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**SELECTIVE RESHAPING: CHINA'S
PARADIGM SHIFT IN INTERNATIONAL
ECONOMIC GOVERNANCE**

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Selective Reshaping: China's Paradigm Shift in International Economic Governance*

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Abstract: Differing from a selective adaptation approach towards external norms in its accession to the World Trade Organization, China plays an increasingly proactive role on the international stage, with the Belt and Road Initiative at the center of these activities. How can we understand this new approach by China towards international economic governance? What is responsible for China's shifting approach, and what are the implications of this shift? The paper presents selective reshaping as a new theoretical framework, and argues first that China is shifting towards the selective reshaping of institutions and rules within the global economic order. Second, perception and conception, complementarity and legitimacy are influencing components that affect selective reshaping, and which manifest substantially differently in this context, when compared with selective adaptation. Third, selective reshaping is likely to transform the institutions and rules within the international economic order, which has profound implications.

Keywords: China, selective reshaping, the Belt and Road Initiative, selective adaptation

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I. Introduction

The existing international economic legal order (IELO) is arguably comprised of three layers: American dominance, liberal internationalism, and sovereignty and state primacy.¹ In recent history, China has remained only a background player in IELO, due largely to its limited scientific and technological development, poor economic performance, and “the lack of other characteristics that a strong power must have.”² Its World Trade Organization (WTO) accession in 2001 represented a major move in China’s engagement with IELO, as it afforded China the opportunity to contribute to shaping multilateral trade norms.³ For the most part, China’s practice immediately following accession involved the selective adaptation of external rules;⁴ that is, the reception and assimilation of foreign ideas into local conditions.⁵

More recent Chinese activity, however, demonstrates a shift from the reactive, selective adaptation of external rules, towards an increasingly proactive approach in reshaping select institutions and rules in international economic law (IEL). Selective reshaping involves China’s external engagement in international economic governance, in contrast to the domestic implementation of WTO rules under selective adaptation. The China-led Belt and Road Initiative (BRI), which arguably also encompasses the Asian Infrastructure Investment Bank (AIIB),⁶ in particular marks a watershed in China’s engagement with IELO. China is on

¹ G. John Ikenberry & Darren J. Lim, *China’s Emerging Institutional Statecraft: The Asian Infrastructure Investment Bank and the Prospects for Counter-Hegemony* 2 (April 2017).

² Guiguo Wang, *China’s FTAs: Legal Characteristics and Implications*, 105 AMERICAN JOURNAL OF INTERNATIONAL LAW 493, 509-510 (2011).

³ Jacques deLisle, *China’s Rise, the U.S., and the WTO: Perspectives from International Relations Theory*, UNIVERSITY OF ILLINOIS LAW REVIEW ONLINE 57, 60 (2018).

⁴ A number of scholars appear to share the understanding of selective adaptation. See, e.g., Pitman B. Potter, *Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices*, 2 WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW 119, 119-150 (2003); Ljiljana Biukovic, *Selective Adaptation of WTO Transparency Norms and Local Practices in China and Japan*, 11 JOURNAL OF INTERNATIONAL ECONOMIC LAW 803, 803-825 (2008); Wenwei Guan, *Beijing Consensus and Development Legitimacy: The Evolution of China’s Foreign Direct Investment (FDI) Regime from a Law & Development Perspective*, 12 ASIAN JOURNAL OF COMPARATIVE LAW 115, 115, 138, 139 (2017).

⁵ Potter, WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW, 119 (2003).

⁶ Heng Wang, *China’s Approach to the Belt and Road Initiative: Scope, Character and Sustainability*, 22 JOURNAL OF INTERNATIONAL ECONOMIC LAW 29, 32-33 (2019).

a fast track from a rule-taker and rule-follower to a rule-shaker,⁷ by challenging the applicability of existing rules, mainly in the context of the WTO and beyond, and rule-shaper,⁸ by influencing how rules change over time, in broader contexts such as in respect of BRI through soft law. China is also actively establishing institutions related to IEL, particularly the AIIB and China International Commercial Court (CICC). These institutions could highlight “a unique Chinese mode”.⁹ This rise of China as a gigantic developing economy and its growing role in shaping IELO have had substantial effects on the dynamics of extra-regional governance. However, there is currently insufficient legal analysis of the development of these institutions and rules.

This paper aims to explain China’s proactive engagement with IEL. Part II of this paper draws on China’s actions, particularly in respect of BRI, to argue that China’s approach towards IELO is shifting from selective adaptation towards increasing selective reshaping of institutions and rules. The major developments used for comparison are China’s WTO accession and BRI, with others also referenced throughout. Differing from the downloading of foreign norms in selective adaptation, selective reshaping is the uploading of China-led institutions and China-preferred rules at the extra-regional level. The article, in its Part III, explores the dynamics that influence and explain selective reshaping. It analyses the influencing factors of selective reshaping (perception and conception, complementarity, and legitimacy) and contrasts these with China’s previous reliance on selective adaptation. Finally, the paper concludes with a discussion of the possible implications of selective reshaping for IELO (Part IV). Selective reshaping will likely enable China to shift its position from that of an economic power to a governance power, through the shaping of an IELO better matched to its own preferences. Selective reshaping may result in a significant disruption of US hegemony going forward, as China’s increasingly important role on the world stage may require the US to engage in at least partial adaptation and accommodation.¹⁰

Several caveats deserve attention here. First, this article endeavors to provide a broad picture of China’s engagement with IELO. China is engaged in wide-ranging initiatives, and this reshaping across a range of chosen topics and in a range of chosen forms is a key part of selective reshaping. Therefore, the paper seeks to paint a fuller picture of China’s activity by drawing on wide-ranging examples (e.g., the AIIB, other international and domestic institutional development, BRI soft law instruments, trade remedy rule reshaping), rather than an analysis of only a few instances. Such full picture is largely lacking in the current literature. The analysis is also not restricted to the results of Chinese reshaping which have been successfully adopted, but covers the efforts to promote such reshaping as these efforts may continue in the future and reveal the trend of China’s practice.

Second, the article focuses on trade, finance and investment. While China’s selective reshaping is likely linked with other issues, such as security, the complexity of these issues necessitates separate analysis.

Third, this paper delineates the scope of BRI through a functional approach, that is, a focus on the functions of measures directed towards BRI implementation, whether or not they

⁷ Sikina Jinnah, *Makers, Takers, Shakers, Shapers: Emerging Economies and Normative Engagement in Climate Governance*, 23 GLOBAL GOVERNANCE 285, 289 (2017).

⁸ Id. at.

⁹ International Union of Judicial Officers, *World Enforcement Conference of Shanghai*, (2019). (regarding the enforcement by courts under Shanghai Declaration of the World Enforcement Conference)

¹⁰ Naná De Graaff & Bastiaan Van Apeldoorn, *US–China Relations and the Liberal World Order: Contending Elites, Colliding Visions?*, 94 INTERNATIONAL AFFAIRS 113, 115 (2018).

are explicitly labelled as part of BRI.¹¹ Therefore, BRI here covers, inter alia, the AIIB and RMB internationalization.

