooting transnational corruption and resultantly provides insights for other developing countries facing a similar problem of corrupt fugitives at large.

## Embracing AML into the Second Anticorruption Battle

As corruption becomes a globalized phenomenon, countries such as China face a second battle that includes not only prohibiting citizens' or enterprises' bribery of officials overseas, but also bringing corrupt absconders to justice and recovering proceeds transferred, hidden, and/or laundered abroad. Most absconders target developed countries, particularly those dubbed as safe passages or havens, as their destination. Despite the availability of bilateral and multilateral treaties and mutual legal assistance in the international community, several state-level obstacles to cooperation are still stubbornly in place, hindering fugitive repatriation and asset recovery.

Specifically, while quite a few regional and international treaties have been concluded, many of them cannot be effectively enforced without state proactivity. For instance, *United Nations Convention Against Corruption* (UNCAC) is the most relevant and legally binding international instrument on the return of fugitives and asset recovery. Nevertheless, the implementation of its provisions depends largely on their compatibility with domestic laws and the conclusion of bilateral treaties.<sup>8</sup> Individual states commonly face little pressure on deciding whether, when, and how to incorporate the convention into their national laws. There also exist in the treaty broad exemptions, such as the violation of sovereignty, national security, and other essential interests, that state parties can leverage as an excuse to refuse offering assistance.<sup>9</sup>

In practice, extradition and mutual legal assistance (MLA) are probably the most widely used tools in the pursuit of fugitives with illicit proceeds. Unfortunately, they are not necessarily applicable or 'user-friendly' to many developing countries. The requisite condition for successful extradition is the existence of an active treaty concluded between the requesting and requested states. However, an extradition treaty is hard to conclude between a dyad that lacks mutual trust in political institutions, human rights issues, and regulatory standards.<sup>10</sup> Two principles of extradition are also upheld in international law, including refusal to extradite a person (a) to be foreseeably sentenced with capital punishment and (b) to be prejudiced or persecuted on account of sex, race, religion, nationality, or political opinion.<sup>11</sup> Such principles hinder some suspects from being extradited to home countries that are considered nondemocratic. Moreover, the concluded treaties may not have included all forms of corruption as extraditable crimes. Thus, many developing countries have no active or applicable extradition treaties with haven states where corrupt fugitives often flee, voiding the basis for legal cooperation.

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<sup>8</sup>Kimberly Prost, 'International Cooperation Under the United Nations Convention Against Corruption', in *Denying Safe Haven to the Corrupt and the Proceeds of Corruption*, ed. ADB and OECD (Manila: Asian Development Bank, 2006), pp. 6–13.

<sup>9</sup>Philippa Webb, 'The United Nations Convention Against Corruption: global achievement or missed opportunity?', *Journal of International Economic Law* 8(1), (2005), pp. 191–229.

<sup>10</sup>Anna MacCormack, 'United States, China, and Extradition: ready for the next step', *New York University Journal of Legislation and Public Policy* 12(2), (2009), pp. 445–498.

<sup>11</sup>Craig R. Roeks, 'Extradition, Human Rights, and the Death Penalty: when nations must refuse to extradite a person charge with a capital crime', *California Western International Law Journal* 25(1), (1994), pp. 189–234.

Countries can turn to MLA through bilateral or multilateral agreements and case-by-case requests. However, a recurring obstacle to requesting MLA is the requirement of dual criminality, meaning that the conduct underlying a request must be criminalized in the domestic laws of both the requesting and requested countries.<sup>12</sup> Moreover, countries may face difficulties caused by different due processes and evidentiary requirements in providing sufficient evidence for an assistance request or collecting evidence through mutually acceptable legal means.<sup>13</sup> The case-by-case nature of cooperation is also costly and gives rise to uncertainty as it hinges heavily on the interstate relations and international circumstances at the time. Therefore, in addition to these formal instruments, states sometimes dispatch undercover law enforcement agents. These agents may use informal measures, such as subterfuge, tricks, or other forms of deception, to lure suspects to voluntarily leave the safe-haven states to a place where extradition or mutual legal assistance is applicable.<sup>14</sup> While such approaches can occasionally be effective, they entail huge legal and diplomatic risks. In some countries, luring people is categorically characterized as illegal. Personnel who apply such measures may be accused of transnational repression and face criminal sanctions.<sup>15</sup>

Given these hurdles and impediments, new mindsets are needed to empower countries where corrupt fugitives and proceeds originate to gain the upper hand in their second anti-corruption battle. This article argues that the AML system provides such a pathway to complement and strengthen current anti-corruption measures. Money laundering is 'the process of obscuring the illicit origins of money derived from crime.' While one may launder illicit funds by 'reintegrating' them 'into the legitimate financial system without arousing the suspicions of law enforcement authorities,' AML can 'disrupt this illicit finance' and make the 'predicate offenses less profitable' and 'less attractive.'<sup>16</sup> Corruption is undoubtedly a predicate offense for money laundering, as explicitly stated by the United Nations Office of Drugs and Crime: 'the ability to transfer and conceal funds is critical to the perpetrators of corruption.'<sup>17</sup> Likewise, the World Bank describes corruption and money laundering as 'a related and self-reinforcing phenomenon.'<sup>18</sup> Therefore, fighting either one of these crimes can be effective in reducing the other.<sup>19</sup>

A key intergovernmental body leading the global action to counter money laundering is the Financial Action Task Force (FATF). FATF sets and promotes global AML standards, known as the FATF Recommendations, and serves as a highly competent watchdog ensuring state compliance with and effective implementation of these Recommendations. This gatekeeping organization assiduously reviews and revises the Recommendations in consideration of evolving circumstances, which has resulted in superior recognition and acceptability among major economies in the world. Inspired by *The Use of the FATF Recommendations to Combat Corruption*, in which the ways AML-oriented strategies can curtail globalized corruption are spelled out,<sup>20</sup> this article encapsulates three mechanisms whereby the AML system complements the current global anti-corruption agenda.

<sup>12</sup>Munir Hafeez, 'Mutual Legal Assistance and Repatriation of Proceeds—Pakistan's experience', (paper presented at 4th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Kuala Lumpur, Malaysia, December 3–5, 2003).

<sup>13</sup>Joyce Elizabeth, 'Expanding the International Regime on Money Laundering in Response to Transnational Organized Crime, Terrorism, and Corruption', in *Handbook of Transnational Crime and Justice*, ed. Philip Reichel (Thousand Oaks: SAGE Publications, 2005), pp. 79–97.

<sup>14</sup>Charles A. Caruso, 'Legal Challenges in Extradition and Suggested Solutions', in *Denying Safe Haven to the Corrupt and the Proceeds of Corruption*, ed. ADB and OECD (Manila: Asian Development Bank, 2006), pp. 6–13.

<sup>15</sup>Gerasimos Tsourapas, 'Global Autocracies: Strategies of Transnational Repression, Legitimation, and Co-Optation in World Politics', *International Studies Review* (2020), DOI: <https://dx.doi.org/10.1093/isr/viaa061>.

<sup>16</sup>Sharman and Chaikin, 'Corruption and Anti-Money-Laundering Systems', p. 29.

<sup>17</sup>UNODC. 'The Global Programme Against Corruption: United Nations Anti-Corruption Toolkit', accessed 22 June 2021 [https://www.unodc.org/documents/treaties/corruption/toolkit/toolkitv5\\_foreword.pdf](https://www.unodc.org/documents/treaties/corruption/toolkit/toolkitv5_foreword.pdf).