Finally, while selective reshaping is proposed as a new theoretical lens for understanding China's engagement with IELO, the extent of China's success in pursuing selective reshaping remains to be seen.

II. What Is China's New Pathway of Selective Reshaping? Selective Adaptation v. Selective Reshaping

This Part first reviews China's selective adaptation, and then explores China's shift towards selective reshaping in terms of institutional and rule development.

A. *Selective Adaptation*

Selective adaptation is a theoretical lens through which China's practice particularly those following its WTO accession has been analysed.¹² It is a refinement of legal transplant theory,¹³ depicting a "process by which foreign ideas are received and assimilated into local conditions", with these local conditions determining the scope for imitation.¹⁴ Selective adaptation is "a coping strategy for balancing local regulatory imperatives with requirements of compliance with foreign norms".¹⁵ However, questions have been raised as to how successfully adaptation is accepted by local communities and underlying norms are assimilated into local practices, given normative tensions in the adaptation process.¹⁶

Adaptation is a largely reactive process, involving the local implementation of foreign norms, in the form of rules, structures, processes, and practices, mediated by local characteristics and needs.¹⁷ It is not the direct imitation of foreign norms, as local governments will attempt to preserve their own policy priorities and shape the adaptation process, resulting in differing degrees of conformity among local and non-local norms.¹⁸ Thus, a crucial concern is whether the implementation of international standards locally will also be accompanied by assimilation of the underlying foreign norms.¹⁹

Regarding selectivity, each country is selective when choosing which external rules to implement. However, this selectivity may extend beyond clearly relevant considerations (e.g., the country's needs and legal structure), to more political considerations around the kinds of rules a country wishes to be perceived as endorsing.

Selective adaptation has played a key role in allowing China to join IELO, partly, "on its own terms", by balancing "international norms of economic regulations with local concerns over social welfare and balanced development".²⁰ This flexibility in adapting foreign norms while engaging in IELO has been enabled by China's size and importance. However, China

¹¹ Wang, *JOURNAL OF INTERNATIONAL ECONOMIC LAW*, 32-33 (2019).

¹² Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 119 (2003).

¹³ For the analysis of legal transplants, see, e.g., ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* 1-121 (University of Georgia Press Second ed. 1993).

¹⁴ PITMAN B. POTTER, *ASSESSING TREATY PERFORMANCE IN CHINA: TRADE AND HUMAN RIGHTS* 9 (UBC Press. 2014).

¹⁵ Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 120 (2003).

¹⁶ Ljiljana Biukovic, *International Law Interrupted - a Case of Selective Adaptation*, 60 *UNIVERSITY OF NEW BRUNSWICK LAW JOURNAL* 161, 176 (2009).

¹⁷ Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 120 (2003).

¹⁸ Biukovic, *JOURNAL OF INTERNATIONAL ECONOMIC LAW*, 804-805 (2008).

¹⁹ *Id.* at, 805.

²⁰ Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 121 (2003).

has largely been perceived as a “reactive agent, one that is responding to the pressures of others as opposed to taking its own initiatives”.²¹

The clearest examples of China’s engagement in selective adaptation emerged during the lengthy WTO entry process and around its compliance with WTO requirements (e.g., transparency). Due to substantial concerns among WTO members regarding inconsistencies between China and the WTO on regulatory practices, China made commitments to comply with WTO rules on matters including national treatment, non-discrimination, transparency and uniform administration.²² Transparency, in particular, is one of the WTO “pillar principles”, and lays the foundation for the rule-based trading system.²³ It is an obligation embedded in WTO agreements that require that rules, judicial decisions and administrative decisions relating to or affecting trade be made public.²⁴ As a result, China was required to undertake substantial legal reform to bring its regulatory practices into compliance with WTO law,²⁵ such as transparent, consistent procedures to enable persons to challenge and enforce rules and decisions.²⁶

These laws and regulations represent a substantial adaptation of WTO-mandated transparency rules.²⁷ The intermediary effect of local norms, however, can be seen in the broad discretion these rules confer on the government and other bodies, for example, to limit access to information where necessary to prevent “social instability and protect the safety of the state, the public and the economy”, along with the absence of provisions for concrete sanctions on government officials who fail to comply with the provisions.²⁸ Further, meetings, debates and discussions in the State Council and various local level government administrations, along with many legislatures including the National People’s Congress, are largely not fully open to the public and the mass media.²⁹

The resilience of local norms of non-transparency and non-accountability associated with imperatives of state-driven development, in conflict with liberal norms underlying the WTO system, has given rise to concerns as to the degree of governmental compliance with these provisions.³⁰ The WTO accession constitutes a prime example of China’s efforts to enter IELO through the local adaptation of foreign norms, giving rise to possible normative tensions.

B. China’s Shift Towards Selective Reshaping

While selective adaptation may have been the main tool in China’s efforts to enter the Western-dominated IELO, as China has gained greater power and experience, it appears to have begun seeking a “greater voice and representation” in this setting, “to a degree reflective

²¹ James F. Paradise, *The Role of “Parallel Institutions” in China’s Growing Participation in Global Economic Governance*, 21 JOURNAL OF CHINESE POLITICAL SCIENCE 149, 153 (2016).

²² Potter, WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW, 123-124 (2003).

²³ Jiangyu Wang, *The Evolution of China’s International Trade Policy: Development Through Protection and Liberalization*, in ECONOMIC DEVELOPMENT THROUGH WORLD TRADE 205, (Yong-Shik Lee ed. 2007).

²⁴ Id. at.

²⁵ Ljiljana Biuković, *Selective Adaptation of WTO Transparency Norms and Local Practices in China and Japan*, in REDESIGNING THE WORLD TRADE ORGANIZATION FOR THE TWENTY-FIRST CENTURY 203, (Debra P. Steger ed. 2010).

²⁶ Pitman B. Potter, *China and the International Legal System: Challenges of Participation*, 191 THE CHINA QUARTERLY 699, 705-708 (2007); Biuković, 203-204. 2010.

²⁷ Potter, WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW, 123 (2003).

²⁸ Biuković, 205. 2010.

²⁹ Wang, 206. 2007.

³⁰ Potter, THE CHINA QUARTERLY, 705-708 (2007).

of its newly-acquired economic power”.³¹ China is shifting towards the selective reshaping of institutions and rules. Here, reshaping refers to developments regarding institutions and rules that go beyond existing standards or structures, which is not necessarily all created by China and may build on the previous experience (like the AIIB learning from the World Bank reform ideas). Building upon selective adaptation, selective reshaping may, in its early stages, continue to be a way of mediating legal transplants. However, selective reshaping shifts the focus to developing new rules and institutions.

This section will review Chinese practices of developing institutions and rules to illustrate the shift towards selective reshaping. The primary example is BRI, as China’s most significant strategic move for extra-regional engagement since the WTO accession.

1. Institutional Reshaping

China reshapes formal and informal institutions understood in their broad sense, including mechanisms (e.g., forums) and systems (e.g., the international payment system). This volume of new institutional developments contrasts with China’s previous focus on adapting WTO obligations.

(a) Formal institutions

For external formal institutions, China leads the AIIB, the New Development Bank (NDB) and a Cross-Border International Payment System (CIPS), with more BRI-related institutions to come including the International Commercial Dispute Prevention and Settlement Organization (ICDPASO).³² The AIIB and NDB have novel governance and policy-making models (like their decision making mechanisms highlighting consensus-building³³).³⁴ As the first multilateral financial institution created by emerging economies,³⁵ the AIIB arguably reshapes selective aspects of multilateral development bank (MDB) governance structures and overarching legal frameworks, including the formula for setting country voting shares, and a nonresident executive board.³⁶ The NDB selectively reshapes the MDB structure, including the principle of equality concerning the NDB members’ rights and obligations,³⁷ and a capital base built on bonds denominated in BRICS national currencies.³⁸ The reshaping reflects flexibility in the MDB operation. China also promotes a CIPS that may replace the Society for Worldwide Interbank Financial Telecommunication (SWIFT) for the settlement

³¹ Paradise, *JOURNAL OF CHINESE POLITICAL SCIENCE*, 151 (2016).

³² Chinese Ministry of Foreign Affairs, *List of Deliverables of the Second Belt and Road Forum for International Cooperation*(2019), available at https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1658767.shtml.

³³ Alex He, *China in the International Financial System: A Study of the NDB and the AIIB*, 1 (China has promised not to abuse its veto power at the AIIB (deferring to consensus building complemented by the majority voting rules)) (2016).

³⁴ *Id.* at.

³⁵ Weifeng Zhou & Mario Esteban, *Beyond Balancing: China’s Approach Towards the Belt and Road Initiative*, *JOURNAL OF CONTEMPORARY CHINA* 1, 14 (2018).

³⁶ ESWAR S. PRASAD, *GAINING CURRENCY: THE RISE OF THE RENMINBI* 233 (Oxford University Press. 2017).

³⁷ Qingzhong Pan, et al., *What is the New in the New Development Bank: Background, Significance and Challenges of the BRICS Development Bank*, 2015(2) *INTERNATIONAL ECONOMIC REVIEW*, 146 (2015).

³⁸ Andrew F. Cooper, *The BRICS’ New Development Bank: Shifting from Material Leverage to Innovative Capacity*, 8 *GLOBAL POLICY* 275, 275, 276 (2017).

and clearing of cross-border transactions denominated in RMB,³⁹ which will strengthen the RMB's international role.⁴⁰

For internal formal institutions like free trade zones (FTZs), China promotes their reshaping to address its concerns. The CICC and International Commercial Expert Committee (ICEC) of Supreme People's Court of China (SPC) handle commercial disputes. The CICC is arguably innovative in promoting mediation,⁴¹ and establishing the ICEC that is unique in the sense that it neither solely relies on domestic judges (like those in Germany) nor consists of international judges (as in Singapore). In the view of a former SPC Vice-President, judicial activities related to FTZs could promote the upgrading of international economic rules through, inter alia, the innovative interpretation and development of existing international rules by FTZ-related adjudications, and the removal of unreasonable international rules (e.g., discriminatory provisions) through the refusal to apply these rules (e.g., the refusal of recognizing and enforcing international arbitration awards and foreign court decisions).⁴²

(b) Informal institutions

China is leading a web of general and issue-specific BRI-related mechanisms in close collaboration with the UN and other international organizations. General mechanisms include the Belt and Road Forum for International Cooperation (BRF), an unprecedented in its level and scale, multilateral diplomatic platform led by China.⁴³ Issue-specific mechanisms exist concerning major aspects of cross-border economic activities: trade (like customs clearance facilitation between China, Hungary, Serbia, and Macedonia under G16+1 summits⁴⁴), finance (e.g., Asian Financial Cooperation Association as a regional financial idea exchange platform⁴⁵), investment (e.g., a multilateral dialogue mechanism on public-private partnership under the Memorandum of Understanding (MOU) between China's National Development and Reform Commission and the United Nations Economic Commission for Europe (UNECE-NDRC MOU)), intellectual property (IP, like the high-level IP conference for BRI countries co-organized by Chinese government agencies and World Intellectual Property Organization⁴⁶), digital economy (e.g., the annual World Internet Conferences), and dispute settlement (e.g., World Enforcement Conference, a permanent dialogue between judiciaries of China and the Central and Eastern European Countries), among others. Additionally,

³⁹ Cameron Rotblat, *Weaponizing the Plumbing: Dollar Diplomacy, Yuan Internationalization, and the Future of Financial Sanctions*, 21 UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 311, 345 (2017).

⁴⁰ PRASAD, 114, 117. 2017.

⁴¹ Supreme People's Court Monitor, SPC Reveals New Belt & Road-Related Initiatives (Oct. 7, 2017).

⁴² Rong He, *On China's Judiciary Participation in the Formation of International Economic Rules*, 1 CHINESE REVIEW OF INTERNATIONAL LAW 3, 14 (2016).

⁴³ NDRC: *Six Aspects of Achievements of the Belt and Road After Its 5 Years*(2018), available at <http://economy.caijing.com.cn/20180809/4498391.shtml>.

⁴⁴ Jędrzej Górski, *China's Strategy Toward Central and Eastern Europe Within the Framework of 16 + 1 Group: The Case of Poland*, in CHINA'S BELT AND ROAD INITIATIVE: CHANGING THE RULES OF GLOBALIZATION 117, (Wenxian Zhang, et al. eds., 2018).

⁴⁵ Li Xiang, *Asian Financial Cooperation Association Launched in Beijing*(July 24, 2017), available at https://news.cgtn.com/news/3d67444e796b444e/share_p.html.

⁴⁶ CNIPA, *The 2018 High-Level Conference on IP for Countries along Belt and Road highlights Inclusiveness, Development, Cooperation, Mutual Benefit*(2018), available at <http://english.sipo.gov.cn/news/officialinformation/1131332.htm>.

Chinese-built industrial parks have been developed in 82 new “economic and trade cooperation zones” in BRI states.⁴⁷

2. Rule Reshaping

Rules include hard law and soft law. Here soft law is understood in its broad sense, which include “nonbinding standards, principles, and rules that influence and shape state behaviour.”⁴⁸ China’s selective reshaping is currently closer to the fine-tuning or challenge of existing hard law in traditional issues, and develop standards in new issues that may lay a foundation for future rule creation. China often endeavors to affect rule-making in selected issues where it has advantages (e.g., financial technology (FinTech), e-commerce, and traditional knowledge) or concerns (like trade remedies, investment facilitation, insurance). These issues are predominantly those that arose after China’s WTO accession including e-commerce and data flow, FinTech, central bank digital currency (CBDC), and investment facilitation.