<sup>18</sup>World Bank, 'Strengthening World Bank', p. 66.

<sup>19</sup>Sharman and Chaikin, 'Corruption and Anti-Money-Laundering Systems', pp. 27–45.

<sup>20</sup>FATF, 'The Use of the FATF Recommendations to Combat Corruption', accessed 22 June 2021 <http://www.fatf-gafi.org/media/fatf/documents/recommendations/bpp-use-of-fatf-recs-corruption.pdf>.

## De-complication

AML can expedite international cooperation in fighting transnational corruption by simplifying or even bypassing some prerequisites for initiating extraditions or MLA. First, AML provides countries with a shared understanding of criminal offenses to solve the prerequisite dilemma, such as dual criminality. Most countries recognize the criminality of money laundering as they adhere to a highly standardized AML framework outlined in the *FATF Recommendations*. The money laundering offense can serve as an appropriate alternative to corruption offenses, which entail lengthy investigations and prosecutions. AML's wide coverage of predicate crimes and target of ill-gotten assets also help both the developing and developed countries to find common grounds and subsequently forge interstate collaboration.<sup>21</sup>

Second, falling back on the money laundering offense can lessen the burden on requesting countries to collect and submit legally acceptable evidence to requested countries. Under the AML regime, many countries permit a reversed or dynamic burden of proof, by which defendants prove the sources of their wealth and explain their dealings with the funds under investigation.<sup>22</sup> Untraceable or unprovable assets can hardly be ruled as legitimate. By contrast, it is much more challenging to investigate and prove corruption because of its secrecy. The former head of the Nigerian Economic and Financial Crimes Commission (EFCC) noted that 80% of convictions obtained by EFCC consisted of money laundering charges because they were often 'the easiest and most effective way to convict the corrupt.' He believed that 'financial criminals could now be convicted for money laundering, which—when proper financial reporting is in place—is easier to investigate and prosecute successfully than corruption.'<sup>23</sup> Documented money flows are difficult to dispute, and failure to identify a legitimate origin and ownership of these funds is sufficient to make a case of laundering. Therefore, AML offers a simple yet powerful solution to help circumvent the complicated evidentiary problem in corruption control.

Third, AML helps to cut down the financial support of many overseas fugitives, rendering them more likely to return to home soils 'voluntarily' and reducing the need to go through the time-consuming process of extradition and MLA. Economic returns are a major driver of corruption; some fugitives may even prefer to serve a few years behind bars than to give up the proceeds and their whereabouts.<sup>24</sup> Once their corrupt proceeds are frozen and confiscated under AML laws, fugitives become unable to sustain their lavish lifestyles abroad and are more likely to turn themselves in. This appeals to the logic that rational individuals would be gravely disincentivized and deterred from corruption when they lack avenues to launder the funds and covertly enjoy them.<sup>25</sup>

## De-politicization

Incorporating an AML approach into the fight against transnational corruption offers a dual-pronged approach that places coequal emphasis on fugitives and proceeds, hence mitigating political factors that currently hinder interstate collaboration. The existing anti-graft measures are largely fugitive-oriented with the primary aims of investigating or repatriating the suspects. However, requests for collaboration are oftentimes declined on grounds related to various political considerations that revolve around the concerned persons. This phenomenon is commonly found among requested states that share less-than-friendly relations with their requesting counterparts. Human rights protection clauses become a double-edged sword that can be abused by fugitives who seek political asylum under the humanitarian obligations or laws of haven countries in an attempt to prevent or

<sup>21</sup>Ibid.

<sup>22</sup>FATF, 'Anti-Money Laundering and Counter Terrorist Financing for Judges & Prosecutors', accessed 22 June 2021 <https://www.fatf-gafi.org/media/fatf/documents/reports/AML-CFT-Judges-Prosecutors.pdf>.

<sup>23</sup>Nuhu Ribadu, *Show Me the Money: Leveraging Anti-money Laundering Tools to Fight Corruption in Nigeria: An Insider Story* (Washington: Centre and Global Development, 2010), pp. 56, 10.

<sup>24</sup>Sharman and Chaikin, 'Corruption and Anti-Money-Laundering Systems', pp. 27–45.

<sup>25</sup>Shams, 'The Fight Against Extraterritorial Corruption', pp. 85–133.

delay justice.<sup>26</sup> This loophole is particularly unfavorable to developing countries as requesting parties because many of them fall short on human rights protections and strong legal institutions. Consequently, leaders of developing countries often find the door on the possibility of forging extradition and MLA deals firmly shut.<sup>27</sup>

The AML framework switches gears to asset tracing and recovery, downplaying the necessity of scrutinizing country-specific political contexts for establishing interstate collaboration. If countries can produce evidence that the assets of the concerned person include criminal proceeds, the prosecution and conviction processes can be built solely on money laundering and no longer involve humanitarian concerns. The identity of the concerned person can be redefined from 'refugees' seeking political asylum to 'fugitives' evading criminal prosecution, leading to a paradigmatic shift in legal rationales. Attaching to the idea of separating fugitives from their proceeds in corruption cases, countries can more easily seek common ground in cooperation while preserving differences in legal and judicial institutions.

### **Leveling the playing field**

Embracing an AML tactic can help alleviate the structurally disadvantaged position of the requesting countries in dealing with fugitives and capital flight. Irrespective of their economic development levels, countries are equally obliged to observe and comply with AML standards. The gap in the bargaining power between countries is therefore narrowed by the AML framework. In the past, countries renowned for their banking secrecy and 'tax haven' reputation (e.g. Switzerland, Panama, etc.) have been reluctant to violate customer confidentiality agreements to avoid jeopardizing their neutrality and future businesses.<sup>28</sup> Requested countries without obvious economic losses caused by transnational fugitives and stolen assets may also lack the incentive to engage in negotiating time-consuming and costly collaboration with other states. However, under the AML framework, different kinds of actors must act against money laundering-related offenses. Owing to the role FATF plays in securing compliance to its proposed, albeit legally nonbinding, recommendations from members and non-members, AML requirements supersede the traditions of financial institutions that prioritize customer privacy and interests. Accordingly, the scope of duties on the part of financial institutions now encompasses keeping information on account holders and reporting suspicious transactions. For example, FATF releases reviews three times per year on high-risk jurisdictions subject to a 'call for action' (the 'FATF blacklist') and jurisdictions under increased monitoring (the 'FATF grey list'). Named countries or territories are considered uncooperative of AML and counter-terrorist financing guidelines and subsequently suffer from enormous reputational damage and financial pressure imposed by other countries.<sup>29</sup> This quasi-sanction mechanism implicitly acts as a commitment device for countries and sectors to exhibit sufficient political will to uphold the AML regime and its good reputation.

Moreover, AML facilitates capacity building in developing countries. Internationally agreed-upon reporting policies compel state actors to collect and present vast volumes of financial intelligence to share among government authorities, thus strengthening individual nations' acquisition capacities of financial information. Anticorruption endeavors, in the long run, can surely benefit from increased information exchange,<sup>30</sup> especially for those developing countries which lag in garnering financial intelligence. Additionally, the principle of benefit-sharing under the AML framework fosters

<sup>26</sup>Antje C. Petersen 'Extradition and the Political Offense Exception in the Suppression of Terrorism', *Indiana Law Journal* (Bloomington) 67(3), (1992), pp. 767–796.

<sup>27</sup>Matthew Bloom, 'A Comparative Analysis of the United States's Response to Extradition Requests from China', *Yale Journal of International Law* 33(1), (2008), pp. 177–214.

<sup>28</sup>Paolo S Grassi and Daniele Calverese, 'The Duty of Confidentiality of Banks in Switzerland: where it stands and where it goes', *Pace International Law Review* 7(2), (1995), pp. 329–372.

<sup>29</sup>Jason C. Sharman, 'The Bark is the Bite: International Organizations and Blacklisting', *Review of International Political Economy* 16(4), (2009), pp. 573–596.

<sup>30</sup>FATF, 'The Use of the FATF Recommendations', p. 14.

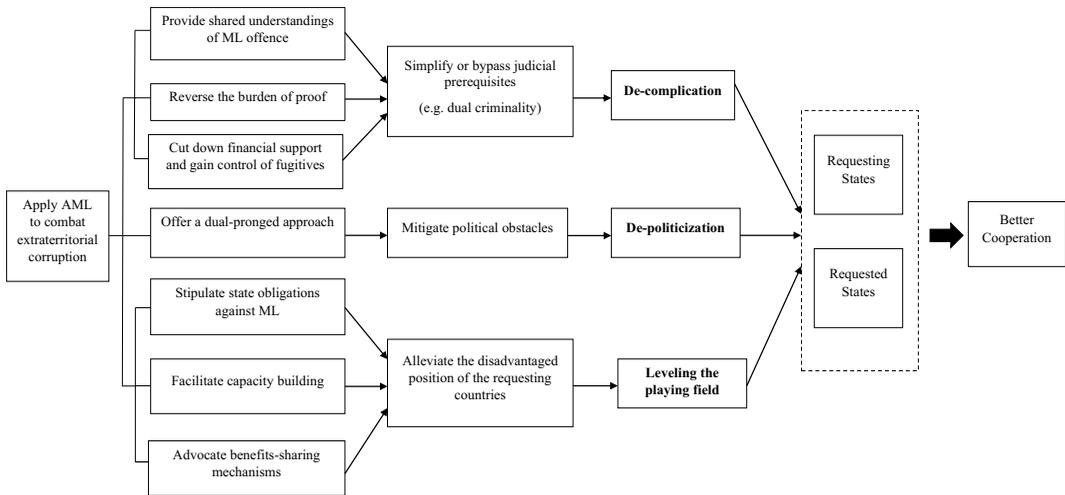


Figure 1. Applying AML to combat transnational corruption: mechanisms and advantages.

a reciprocal relationship and incentivizes cooperation between requested and requesting states. In the not-so-distant past, requesting countries often found themselves in a passive position because the processing and outcomes of their requests were contingent upon how willing and expeditious their requested counterparts were to respond. Such a system left international cooperation on a voluntary and benevolent basis. Considering the substantial amount of manpower and effort needing to be devoted by both parties in extraterritorial enforcement, the global AML framework advocates for benefit sharing instead. As explicitly elucidated by FATF's Recommendation 38: 'countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.'<sup>31</sup> A request for legal assistance on asset freezing and confiscation can thus be turned into a mutually beneficial task that taps into the motivation of requested countries to chip in. Figure 1 summarizes the three mechanisms.

## Data and Methods

The proposed theoretical framework is exemplified in the context of China. For decades, China has been vulnerable to grand corruption with a multitude of corrupt offenders fleeing abroad and enormous amounts of illicit proceeds flowing out of the country. By some estimates, 18,000 Chinese public officials were on the run between the 1990s and 2011, together with their ill-gotten proceeds that totaled a staggering amount of RMB 8 trillion.<sup>32</sup> It was not until the 18th Congress of the Chinese Communist Party (CCP) that an outward-looking extraterritorial anticorruption regime began to burgeon in China.

The authors conducted semi-structured in-depth interviews between May and July of 2020. The interviewees include 12 professionals and experts, consisting of scholars from leading Chinese think tanks on anticorruption and AML research, officers in law and party discipline enforcement teams, as well as managerial personnel from regulatory agencies and financial services companies. Although the sample size is quite limited, the day-to-day job responsibilities of these interviewees cover key

<sup>31</sup>FATF. 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendation', updated October 2021, accessed 23 June 2021 <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

<sup>32</sup>Chunying Wang, '反腐败的双动力机制: 境外追逃与境内反腐' [The dual anticorruption drivers: the overseas pursuit of fugitives and domestic corruption control], 人民论坛 [People's Tribune] 13, (2015), pp. 48–50.

dimensions of China's extraterritorial anti-corruption regime. Several interviewees were interviewed multiple times to solicit their valuable first-hand accounts on predetermined questions and opinions on the areas of improvement about China's current anti-corruption strategies.

Interviews were supplemented with document analysis for specific corruption cases, government measures, and interstate relations. Pertinent data were gleaned from many public records, including government-released books, dossiers and documentaries, and state media reports regarding the Chinese government's pursuits of overseas fugitives. These materials primarily aim to attract a wide readership of the state-led anticorruption efforts and to deter criminals, thus often revealing rich government insiders' views on Chinese extra-territorial anti-corruption practices and details of many cases with high publicity. The authors also gathered a small dataset of returned Chinese fugitives listed on Interpol 'Red Notices' (百名红通人员)<sup>33</sup> and conducted content analysis to see how AML is integrated into the nation's multidimensional fugitive-hunting tactic. Finally, domestic resources were triangulated with foreign media reports and FATF documents such as the *Mutual Evaluation Report of China* to enhance finding reliability.<sup>34</sup>

### The Context: China's Burgeoning Extraterritorial Anticorruption Regime

China's first step in signaling its ever-stronger resolve to apprehend overseas fugitives is the establishment of the Office of International Fugitive Returns and Asset Recovery (OIFAR, 国际追逃追赃工作办公室), which operates under the direct leadership of the central government. Set up in 2014, this supra-coordination group is made of leading figures from eight public agencies, ranging from traditional anti-graft bodies in charge of domestic corruption investigations and prosecutions to other departments that were previously less involved in corruption control. The former category includes the Central Commission for Discipline Inspection (CCDI), the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security. The latter category involves the Ministries of Security, Justice, and Foreign Affairs and the People's Bank of China (PBOC). Provinces, autonomous regions, and municipalities have also set up coordination groups on the fugitive pursuit and asset recovery. Figure 2 illustrates the organizational structure of OIFAR and the respective functions of the eight agencies in forging interagency cooperation. The resulting grand collaboration shows the Chinese government's aspiration to elevate its extraterritorial anti-corruption work to a new height by expanding diplomatic ties, making the most of financial intelligence, and taking advantage of AML tools. As stated by the director of the OIFAR,

The pursuit of corrupt fugitives and the recovery of their ill-gotten assets take place both domestically and internationally. The winning of this wide-ranging 'battle' depends on whether the attention and resources of multiple regulatory agencies specializing in judicial, law enforcement, and AML affairs can be garnered and mobilized. In the past, the Chinese government did not gain the upper hand in this battle exactly because of the absence of a master plan that could strategically bring individual departments together and leverage their respective strengths to reach specific milestones. Fortunately, the establishment of the OIFAR signals the integration of the key functions, critical resources, and regulatory power formerly distributed across different enforcement organs.<sup>35</sup>

Taking a multi-dimensional approach, the Chinese government has more actively advocated for international cooperation and put forth judicial reforms in recent years. One interviewee commented, 'China now sees more deeply the importance of participating in international anti-corruption

<sup>33</sup>China Red Notice is issued by member states of Interpol to request for international assistance in locating or provisionally arresting a person pending extradition, surrender, or similar legal action, updated January 2022, accessed 28 August 2020 <https://www.interpol.int/How-we-work/Notices/View-Red-Notices>.