(a) Hard law

For hard law, China seemingly endeavors to shape international rules in select issue areas. China endeavors to promote selective aspects of cross-border e-commerce (e.g., cross-border trade in goods enabled by the Internet⁴⁹), but opposes binding disciplines on sensitive cross-border data flow issues of e-commerce (like the prohibition of data localization, and the protection of source code).⁵⁰ At the WTO, China’s efforts include the promotion of the Work Programme on Electronic Commerce under the 11th WTO Ministerial Conference and the submission of three proposals to the WTO on e-commerce.⁵¹ The China-Korea Free Trade Agreement (FTA) also contains “the most detailed and consequential” digital trade provisions outside of the TPP.⁵² The WTO moratorium on customs duties for digital products receives explicit reaffirmation in China’s FTAs with Korea and Australia, representing a crucial move to make the WTO moratorium permanent.⁵³ China is also promoting rules on investment facilitation as seen in the WTO negotiations⁵⁴ and the recently upgraded China-Singapore FTA.⁵⁵

China is involved in reshaping of hard law in traditional areas, to a lesser extent, due likely to the difficulty in challenging more concrete, pre-existing rules. These more limited efforts include actions related to trade remedies (the China–Korea FTA forbids a methodology based on surrogate value of a third country in determining the dumping margin during the anti-

⁴⁷ Gregory Shaffer & Henry Gao, *A New Chinese Economic Law Order?*, UC IRVINE SCHOOL OF LAW RESEARCH PAPER NO. 2019-21, 6 (2019).

⁴⁸ KERN ALEXANDER, et al., *GLOBAL GOVERNANCE OF FINANCIAL SYSTEMS: THE INTERNATIONAL REGULATION OF SYSTEMIC RISK* 134 (Oxford University Press. 2006).

⁴⁹ Council for Trade in Goods, *Proposal for E-commerce Discussions Draws Interest*(17 November 2016), available at https://www.wto.org/english/news_e/news16_e/good_17nov16_e.htm.

⁵⁰ D. Ravi Kanth, *Now, China Opposes Global E-Commerce Rules*(2018), available at <https://www.livemint.com/Home-Page/R4MxFebaZPfJgsUCoJhRVM/Now-China-opposes-global-e-commerce-rules.html>.

⁵¹ CEPA Investment Agreement (2017).

⁵² Deborah Elms, *Evolving Digital and E-Commerce Trade Rules for Northeast Asia* 172 (2016).

⁵³ *Id.* at, 171.

⁵⁴ Chinese Ministry of Commerce, ‘Minister Zhong Shan Attends the Ministerial Breakfast Meeting on Investment Facilitation of the WTO Members and Delivers a Speech’ (2017), available at <http://english.mofcom.gov.cn/article/newsrelease/significantnews/201712/20171202686115.shtml>.

⁵⁵ China-Singapore FTA Upgrade Protocol Appendix 4, Article 21 (2019).

dumping process,⁵⁶ and repudiates the practice of zeroing in dumping margin determination⁵⁷), and certain aspects of IP (like the rule development on a utility model in the China-Korea FTA,⁵⁸ and biopiracy).

(b) Soft law

China has made efforts to shape soft law in new issues like e-commerce and FinTech. China is reportedly leading efforts to formulate a standard framework for the cross-border e-commerce at the World Customs Organization (WCO), which is a “first guidance document for the cross-border e-commerce supervision and service of the world customs” and shows “China’s leading role in formulating the international rules of the cross-border e-commerce in the customs field”.⁵⁹ According to Chinese government officials, this will be the basis for the principles of the cross-border e-commerce supervision of the WCO.⁶⁰ At the United Nations Commission on International Trade Law (UNCITRAL), the Commission has for the first time developed a guiding legal document (i.e. the UNCITRAL Technical Notes on Online Dispute Resolution) based on China’s plan.⁶¹

China is reshaping soft law regarding finance related to FinTech. Departing from China’s traditional passive stance in the Financial Stability Board (FSB) and the standard-setting bodies (SSBs), China is promoting a shift away from shadow banking and towards the NBFIs (including mobile banking providers, payday lenders, broker-dealers, and hedge funds) under the overlapping labels of financial inclusion and FinTech.⁶² This may partially explain why China promotes financial inclusion at the G20, as evidenced by the G20 High-Level Principles for Digital Financial Inclusion,⁶³ which is part of the G20’s legislative products (like communiqués and declarations) as a regulatory and political medium and which indicates future initiatives among others.⁶⁴ Additionally, there are a number of first-time efforts being made by China at the International Organization for Standardization (ISO) (e.g., China-led drafting of an international standard on specification of description for banking products,⁶⁵ and ISO 20022 financial exchange message⁶⁶). China is reshaping, rather than passively accepting, global financial standards of shadow banking that used to include non-banking financial services.

⁵⁶ *China-Korea Free Trade Agreement Officially Signed*(2015), available at http://big5.mofcom.gov.cn/gate/big5/fta.mofcom.gov.cn/enarticle/enrelease/201506/21934_1.html.

⁵⁷ *Id.* at, Article 7.7.5.

⁵⁸ *Id.* at, Article 15.16.

⁵⁹ Xinhua News Agency, *China to Push Formulation of Cross-Border E-Commerce International Rules for World Customs*(January 11, 2018), available at <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/43482.htm>.

⁶⁰ *Id.* at.

⁶¹ *Regulating Commerce by Rules, Promoting Economic and Trade Development*(Oct. 22, 2017), available at https://mp.weixin.qq.com/s/3JeROnYdl2_Lx3GGk0_uEQ.

⁶² Peter Knaack & Julian Gruin, *From shadow banking to digital financial inclusion: Regulatory framework contestation between China and the FSB*, 1, 2 (2017).

⁶³ G20 High-Level Principles for Digital Financial Inclusion (2016).

⁶⁴ CHRIS BRUMMER, *SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY* 73-74 (Cambridge University Press 2nd ed. 2015).

⁶⁵ Wei Li, *Development of Financial Standardisation in the New Era*, 24 CHINA FINANCE (2017).

⁶⁶ Qian Yao, *National Financial Standardization Technical Committee Secretary General Qian Yao: Prioritizing Standards, Promoting Going-Out of Finance*(2018), available at <https://mp.weixin.qq.com/s/EW5asUXbIUHZmvTSyY48Rg>.

CBDC is another crucial area relate to FinTech, and is expected to affect how international monetary system and world economy operate in digital age. China is expected to influence the development of international standards regarding CBDC. It is predicted that China “will be the first major country”⁶⁷ to launch a CBDC that is the cornerstone of the digital economy and the key to “competition among powers.”⁶⁸ The currency developed by the People’s Bank of China (PBOC), China’s central bank, differs in design from those of other countries.⁶⁹ A PBOC official indicated that China is actively promoting CBDC standards “around the globe based on its leading research”.⁷⁰ More broadly, China is participating in CBDC concept and standard-setting through standard-setting bodies (SSBs, ranging from CBDC definition and categories, issues affecting CBDC and virtual currencies, to regulation).⁷¹ At the International Telecommunication Union (ITU), China appears to be leading research and the standardization of the CBDC ecosystem and reference architecture.⁷²

China is developing an unprecedented network of soft law under BRI, and such soft law may be hardened in selective areas (like technical standards, e-commerce, and dispute settlement) in the long run.⁷³ Some of BRI MOUs has been discussed above. China also plays its role in standard setting, such as China reportedly introducing CBDC-related standards in certain BRI economies.⁷⁴

Notably, China is seeking a new pathway of reshaping rules through BRI private contracts, and dispute settlement process (particularly rule interpretation by domestic courts). China’s trade governance development is built on infrastructure and private contracts and dispute settlement, catalyzed by development finance and treaties.⁷⁵ For instance, the BRI projects will enhance China’s role in standard setting in related areas like technical standards. One may argue that China’s courts like CICC appear to play an increasingly active role in interpreting international rules and practices (like BRI typical or guiding cases).