<sup>34</sup>FATF, 'Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, People's Republic of China', updated April 2019, accessed 23 June 2021

<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>.

<sup>35</sup>Jie Jiang and Jiang Lin, '中央追逃办成立五周年 全国共追回外逃人员5974人' ['The fifth anniversary of the establishment of the Central Pursuit Office, China pursued 5974 fugitives in total'], 人民日报 [People's Daily], 27 June 2019 accessed 25 August 2020 [http://www.xinhuanet.com/politics/2019-06/27/c\\_1124676035.htm](http://www.xinhuanet.com/politics/2019-06/27/c_1124676035.htm).

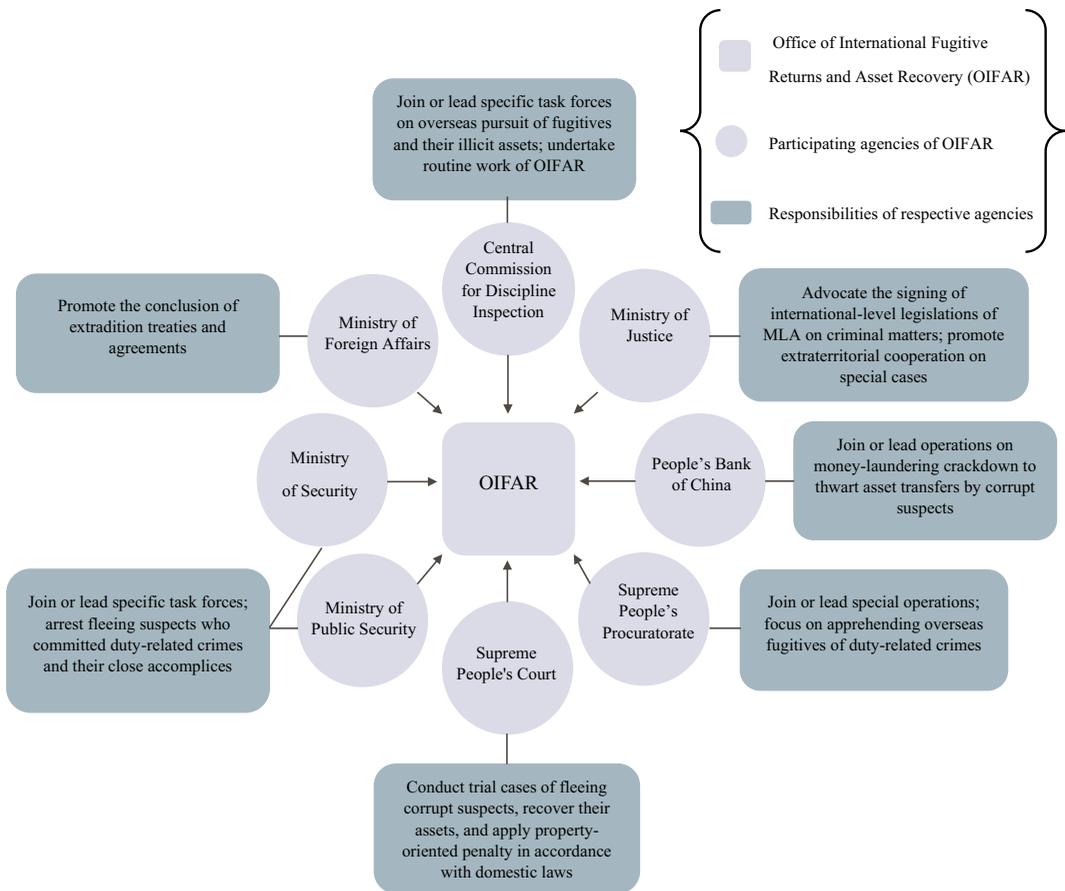


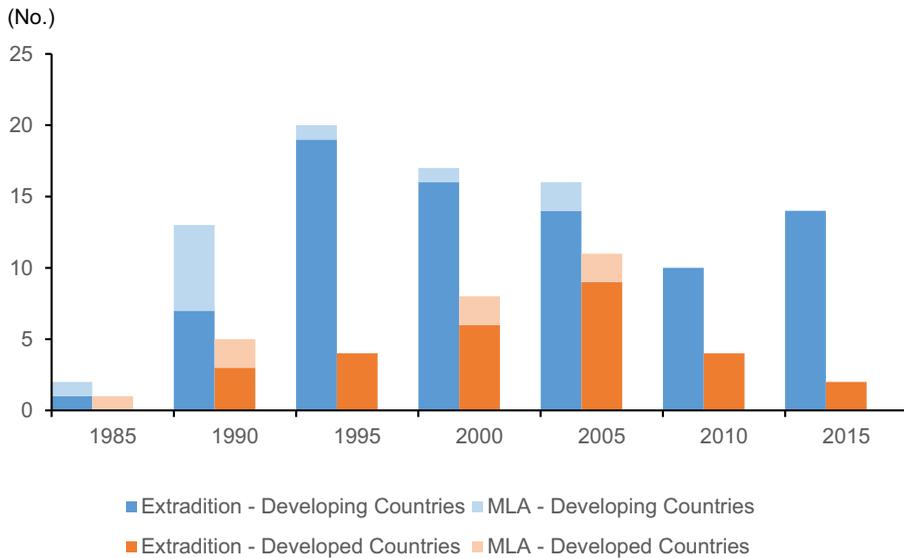
Figure 2. Structure and functions of OIFAR.

events and earning more right of discourse in the global anticorruption regime.<sup>36</sup> His words square with China's recent frequent initiations of declarations or statements on regional and international cooperation in transnational corruption control (see Table A1) as well as conclusions of bilateral agreements or treaties with other countries. Figure 3 shows the number of extradition treaties and MLA agreements that China has signed with other countries in every five-year interval over the past three decades. A significant rise has taken place from 2014 onwards.

Underpinning these proactive international outreach efforts are the conscious amendments of domestic laws in consistency with international legal standards. Starting from 2012, to provide reassurance to foreign governments in the negotiation process, China has abolished the death penalty for 22 offenses and added life imprisonment to the Chinese criminal law as a viable substitute to capital punishment for serious corrupt offenders.<sup>37</sup> Since 2018, the Chinese government has allowed criminal trials in absentia, a legal progress that exclusively targets suspects who have fled abroad and is lauded by several interviewees.

<sup>36</sup>Interview with a think tank researcher, in Beijing, China (June 2020).

<sup>37</sup>Interview with an international law scholar, in Beijing, China (August 2020). The interviewee emphasized that many countries refused to extradite fugitives to China due to the death penalty. Death penalty with reprieve is not acceptable to those countries either.



**Figure 3.** Number of extradition treaties and agreements China signed with other countries, 1985–2018. Notes: 1. Data is collected from the official websites of the Ministry of Justice and the CCDI International Cooperation Agency. 2. ‘Extradition’ refers to ‘Extradition Treaty.’ ‘MLA’ denotes ‘Mutual Legal Assistance Agreement.’ 3. The classification of developed countries combines various internationally recognized indicators, including the 2018 UNDP Human Development Index, World Bank’s definition of high-income economies in the 2020 fiscal year (i.e. those with a GNI per capita of \$12,376 or more), and IMF’s 2018 World Economic Outlook Report, etc.

Additionally, the OIFAR has launched several high-profile extraterritorial campaigns aiming at isolating and hunting down the fugitives and alerting foreign territories that have hosted the targeted suspects. ‘Fox Hunt’ (猎狐行动), operated by the Ministry of Public Security in 2014, repatriated hundreds of corrupt officials who had fled abroad.<sup>38</sup> This was followed by the issuance of the Red Notice of 100 wanted fugitives ‘on duty-related or economic crimes’ through Interpol in 2015,<sup>39</sup> marking a key milestone in China’s extraterritorial anticorruption campaigns’ as commented by an interviewee who specializes in anti-corruption research.<sup>40</sup> In 2017, forces from the police, diplomacy, finance, and AML regulatory arms joined the ‘Skynet movement’ (天网行动) to collectively hunt overseas fugitives. In these campaigns, the Chinese government handled individual fugitive cases with more flexible and diverse means, including repatriation of illegal immigrants, off-site prosecution (异地追诉), and persuasion to return (劝返). Specifically, taking into account the stipulation of repatriation of illegal immigrants, China can suggest civil charges by proving that the persons concerned illegally obtained their right to reside in the country they had fled to.<sup>41</sup> The host country may forcibly return them based on immigration violations to their country of origin.<sup>42</sup> Off-site prosecution refers to the process by which China provides evidence or intelligence to help

<sup>38</sup>Jamie Fullerton, ‘Operation Skynet: China’s anti-corruption campaign goes international as Beijing reaches out to uncover officials fled abroad’, *The Independent*, 29 March 2015 accessed 25 August 2020 <https://www.independent.co.uk/news/world/asia/operation-skynet-chinas-anti-corruption-campaign-goes-international-as-beijing-reaches-out-to-10142310.html>.

<sup>39</sup>Nectar Gan, ‘What’s an Interpol red notice and what power does it wield over wanted Chinese tycoon Guo Wengui?’, *South China Morning Post*, 19 April 2017 accessed 25 August 2020 <https://www.scmp.com/news/china/policies-politics/article/2088855/whats-interpol-red-notice-and-what-power-does-it-wield>.

<sup>40</sup>Interview with a think tank researcher, in Beijing, China (June 2020).

<sup>41</sup>Jianda Zhou, ‘引渡替代措施在国际追逃中的运用’ [‘Application of alternative measures of extradition in the process of pursuit of fugitives’], *中国党政干部论坛* [*Chinese Cadres Tribune*] 02, (2016), pp. 23–25.

<sup>42</sup>Lei Chen, ‘论我国追赃国际合作的法律依据和主要方式’ [‘Legal basis and main measures of China’s international cooperation of assets recovery’], *法治研究* [*Research on Rule of Law*] 12, (2013), pp. 32–39; Feng Huang, ‘国际追逃追赃的趋势与判断’ [‘Trend and judgment of international pursuit of fugitives and assets recovery’], *中国党政干部论坛* [*Chinese Cadres Tribune*], (2012), pp. 15–18.

agencies and judiciaries of the haven state to prosecute a fugitive within the latter's legal framework and jurisdiction. China resorts to this approach when a fugitive cannot be repatriated or extradited from their host territories promptly.<sup>43</sup>

An interviewee commented, 'Application of these measures shows a more open mind of the Chinese government;' nonetheless, he lamented, 'because all legal procedures take place on foreign soils, we cannot dismiss the passive and disadvantaged position of China in those lawsuits.'<sup>44</sup> Being cognizant of this fact, China in recent years has also resorted to the 'persuasion' tactic, which serves as a non-statutory and unorthodox measure. According to the Chinese official rhetoric, this tactic can tap into one's moral conscience, sense of shame, and rational deliberation. As explained by OIFAR in the CCDI documentary entitled 'The Red Notice' (红色通缉), several China's wanted fugitives, after being privately approached, verbally persuaded, and emotionally moved by their relatives and officers, were convinced that surrendering themselves to justice was a better long-term option than hiding fearfully and indefinitely overseas.<sup>45</sup> However, as previously discussed, informal measures—persuasion included—could potentially ignite controversies and even international legal disputes, which will be critically reflected in the concluding segment. Here, delving deeper into the available cases, the authors find that the Chinese government has shown the conscientious application of the AML tools, which, among other means, expedited the seizure of fugitives and the recovery of assets in line with the proposed mechanisms.

### New Practice in Use: 'Trace the Money, Seize the Fugitives'

China's new mindset about gaining the return of corrupt officials can be observed in the handling of several fugitives listed in the Red Notice. Based on information on the CCDI website and various media reports, the authors compiled a dataset of 60 fugitives who have so far returned to China. Among them, 34 were portrayed by the Chinese state media as 'voluntary returnees'<sup>46</sup> who came back because of the government's use of varying tactics, including persuasion, social isolation-induced by the Interpol Red Notice, off-site prosecutions, and legal leniency. The AML approach stands out as an important component that catalyzes these fugitives' return. Among 22 'voluntary returnees' who were reported on, 11 were explicitly subject to the use of AML measures (see Table 1). The following further shows how AML plays an indispensable role in securing some notable successes.

### De-complication

As shown in Table 1, most of the listed fugitives went to Western countries such as the United States, Canada, and Australia. None of their chosen destinations has extradition treaties with China. Extraditing these fugitives to China through orthodox means is therefore a long shot. In contrast, using the AML approach can greatly speed up physical custody of the suspects by freezing their financial assets and nudging many of them to 'voluntarily' go back to China, thus circumventing complicated formal legal procedures. One interviewee commented, 'Dual criminality has been a major obstacle hindering China from seeking in-depth MLA with many other countries. However, under the AML laws, fugitives' assets can be more easily and justifiably frozen and confiscated. This makes fugitives financially vulnerable and non-sustainable overseas.'<sup>47</sup> Simply put, fugitives running out of financial resources become likely to turn themselves in and cooperate with the Chinese authorities in exchange for subsequent prosecutorial leniency.

<sup>43</sup>Zhou, 'Application of alternative measures', pp. 23–25, as in footnote 45.

<sup>44</sup>Interview with a think tank researcher, in Beijing, China (June 2020).

<sup>45</sup>CCDI and CCTV. '红色通缉' ['The Red Notice'], posted January 2019, accessed 25 August 2020 [http://v.ccdi.gov.cn/hongse\\_tongji/index.shtml](http://v.ccdi.gov.cn/hongse_tongji/index.shtml).

<sup>46</sup>Ibid

<sup>47</sup>Interview with a former leader of AML office in the PBOC, in Shanghai, China (July 2020).