C. Conclusion

Institutional reshaping often works to mold rules (e.g., the AIIB Environmental and Social Framework⁷⁶), and thus cannot be completely separated from rule reshaping. Selective reshaping focuses on prioritized areas, at selected venues (like international organizations) and with selected partners (such as BRI states). This selection is likely driven by various factors. For example, the selected areas are often those in which China has increased economic and possibly geopolitical interest (e.g., digital trade, finance and investment), and where there is room for China to gain advantages through fostering change. For example,

⁶⁷ Bailey Reutzel & Pete Rizzo, *Most Influential in Blockchain 2017 #6: Yao Qian*(2017), available at <https://www.coindesk.com/coindesk-most-influential-2017-6-yao-qian/>.

⁶⁸ Qian Yao, *Technological Considerations of Central Bank Digital Currency*, Yicai(March 6, 2018), available at <https://www.yicai.com/news/5404436.html>.

⁶⁹ Will Knight, *China’s Central Bank Has Begun Cautiously Testing a Digital Currency*(June 23, 2017), available at <https://www.technologyreview.com/s/608088/chinas-central-bank-has-begun-cautiously-testing-a-digital-currency/>.

⁷⁰ Chen Jia, *China Promotes Global Digital Fiat Currency Standardization*, China Daily(8 December 2018), available at http://www.chinadaily.com.cn/cndy/2018-12/08/content_37372782.htm?from=timeline&isappinstalled=0.

⁷¹ Id. at.

⁷² Yao, National Financial Standardization Technical Committee Secretary General Qian Yao: Prioritizing Standandards, Promoting Going-Out of Finance. 2018.

⁷³ Wang, JOURNAL OF INTERNATIONAL ECONOMIC LAW, 41-42, 55 (2019).

⁷⁴ Jia. 8 December 2018.

⁷⁵ Shaffer & Gao, UC IRVINE SCHOOL OF LAW RESEARCH PAPER NO. 2019-21, 2 (2019).

⁷⁶ Asian Infrastructure Investment Bank, *AIIB Environmental and Social Framework*, (February 2016).

China “remains deeply committed to” many traditional institutions,⁷⁷ and supports existing investment law, which works in China’s interests as an exporter under BRI.⁷⁸ China can be expected to continue supporting the WTO since the WTO rules help to promote economic activities with BRI states, and China benefits from liberal openness under the multilateral trading system. Further, selective reshaping target less sensitive issues, and avoid issues where it has not accepted stringent international obligations (e.g., labor).

III. How to Understand Selective Reshaping?

What are the factors that influence how selective reshaping occurs? How are they similar with and different to factors under selective adaptation? Selective reshaping and selective adaptation sit on a nuanced continuum involving multiple shades of grey, instead of a dichotomy. Selective reshaping builds upon the selective adaptation of external rules (like WTO rules) whose three major factors are perception, complementarity, and legitimacy. The major influencing factors of selective reshaping are perception and conception, complementarity and legitimacy, which explain the rationales behind the paradigm shift from adaptation to reshaping. The influencing factors of selective reshaping differ substantially from those in selective adaptation.

A. Perception and Conception

1. An Increasing Role for Conception

Perception plays a somewhat similar role in selective reshaping and adaptation. In selective adaptation, perceptions concerning the purpose, content, and effect of non-local rules and institutional arrangements may determine the “focus and parameters of selection and adaptation”,⁷⁹ and exert influence on the processes and results of selective adaptation.⁸⁰ The actors include local interpretative communities, such as government officials, socio-economic professionals, and other groups exercising authority in the relevant area, along with the public.⁸¹ For example, the adaptation by China of North American and European regulatory models reflects “perceptions [by Chinese regulators] about the inadequacy of China’s regulatory norms for the state-owned sector, as well as assumptions about the relationship between corporate law regimes and economic growth”.⁸²

Perception is a complex process, influenced by complicated cognition factors in the recipient country, including a diversity of understanding and “cognitive dissonance and denial.”⁸³ Significantly, the perceptions of key actors may often differ substantially. For example, conditionalities linked to China’s WTO accession process could be perceived as foreign rule imposition by some Chinese actors, but by other, reform-oriented circles, as an opportunity to “cement a stringent regulatory framework against entrenched vested interests”.⁸⁴

Notably, the additional element of conception in selective reshaping is largely absent in selective adaptation. In selective reshaping, China extends to the conception of ideas on the development and promotion of institutions and rules. China’s perception of external rules and institutional arrangements lays the foundation for the conception of new or altered rules and

⁷⁷ Paradise, *JOURNAL OF CHINESE POLITICAL SCIENCE*, 154 (2016).

⁷⁸ Shaffer & Gao, *UC IRVINE SCHOOL OF LAW RESEARCH PAPER NO. 2019-21*, 17-18 (2019).

⁷⁹ Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 120 (2003); Potter, *THE CHINA QUARTERLY*, 701 (2007).

⁸⁰ POTTER, *Assessing Treaty Performance in China: Trade and Human Rights* 10. 2014.

⁸¹ Potter, *THE CHINA QUARTERLY*, 701 (2007).

⁸² Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 148 (2003).

⁸³ Potter, *THE CHINA QUARTERLY*, 701 (2007).

⁸⁴ Ivo Krizic & Omar Serrano, *Exporting Intellectual Property Rights to Emerging Countries: EU and US Approaches Compared*, 22 *EUROPEAN FOREIGN AFFAIRS REVIEW* 57, 73 (2017).

institutions in selective reshaping. Concerning rules, besides examples discussed above, BRI also involves the conception of an unprecedented BRI-type soft law network, through which China promotes its proposed extra-regional governance. The soft law expands from trade to new issues such as investment facilitation. Concerning institutions, China's engagement in conception can be seen regarding issues including infrastructure finance and dispute settlement. It was only after China's decades of perception and increased understanding of the global rules and institutions that it made the transition to enhanced leadership, for example by developing novel multilateral organizations (like the AIIB that necessitates the design of the institution and its rules)⁸⁵ and domestic institutions that deals with China's external engagement (like CICC).

Notably, the effects of perception and conception on selective reshaping will change over time. For example, China's position on IP may transform with its IP development and an increased need to protect IP if Chinese high-tech businesses expand along BRI states. The increasing IP-related activities in BRI will accelerate the IP protection and enforcement process becoming part of China's interests.⁸⁶

2. *A Predominantly Conscious Process*

In selective adaptation, perception is a largely unconscious process through which interpretive communities encounter, interrogate, and interpret non-local and local standards by reference to their psychological and socio-cultural norms.⁸⁷ Selective reshaping, by contrast, involves a predominantly conscious processes, particularly regarding conception. Conception requires a conscious process of identifying selected partners, venues, and areas to promote institutional or rule development. In selective reshaping, China develops selected rules and institutions that it understands well, considers less sensitive and views as beneficial for its future. This helps to explain why China engages with new issues like FinTech and CBDC, where it has special expertise and may more easily promote its practice, and why China explores the AIIB, based on its experience with MDBs and infrastructure building.