Table 1. Cases of voluntary returnees on the 100 wanted list

#	Name	Abscondence Year	Return Year	Destination Country	Extradition treaties?	AML used?	Methods used to make the fugitives return
1	YANG Xiuzhu	2003	2016	U.S.	N	Y	<ul style="list-style-type: none"> <li>● freezing overseas assets (freezing assets' hereafter)</li> <li>● persuasion</li> </ul>
2	LI Huabo	2011	2015	Singapore	N	Y	<ul style="list-style-type: none"> <li>● repatriation of illegal immigrant ('repatriation' hereafter)</li> <li>● persuasion</li> <li>● freezing assets</li> </ul>
3	HUANG Yurong	2002	2015	U.S.	N	N	<ul style="list-style-type: none"> <li>● repatriation</li> <li>● persuasion</li> </ul>
4	YAN Yongming	2001	2016	Australia, New Zealand	N	Y	<ul style="list-style-type: none"> <li>● isolation from overseas communities ('isolation' hereafter)</li> <li>● funds cut off by family members ('funds cut' hereafter)</li> <li>● freezing assets</li> <li>● persuasion</li> </ul>
5	XIAO Jianming	2012	2019	U.S.	N	N	<ul style="list-style-type: none"> <li>● off-site prosecution</li> <li>● persuasion</li> </ul>
6	JIANG Lei	04/2007	12/2018	New Zealand	N	N	<ul style="list-style-type: none"> <li>● off-site prosecution</li> <li>● persuasion</li> </ul>
7	CHEN Weijuan	04/2013	01/2016	U.K.	N	Y	<ul style="list-style-type: none"> <li>● offering leniency ('leniency' hereafter)</li> <li>● off-site prosecution</li> <li>● funds cut</li> <li>● repatriation</li> </ul>
8	LIU Changkai	01/1999	08/2017	U.S.	N	N	<ul style="list-style-type: none"> <li>● persuasion</li> <li>● isolation</li> </ul>
9	ZHU Zhenyu	2002	2015	U.S., Mainland China	N	N	<ul style="list-style-type: none"> <li>● persuasion</li> <li>● persuasion</li> </ul>
10	YANG Lihu	2013	2015	Canada	N	N	<ul style="list-style-type: none"> <li>● leniency</li> <li>● persuasion</li> <li>● isolation</li> </ul>
11	GUO Liaowu	2010	2016	Australia	N	Y	<ul style="list-style-type: none"> <li>● funds cut</li> <li>● persuasion</li> <li>● leniency</li> </ul>
12	CHANG Zheng	2011	2016	Canada	N	N	<ul style="list-style-type: none"> <li>● persuasion</li> </ul>
13	LIU Baofeng	2001	2019	Canada	N	Y	<ul style="list-style-type: none"> <li>● funds cut</li> <li>● persuasion</li> <li>● leniency</li> </ul>
14	LAI Mingmin	2001	2018	Australia	N	N	<ul style="list-style-type: none"> <li>● persuasion</li> </ul>
15	Zeng Ziheng	2011	2016	Australia	N	N	<ul style="list-style-type: none"> <li>● repatriation</li> <li>● persuasion</li> <li>● isolation</li> </ul>
16	ZHANG Liping	1999	2016	Peru	N	N	<ul style="list-style-type: none"> <li>● persuasion</li> </ul>
17	JIANG Qian	2011	2016	Canada	N	Y	<ul style="list-style-type: none"> <li>● funds cut</li> </ul>

(Continued)

Table 1. (Continued).

#	Name	Abscondence Year	Return Year	Destination Country	Extradition treaties?	AML used?	Methods used to make the fugitives return
18	HE Jian	2010	2017	Canada	N	Y	● funds cut
19	MO Peifen	2013	2019	U.S.	N	Y	● funds cut ● persuasion
20	CHU Shilin	2012	2016	Canada	N	Y	● funds cut ● persuasion ● leniency
21	XU Xuewei	2012	2017	U.S.	N	N	● persuasion ● leniency
22	REN Biao	2014	2017	Saint Kitts and Nevis	N	Y	● funds cut ● persuasion ● isolation

Following this line of thought, campaigns such as Fox Hunt and Skynet were orchestrated to crack down on the illegal transfer of assets through offshore companies or underground banking systems. To strengthen its ability to trace and investigate the flows of criminal proceeds, for example, the AML branch of the PBOC cooperated with the Ministry of Public Security. An interviewee said: ‘domestic banks and the police all had point-to-point connections; banks would freeze the accounts of the suspects immediately once the police sent out requests.’<sup>48</sup> These swift actions aim to create an impasse for criminals in a way that they can neither conceal the funds within the country nor transfer them out of the country.<sup>49</sup> Meanwhile, the Chinese government has worked assiduously on facilitating its cross-country collaboration on asset recovery, including establishing actionable mechanisms to freeze, confiscate, and return assets, exchanging financial intelligence through signing international treaties and agreements, and launching domestic legal reforms.<sup>50</sup> For example, in 2012, China’s Criminal Procedure Law added specific procedures for confiscating and forfeiting illegal gains, which allowed for the confiscation of assets transferred abroad by corrupt officials who have absconded but yet to be convicted. As recognized by a leading AML researcher in China, this legislation is a clear reflection of the new mentality of the Chinese government to view corrupt proceeds and fugitives separately.<sup>51</sup> Another interviewee echoed this observation and considered the reform ‘an effective response to legal obstacles in recovering illicit assets of suspects who have fled or passed away, and in securing assistance from countries that are prominent destinations among fugitives, such as the United States and the United Kingdom.’<sup>52</sup> Similarly, Chen Lianfu, a core member of the Procuratorial Committee of the Supreme People’s Procuratorate, regards this legislative move as a breakthrough in China’s criminal law and believes that the use of AML strategies immeasurably helps overcome the long-standing obstacles of China’s transnational recovery of criminal proceeds.<sup>53</sup>

Aided by the AML measures, China on many occasions becomes capable of optimizing the efficiency of other means and achieving successes in pursuing the corrupt fugitives. Specifically, the Chinese authorities have oftentimes adopted a two-step approach: 1) cut off the financial support of the fugitives within and outside of China using AML tactics at first, causing tremendous constraints and frustrations to the fugitives on the run; 2) then, psychologically incentivize the fugitives to return by offering leniency and pressuring them by mobilizing their significant others to play the family card. In combination, the fugitives found themselves in a ‘dead-end both financially and emotionally’—as narrated in the CCDI documentary. Many of them finally surrendered themselves to justice.

The return of Yang Xiuzhu (No. 1 in Table 1) is a prominent case in point. Yang had appropriated ill-gotten funds to invest in property in midtown Manhattan and earned millions of US dollars reselling the property. The Chinese authorities then proposed a partnership with their American counterparts and arranged a face-to-face conversation with representatives of the U.S. Attorney’s Office for the Southern District of New York in charge of investigating money-laundering offenses. The Chinese practitioners presented the staff evidence of Yang’s transnational money laundering and supported the latter’s proposal to start criminal prosecution on asset recovery. Yang’s family

<sup>48</sup>Interview with a senior manager of a Chinese state bank, in Beijing, China (July 2020).

<sup>49</sup>Interview with the former PBOC AML officer, in Shanghai, China (July 2020).

<sup>50</sup>Linzong Lan, ‘[近距离] 走进中央追逃办: 带您了解反腐败国际追逃追赃的“台前幕后”’ [‘Stepping into OIFAR: understand the whole process of anti-corruption and international pursuit of fugitives with their assets’], 中央纪委监察部网站 [CCDI of CCP and National Supervisory Commission], last modified 25 April 2017 accessed October 24, 2021, [http://www.ccdi.gov.cn/special/ztzz/zttzjxs\\_ztzz/201704/t20170425\\_97975.html](http://www.ccdi.gov.cn/special/ztzz/zttzjxs_ztzz/201704/t20170425_97975.html).

<sup>51</sup>Interview with the director of the AML research center, in Shanghai, China (July 2020).

<sup>52</sup>Interview with an anticorruption researcher, in Beijing, China (June 2020).