B. *Complementarity*

Complementarity concerns the relationship between local and non-local standards and rules. In selective adaptation, complementarity describes how apparently contradictory phenomena or priorities, usually local and foreign norms, can be combined in various ways that preserve the essential characteristics of each component, and yet enable them to work together in a mutually reinforcing way to bring new effects.⁸⁸ The challenge is to ensure that international and local norms are capable of "coexisting and operating together in non-conflicting and effective ways" although they could contradict each other.⁸⁹ However, complementarity in selective reshaping, while still concerned with the relationship between local and non-local rules, is more related to the balancing of China's preferences with external rules.

1. *Complementarity between External Norms and Local Regulatory Imperatives*

Complementarity between external norms and local regulatory imperatives (and local conditions) under selective adaptation remains a consideration in selective reshaping. For example, FTZs are an important way for China to test the applicability and effects of potential reshaping and its complementarity with local conditions, needs, and values, which

⁸⁵ Gregory T. Chin, *Asian Infrastructure Investment Bank: Governance Innovation and Prospects*, 22 GLOBAL GOVERNANCE, 12 (2016).

⁸⁶ Jyh-An Lee, *The New Silk Road to Global IP Landscape*, in LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE 421, (Lutz-Christian Wolff & Xi Chao eds., 2016).

⁸⁷ POTTER, *Assessing Treaty Performance in China: Trade and Human Rights* 10. 2014.

⁸⁸ Potter, *THE CHINA QUARTERLY*, 701 (2007).

⁸⁹ Biukovic, *JOURNAL OF INTERNATIONAL ECONOMIC LAW*, 804-805 (2008).

reduce legal, economic and other risks. FTZs serve an important function in experimenting concerning 21st century issues (e.g., competitive neutrality) to accumulate experience for China in negotiations.⁹⁰ This is the case with the pre-establishment national treatment and the negative list approach that complement local needs, since they could promote domestic reform and attract investment, a priority for China.⁹¹ They were experimented in FTZs before they are expanded nationally and negotiated on in the future upgrading of China's FTAs with Australia and Korea.

However, the need for such complementarity is less strong in selective reshaping than in selective adaptation. Selective adaptation is largely used to enable reform, and thus the focus is on the complementarity of external norms being transplanted into the domestic setting. As discussed below, complementarity in selective reshaping is concerned more with the compatibility between external rules and China's preferences.

2. *Complementarity between External Norms and China's Preferences*

Complementarity between external norms and China's preferences is a crucial criterion on which international rules and institutions are to be embraced or reshaped under selective reshaping. External norms cover various international rules and institutions related to wide-ranging issues under BRI, which are much broader than the WTO and its rules in China's WTO accession under selective adaptation. There are at least three preferences of China, which are much broader than local regulatory imperatives. Such complementarity could be found at multilateral (e.g., AIIB), regional (like FTAs) and domestic (e.g., CICC) levels.

First, China aims for an enhanced role in international governance. China appears to combine "new ideas (China Dream, Asia Dream), new policies (comprehensive diplomacy and security), new institutions (AIIB) and new projects (BRI)",⁹² which reflects China's "emerging grand strategy as a rule-maker."⁹³

Second, China prefers the expansion of trade, investment and finance. China endeavors to develop its preferred rules (including e-commerce and investment) and institutions (like the AIIB and CICC) reflects the complementarity between external rules and such preference in rule development, rule interpretation and institutional development. China's BITs are a prime example. Driven by the concerns over investment treatments and protection concerning Chinese outbound investment, China's new tailored approach to investment balances between the protection of SOE-focused investment programs (like possible disciplines on investment facilitation and investment review) and ensuring sufficient flexibility for China's regulatory space (like a tightened admissibility of investor claim that is relevant to foreign investors).⁹⁴

Third, China strives to respond to external dynamics and challenges in China's rise. China comes under pressure from rules and institutions that are usually shaped by advanced economies. As a response, China's efforts range from reshaping trade remedy rules through its FTAs, to leading the establishment of AIIB and developing a BRI soft-law network.

Notably there are overlap among these preferences. Theoretically, the courts' efforts may involve all these preferences depending on the context. China's courts (like the courts in FTZs and CICC) could incrementally reshape rules through judgments and guiding cases. It involves legal reasoning, interpretation, and the refusal to recognize and implement certain arbitration awards, court judgements or international rules.⁹⁵

⁹⁰ He, CHINESE REVIEW OF INTERNATIONAL LAW, 13 (2016).

⁹¹ Guan, ASIAN JOURNAL OF COMPARATIVE LAW, 138 (2017).

⁹² William A Callahan, *China's "Asia Dream": The Belt Road Initiative and the new regional order*, 1 ASIAN JOURNAL OF COMPARATIVE POLITICS 226, 226 (2016).

⁹³ *Id.* at, 239.

⁹⁴ Karl P. Sauvant & Nolan Michael D., *China's Outward Foreign Direct Investment and International Investment Law*, 18 JOURNAL OF INTERNATIONAL ECONOMIC LAW 893, 915 (2015).

⁹⁵ He, CHINESE REVIEW OF INTERNATIONAL LAW, 14 (2016).

The complementarity, although not always perfectly realised, helps explain why China has been proactive in developing selected rules, while remaining to some extent passive concerning sensitive issues (like governance, debt sustainability, labor, and other social impacts),⁹⁶ which are largely non-trade concerns.

C. Legitimacy

Legitimacy is concerned with the “quality of a rule which derives from a perception on the part of those to whom it is addressed that it has come into being in accordance with right process”,⁹⁷ and affects both selective adaptation and selective reshaping. Selective adaptation needs the support of local communities that are dependent on the legitimacy of the content and process of selecting adopted regulatory norms.⁹⁸ Legitimacy is affected by a number of factors, including personal preferences reflecting individual circumstances and interests, and “broader social perspectives of idealism, nationalism and identity”.⁹⁹ These factors are also relevant to legitimacy considerations under selective innovation.

However, selective reshaping faces different kinds of legitimacy concerns compared with those under selective adaptation. In particular, selective reshaping is more greatly affected by international legitimacy.