<sup>53</sup>Zexian Chen and Weiming Zhou, ‘追逃追赃与刑事司法协助体系构建’ [‘Pursuit of fugitives with their assets and construction of legal assistance framework in criminal matters’], 北京师范大学学报(社会科学) [Journal of Beijing Normal University (Social Sciences)] 05, (2015), pp.142–149.

members were warned not to provide her with attorney fees or living expenses<sup>54</sup>. Eventually, Yang decided to return to China and surrender herself after 13 years on the run, and about RMB 42 million was recovered from this single case.

Similarly, the strategy of controlling the transferred illicit assets plays a key role in the case of Yan Yongming (No. 4 in Table 1), a graft fugitive who had been on the run for 15 years. In 2014, the New Zealand police charged Yan with money laundering, and the court issued a worldwide order to freeze his assets, meaning he no longer had access to over 43 million New Zealand dollars. The only financial support available to Yan was a meager monthly living allowance provided by the New Zealand police. Finding this situation unbearable, Yan decided to admit guilt and turn himself in two years later. Hence, 'cutting off fugitives' financial sources serves as a second-to-none premise of their return,' as stated by an interviewee.<sup>55</sup>

### Depoliticization

States' obligation to curb money-laundering offenses reduces hindrances to China's pursuit of fugitives stemming from the vast differences in political systems and ideological values with other countries. Oftentimes, conniving fugitives claim that their freedom and safety would be jeopardized upon their return to China. These fugitives appeal on the grounds of human rights violations and have their stay extended in developed countries. Prime examples of corrupt fugitives doing so include Yang Xiuzhu, who applied for political asylum in the United States, and Huang Yurong (No.3 in Table 1) who stalled nine years in the United States through repeated appeals to the immigration and federal courts.

The case of Yan Yongming perfectly illustrates how the shifting definition of fugitives from political offenders to money launderers helps to bring them home to justice. Under the fake name 'Liu Yang,' Yan obtained citizenship in New Zealand. China requested his deportation based on the fraudulent and false declaration on his immigration papers, but the request was denied because Yan claimed to be a Falun Gong practitioner and would be politically persecuted upon his return to China. The trial lasted over seven years in New Zealand and ruled Yan's citizenship status valid, stirring up a huge controversy about his deeply entrenched influence on local politics.<sup>56</sup> Although the use of repatriation was dismissed, China shifted the approach to off-site prosecution by focusing on recovering his ill-gotten assets.<sup>57</sup> Authorities from China and New Zealand were soon able to find common ground to recognize Yan as a money launderer. The state-level collaboration kicked off soon thereafter; Yan was prosecuted in New Zealand, resulting in his return 15 years after fleeing the country alongside RMB 130 million.<sup>58</sup>

### Leveling the playing field

The adoption of a benefit-sharing mechanism is another important aspect of the AML framework that has helped change China's view on the pursuit of corrupt fugitives. Countries are becoming increasingly incentivized to forge collaborative partnerships with China owing to the possibility of sharing the assets collected from corrupt fugitives. Unlike the domestic laws of many countries in which principles of mutually beneficial cooperation are outlined, distributive and reciprocal

<sup>54</sup>CCDI and CCTV, '红色通缉' ['The Red Notice].

<sup>55</sup>Interview with a CCDI officer, in Beijing, China (August 2020).

<sup>56</sup>新西兰法院允中国“百名红通”闫永明以巨额罚款和解' ['New Zealand court allows China's "Hundred Red Notices" Yan Yongming to settle with huge fines'], *BBC 中文* [BBC Chinese], 23 August 2016 accessed August 25, 2020, [https://www.bbc.com/zhongwen/simp/china/2016/08/160823\\_new\\_zealand\\_china\\_money\\_laundering](https://www.bbc.com/zhongwen/simp/china/2016/08/160823_new_zealand_china_money_laundering).

<sup>57</sup>Xiaoqiu Zhao, '红通成绩单: 国际追逃追赃的中国方法与智慧' [Transcript about the Red Notice: China's plan and wisdom on international fugitive repatriation and asset recovery], *法律与生活* [Law and Life] 2, 2019, pp. 12–15.

<sup>58</sup>Ai Yan, 'New Zealand returns China US\$19 million recouped from corrupt fugitive' *China Global Television Network*, 10 May 2017 accessed 25 August 2020 [https://news.cgtn.com/news/3d45444e79677a4d/share\\_p.html](https://news.cgtn.com/news/3d45444e79677a4d/share_p.html).

mechanisms on the confiscated assets were previously absent in Chinese laws.<sup>59</sup> Out of the fear of being held accountable for the loss of state assets, Chinese officials used to strongly adhere to the principle that all the proceeds taken by the fugitives solely and surely belonged to China. 'As a result,' an interviewee commented, 'other countries did not see their obligations to aid because legal processes could be costly and lengthy in nature and the illicit proceeds may have been laundered and integrated into the economic systems with legitimate sources.'<sup>60</sup>

Through the lens of AML, China has learned to look at this issue more flexibly. For example, as stipulated in Article 57 of China's Anti-drug Law, which has been in effect since 2008, '*where a criminal case is solved through international cooperation, the People's Republic of China may provide relevant assistance to the other countries involved to recuperate the illegal gains, profits derived therefrom, and property used for drug-related crimes or the money from sales of such property.*' China's Law on International Criminal Judicial Assistance, promulgated in 2018, also states in its Article 49 that '*in requests for foreign nations to confiscate or recover unlawful gains or other assets involved in a case where a foreign nation submits a request for sharing, the amounts, and proportions for sharing are to be decided upon through consultation with the foreign nation ...*' In 2016, China sealed a landmark agreement with Canada, a major destination for Chinese corruption fugitives, to share criminal proceeds if their origins cannot be identified.<sup>61</sup> The acknowledgment of the reciprocal mechanism signals to criminals that other countries are 'no longer a safe harbor for their criminal gains,' as stated by a Chinese Foreign Ministry official,<sup>62</sup> and begins to incentivize foreign governments to provide timely assistance to China in pinpointing the whereabouts of the targeted assets. Requesting and requested states collaborate as if coming into a joint venture as business partners on a leveled playing field instead of one offering completely altruistic assistance to another.

For instance, in the case of Yan Yongming who ran away with RMB 200 million, New Zealand returned 130 million yuan to China and kept the remainder. The sharing mechanism for recovered proceeds and fines was newly established in this case.<sup>63</sup> This benefit-sharing measure not only incentivizes the requested countries to temporarily lend their support to China but also helps to establish mutual trust and rapport in the long run. The collaboration between China and New Zealand over Yan's case was even chosen by World Bank as a model practice for international sharing.<sup>64</sup>

In short, by the AML mentality supported by a multifaceted approach, China has accomplished resounding successes in tackling the fugitive problem. According to the official report, between 2014 and 2020, China has captured a total of 7,831 absconded persons from more than 120 countries and regions, including 2,075 public officials and party members and 60 suspects of the 100 Red Notice, along with their criminal proceeds worth RMB 19.654 billion.<sup>65</sup>

## Conclusion

This article put forth three major mechanisms—de-complication, de-politicization, and leveling the playing field—through which AML plays a crucial role in overcoming the longstanding problems inherent in traditional means of international cooperation on transnational corruption control.

<sup>59</sup>Interview with a prominent legal scholar, in Beijing, China (August 2020).

<sup>60</sup>Interview with an AML researcher, in Shanghai, China (July 2020).

<sup>61</sup>Pinghui Zhuang, 'China and Canada seal deal on return of assets stolen by fugitive corruption suspects', *South China Morning Post*, 23 September 2016 accessed 25 August 2020 <https://www.scmp.com/news/china/policies-politics/article/2021977/china-canada-sign-treaty-return-assets-stolen-fraud>.

<sup>62</sup>Ibid.

<sup>63</sup>Interview with a CCDI officer in charge of Yan's case, in Beijing, China (August 2020).

<sup>64</sup>CCDI and CCTV, '红色通缉' [The Red Notice].

<sup>65</sup>CCDI, '从120多个国家和地区追回外套人员7831人, 其中百名红通人员60人, 反腐追逃一追到底' [Captured 7,831 persons from more than 120 countries and regions, including 60 persons of the 100 Red Notice. Anticorruption and seizing the runaways to the end], *people.cn*, 9 November 2020 accessed 13 September 2021 <http://politics.people.com.cn/BIG5/n1/2020/1109/c1001-31923243.html>.

China's rapidly expanding extraterritorial anti-corruption regime in recent years provided corroborating evidence. The country's conscious integration of AML measures into its domestic and international anticorruption endeavors fostered international cooperation and boosted the efficiency of other existing strategies against transnational corruption. Specifically, while China has undertaken a series of policies and measures to facilitate international cooperation on corruption matters, investigations of money laundering-related offenses often precede corruption charges and surprisingly result in fruitful interstate collaboration. Data from case studies of Red Notice returnees further suggest that asset-freezing and confiscation complement and optimize the use of conventional anti-corruption tactics. As the CCDI figuratively stated in the case of Yang Xiuzhu, the aim was to ensure that fugitives have 'no money to spend, nobody to rely on, and thus no way to escape' (无钱可花, 无人可靠, 无路可逃). AML, the 'unsung hero' as coined by an interviewee who leads AML work in a major state-owned bank of China, indeed constitutes the very first step in this equation for success.

Admittedly, a qualitative approach is only capable of revealing the aggregate outcomes jointly achieved by AML and other measures. The magnitude of the impact that AML itself exerts on combating transnational corruption can be further clarified in future research. For instance, several sampled cases in Table 1 used the 'persuasion' tactic simultaneously with AML. The success of persuasion, according to publicly available records, seems to be contingent largely upon a sense of financial powerlessness felt by fugitives in the wake of their host countries' AML compliance and not so much based on violence or coercion.<sup>66</sup> However, controversies in other cases should not be utterly dismissed. Reportedly, some 'Red Notice' suspects filed lawsuits over harassment in their host nations against those allegedly representing the Chinese authorities who were attempting to approach them.<sup>67</sup> There were also journalistic articles narrating coercive measures, such as verbal threats, legal charges, and imprisonment, used upon the family members of fugitives who remained in China.<sup>68</sup> These reports inevitably made one question whether fugitives indeed 'voluntarily' returned to China and speculate on the possibility that the Chinese government, under the convenient guise of 'persuasion,' has employed de-facto (transnational) repression strategies. Similarly, others criticized China for overlooking the 'neutrality clause' and abusing the Interpol system to expedite its pace of an unreasonable, politically orchestrated witch hunt.<sup>69</sup> All these critiques serve as a much-needed reminder that information about the on-the-ground operations of China's overseas law enforcement is still largely undisclosed, if not actively concealed. More systematic fieldwork and rigorous research designs are needed to generate nuanced and stronger causal understandings of the relationship between AML and extraterritorial anti-corruption success.

In addition, AML is not a silver bullet in removing all impediments to international cooperation. In response to the controversial and sweeping national security law in Hong Kong, for instance, seven countries so far, including Australia, Canada, France, Germany, the United Kingdom, the United States, and New Zealand, have halted their extradition treaties with Hong Kong. This alarming backlash precisely illustrates how politics still dictates the tempo of international cooperation. While China has advanced in its pursuit of corrupt fugitives, the country must continue to bring its domestic laws and practices into conformity with international standards and norms.

Lastly, countries may interpret their levels of success in bringing fugitives to justice and recovering their ill-gotten assets quite differently. For one, some interviewed officials confided that they were disappointed to see that not all the stolen assets could be recovered, considering the unreturned portions as a significant economic loss. Namely, the cost associated with attaining a symbolic victory of bringing the wanted to justice on home soils may be too staggering to be

<sup>66</sup>Yue Li and Chen Liu, 'Runaway Chinese Officials and International Chase', in *Corruption and Anticorruption in Modern China*, ed. Qiang Fang and Xiaobing Li (New York: Lexington Books, 2018), pp. 187–203.

<sup>67</sup>Freedom House. 'China: Transnational Repression Case Study', posted 2021, accessed 23 June 2021 [https://freedomhouse.org/report/transnational-repression/china#footnote69\\_hgkosar](https://freedomhouse.org/report/transnational-repression/china#footnote69_hgkosar).

<sup>68</sup>Zack Dorfman, 'The Disappeared', *Foreign Policy*, 29 March 2018 accessed 23 June 2021 <https://foreignpolicy.com/2018/03/29/the-disappeared-china-renditions-kidnapping>.

<sup>69</sup>Alexander Cooley, 'The International Dimensions of The New Transnational Repression' (written testimony submitted to the Commission on Security and Cooperation in Europe 'Tools of Transnational Repression', Washington, District of Columbia, 12 September 2019).

ignored. On this note, the Chinese authorities ought to continuously work at full tilt to deter and prevent corruption and other predicate crimes from happening in the first place. Nonetheless, as underscored by several interviewees, how this fund-tracing mentality can be firmly instilled in thousands of frontline regulators, especially those working in geographically remote and economically less advantaged areas, is still a challenge needing to be resolutely overcome.

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## Disclosure statement

No potential conflict of interest was reported by the author(s).

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## Appendix

Table A1.

China's involvement in international conventions and statements on transnational corruption control, 2003–2018

Year	Title	Whether led or initiated by China
2003	UN Convention Against Transnational Organized Crime	No
2005	United Nations Convention Against Corruption(UNCAC)	No
2013	Agreement on the Return or Sharing of Recovered Assets (signed with Canada)	Yes
2014	Beijing Declaration of Anti-Corruption (signed at the Ministerial-level Meeting of APEC)	Yes
	2015–16 G20 Anti-Corruption Action Plan	Yes
2015	Joint Statement of the PRC and the Russian Federation on Strengthening Comprehensive Partnership and Strategic Cooperation and on Promoting Mutually Beneficial Cooperation	Yes
	China and the US Announced to Strengthen the Anti-Corruption Cooperation at the Seventh U.S.-China Strategic and Economic Dialogue	Yes
	G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery; 2017–2018 G20 Anti-Corruption Action Plan	Yes
2017	China-ASEAN Joint Statement on Comprehensively Strengthening Effective Anti-Corruption Cooperation	Yes
	Beijing Initiative for Clean Silk Road (signed at Belt and Road Forum for International Cooperation)	Yes

(Continued)

Year	Title	Whether led or initiated by China
2018	Action and Cooperation Plan on Common Priorities Areas China-CELAC, 2019–2021 (signed at the Second Ministerial-level Meeting of the China-CELAC Forum)	Yes
	The BRICS Summit Johannesburg Declaration	Yes
	Memorandum of Understanding on Anti-Corruption Law Enforcement Cooperation between the Australian Federal Police and the PRC	Yes