1. Increasingly Conscious Legitimacy Concerns

On the one hand, legitimacy is a crucial determinant as to whether China’s selective reshaping will be adopted by the international community.¹⁰⁰ Legitimacy concerns in selective adaptation are mainly directed towards the, often unconscious, responses of the interpretive communities involved in engaging with local and international rules.¹⁰¹ In contrast, selective reshaping requires a conscious process of choosing which rules and institutions to promote and justify. Selective reshaping also needs to consciously address legitimacy concerns. One may argue that selectivity (e.g., selective partners and areas) may undercut legitimacy by focusing on rules that largely suit a limited number of countries. There is skepticism about China’s measures in certain contexts or the lack of rule development in respect of other issues (like concerns related to the debt sustainability and transparency of BRI, and other countries’ concerns based on the principles of sovereignty),¹⁰² which arguably detracts from legitimacy. The legitimacy concerns help to explain why China has highlighted issues like transparency in the BRF,¹⁰³ and why China recently appears to

⁹⁶ Wang, *JOURNAL OF INTERNATIONAL ECONOMIC LAW*, 46 (2019).

⁹⁷ Thomas M. Franck, *Legitimacy in the International System*, 82 *THE AMERICAN JOURNAL OF INTERNATIONAL LAW* 705, 706 (1988).

⁹⁸ Potter, *WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW*, 121 (2003).

⁹⁹ Potter, *THE CHINA QUARTERLY*, 701 (2007).

¹⁰⁰ The legitimacy issue regarding the BRI is obvious as the case with Italy's recent BRI MOU with China. See, e.g., Crispian Balmer, *Italy's Drive to Join China's Belt and Road Hits Potholes*, Reuters(2019), available at <https://www.reuters.com/article/us-italy-china-analysis/italys-drive-to-join-chinas-belt-and-road-hits-potholes-idUSKCN1QW1E2>. (Regarding Italy’s move to join the BRI, a spokesman for the White House’s national security advisers indicated that “[n]o need for Italian government to lend legitimacy” to China's BRI projects)

¹⁰¹ POTTER, *Assessing Treaty Performance in China: Trade and Human Rights* 11. 2014.

¹⁰² See, e.g., Shaffer & Gao, *UC IRVINE SCHOOL OF LAW RESEARCH PAPER NO. 2019-21*, 9 (2019). (transparency concerns); Christoph Lattemann, et al., *Final Reflections, in CHINA'S BELT AND ROAD INITIATIVE: CHANGING THE RULES OF GLOBALIZATION* 338, 341, (Wenxian Zhang, et al. eds., 2018). (various concerns including debt)

¹⁰³ Xinhua, *Keynote Speech by Xi Jinping at the Opening Ceremony of Second Belt and Road Forum for International Cooperation (Full Text)*(2019), available at http://www.xinhuanet.com/politics/leaders/2019-04/26/c_1124420187.htm.

“rebalance” its overseas lending practices given concerns over the debt burdens of developing states.¹⁰⁴ This could also partially explain China’s maximized flexibility.¹⁰⁵

On the other side, China may be critical of the legitimacy of selected aspects of IELO that are considered unfavorable to China and are negotiated or developed without China’s participation. An example is the best practices in MDBs in the discussion of the AIIB. China’s then Financial Minister Lou Jiwei reportedly did not acknowledge best practice in the context of MDBs,¹⁰⁶ and stated that there is only the “good practice” instead of the “best practice”.¹⁰⁷ He also indicated that developing countries’ needs should be considered and “sometimes the West puts forwards some rules that we don’t think are optimal”.¹⁰⁸ AIIB President Jin Liqun does not agree to anything constituting international best practice unless it “incorporates the development experience of China and many countries in Asia and elsewhere”,¹⁰⁹ and suggested that the AIIB would have a different development model reflecting the experience of China, India and various Asian countries.¹¹⁰ Related to BRI, the Chinese government states that “a more fair, reasonable and balanced global governance system” shall be promoted.¹¹¹

2. *More Reliance on International Legitimacy*

Selective adaptation is a process of China “downloading” external rules to the local setting, and is thus concerned largely with domestic legitimacy. Dependent on domestic and international legitimacy, selective reshaping is concerned with the possible “uploading” of China-preferred rules to the extra-regional level and reshaping of institutions.

(a) Domestic legitimacy

Concerned with the local community’s support for international rules,¹¹² domestic legitimacy remains an important aspect of selective reshaping. It plays a similar role in selective reshaping and selective adaptation, involving the extent to which members of local communities accept the purposes and consequences of China’s measures, which may concern factors “ranging from personal preferences born of individual circumstances and interests, to broader social perspectives of idealism, nationalism and identity that inform responses to procedural or substantive dimensions of international law standards.”¹¹³ These factors will influence the likelihood that selective reshaping is perceived as legitimate locally in China.

Since selective reshaping reflects the country’s preferences, rather than being viewed as an external implant being introduced, it may be more likely to be accepted as legitimate by

¹⁰⁴ Lucy Hornby, *China ‘Rebalances’ Overseas Lending on Debt Burden Concerns*(2019), available at <https://www.ft.com/content/c0c3b840-238d-11e9-8ce6-5db4543da632>.

¹⁰⁵ Heng Wang, *China’s Approach to the Belt and Road Initiative: Scope, Character and Sustainability*, JOURNAL OF INTERNATIONAL ECONOMIC LAW, 21-22 (2019).

¹⁰⁶ Paul Pennay, *China Says Western Rules May Not Be Best for AIIB*, (2015).

¹⁰⁷ Boao Forum for Asia, *LOU Jiwei delivered a speech at the luncheon session for the BFA seminar on Infrastructure Connectivity in Asia: The Financing Challenge*(2014), available at <http://english.boaforum.org/iciatfc/14175.jhtml>.

¹⁰⁸ Pennay, (2015).

¹⁰⁹ Ben Blanchard, *China Touts New Bank’s Greater Understanding of Developing World*(2016), available at <https://www.reuters.com/article/us-china-aiib-idUSKCN0ZC05S>.

¹¹⁰ Id. at.

¹¹¹ *Ministry of Foreign Affairs Holds Briefing for Chinese and Foreign Media on President Xi Jinping’s Attendance and Chirring of Related Events of the BRF*(Apr. 18, 2017), available at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1455115.shtml.

¹¹² Biukovic, JOURNAL OF INTERNATIONAL ECONOMIC LAW, 804 (2008).

¹¹³ Potter, THE CHINA QUARTERLY, 701 (2007).

local audiences in China. For example, BRI may help to address China's increased demands on energy and resources from outside China¹¹⁴ and domestic economic concerns (such as industrial overproduction and unemployment),¹¹⁵ boost growth in western regions of China,¹¹⁶ and promote outbound investment and export. The AIIB would bring different benefits to China, including (i) contribution to economic growth of China (relieving excessive production capacity at home, and increasing yields of foreign exchange reserves);¹¹⁷ (ii) learning the lending experience and knowledge of other creditor states (like those on due diligence) and reducing lending risk of foreign investments;¹¹⁸ (iii) increasing overseas market share of Chinese businesses;¹¹⁹ and (iv) the RMB internationalization.¹²⁰

Meanwhile, China uses various mechanisms to test the effects of reshaping efforts and adjust the policy to ensure that it receives support from local stakeholders. FTZs experiment with new approaches (e.g., the negative list approach, pre-establishment national treatment, and competitive neutrality) to accumulate experience,¹²¹ and seek domestic legitimacy arguably through their demonstrated positive effects. If BRI helps to deliver sustained economic prosperity, it will be more likely to foster domestic legitimacy.¹²²

(b) International legitimacy

Selective reshaping focuses more on building international legitimacy for new rules and institutions, since enhanced legitimacy via-a-vis the global audience is important for the possible new IELO influenced by selective reshaping.¹²³ It is supported by AIIB's President Jin Liqun's statement that "China is more concerned over the legitimacy issue [of the AIIB]," and "[t]here is a legitimate issue if only regionals are members" of the AIIB.¹²⁴ International legitimacy is a crucial factor for the fruits of selective reshaping to be an alternative or a supplement to existing rules and institutions, and to set new obligations. Selective reshaping requires China to persuade international audiences of the legitimacy of China-led extra-regional developments to ensure adoption and enforcement.

China takes a pragmatic approach to seeking international legitimacy through, inter alia, highlighting existing international rules and institutions, and working with international organizations (like the various MOUs with the UN) and other states. For rules, the tying of the non-binding BRI MOUs to existing rules and institutions lends MOUs "more ability to

¹¹⁴ Ikenberry & Lim, 4. April 2017.

¹¹⁵ De Graaff & Van Apeldoorn, INTERNATIONAL AFFAIRS, 119 (2018).

¹¹⁶ Id. at.

¹¹⁷ Ikenberry & Lim, 10-11, footnote 42. April 2017.

¹¹⁸ Id. at, 11.

¹¹⁹ Chi Lo, *AIIB Outbound Investment Agenda Is Key to China's Economic Rebalancing*(2015), available at <https://www.scmp.com/print/comment/insight-opinion/article/1802993/aiib-outbound-investment-agenda-key-chinas-economic>.

¹²⁰ Id. at.

¹²¹ He, CHINESE REVIEW OF INTERNATIONAL LAW, 13 (2016).

¹²² Baogang He, *The Domestic Politics of the Belt and Road Initiative and its Implications*, 28 JOURNAL OF CONTEMPORARY CHINA 180, 189 (2019).

¹²³ G. John Ikenberry & Darren Lim, *What China's Institutional Statecraft Could Mean for the International Order*(2017), available at <https://www.brookings.edu/blog/order-from-chaos/2017/04/13/what-chinas-institutional-statecraft-could-mean-for-the-international-order/>.

¹²⁴ *Building Asia's New Bank: An Address by Jin Liqun, President-Designate of the Asian Infrastructure Investment Bank*(October 21, 2015), available at https://www.brookings.edu/wp-content/uploads/2015/10/20151021_asia_infrastructure_bank_transcript.pdf.

claim legitimacy,”¹²⁵ and is a way by which MOUs may “later be seen to have implied legitimacy.”¹²⁶ BRI documents like BRF Joint Communiqué¹²⁷ repeatedly refer to international rules and highlight good practice, as well as well-accepted values. For institutions, the AIIB commits, at least on some occasions, to applying best practices, although it is premature to conclude whether the AIIB will depart from current standards given its limited number of projects.¹²⁸

That said, selective reshaping necessarily faces challenges regarding international legitimacy. Legitimacy concerns may arise from the extra costs and risks, and a lack of efficiency, associated with selective reshaping, including the risk that the resulting rules and institutions “exacerbate the problem or creat[e] new problems that are difficult to anticipate”.¹²⁹ China might encounter legitimacy concerns relating to skepticism about its intentions and national interests.¹³⁰ For institutions, the future of the AIIB largely depends on “how to convince the world that the AIIB is not a tool exclusively serving” BRI and that BRI will benefit other countries in Asia and beyond,¹³¹ as well as on AIIB’s performance legitimacy (i.e., the effectiveness).¹³² Concerning rules, the wide usage of soft law in selective reshaping may carry concerns and difficulties regarding legitimacy.¹³³ While soft law may face less legitimacy concerns than hard law, because it is sometimes seen as less threatening to sovereignty, the involvement of political factors in soft law (for instance, soft law instruments predominantly consist of political statements rather than detailed legal obligations) could heighten legitimacy concerns as it is subject to the winds of political change. Soft law could be more intrusive than treaties as evidenced in areas like international financial law (like Financial Action Task Force standards, IMF expectations, and the World Bank standards).

A focus on legitimacy results in some tradeoffs and could limit China’s capacity regarding selective reshaping. It is hard to retain legitimacy given thorny and complicated “cooperation problems” in multilateral institutions (like the AIIB) with a large number of actors.¹³⁴ The collaboration with other countries increases legitimacy but also reduces China’s ability to decide on rule-making. The success in recruiting members to the AIIB “effectively reduced China’s ability to dictate decision-making standards.”¹³⁵

¹²⁵ Chris Devonshire-Ellis, *Vassal States? Understanding China’s Belt and Road MoU*(2018), available at <https://www.silkroadbriefing.com/news/2018/02/08/vassal-states-understanding-chinas-belt-road-mou/>.

¹²⁶ *Id.* at.

¹²⁷ Joint Communiqué of the Leaders Roundtable of the Belt and Road Forum for International Cooperation Paragraph 14(a) (2017).

¹²⁸ Jonathan Hillman, *Belt and Road Summit: Beijing’s Push on Trade*(May 2, 2017), available at <https://www.thecipherbrief.com/belt-and-road-summit-beijings-push-on-trade-2>.

¹²⁹ Jean Frédéric Morin, et al., *The Trade Regime as a Complex Adaptive System: Exploration and Exploitation of Environmental Norms in Trade Agreements*, 20 JOURNAL OF INTERNATIONAL ECONOMIC LAW 365, 383 (2017).

¹³⁰ Paradise, JOURNAL OF CHINESE POLITICAL SCIENCE, 149 (2016).

¹³¹ He, 1 (2016).

¹³² Chin, GLOBAL GOVERNANCE, 17 (2016).

¹³³ Ikenberry & Lim, 5. April 2017.

¹³⁴ *Id.* at.

¹³⁵ Avery Goldstein, *A Rising China’s Growing Presence: The Challenges of Global Engagement, in CHINA’S GLOBAL ENGAGEMENT: COOPERATION, COMPETITION, AND INFLUENCE IN THE 21ST CENTURY* 10, (2017).

D. Conclusion

Perception and conception, complementarity, and legitimacy are crucial influencing factors regarding how rules and institutions are to be embraced and developed under selective reshaping. As a process of learning by doing, these factors explain how the parameters of selective reshaping capture China's thinking and practice in IEL.

These factors, of course, are subject to institutional capacity constraints. This encompasses China's institutional capacity and the institutional capacity of other states who engage with reshaped rules or institutions (like the AIIB), as their contributions to the development will be critical to the resultant rules and institutions.

IV. Conclusion

Foremost, China is shifting from selective adaptation of external norms (like WTO law), an exogenous pressure provoking change particularly in its WTO accession, to selective reshaping of international institutions and rules (particularly under China's proactive BRI initiative). Selective reshaping is concerned with reshaping institutions and incrementally uploading rules to transnational law. The hallmarks of institutional reshaping include the AIIB and CIPS. China's efforts to reshape hard and soft law can be found at multilateral venues (such as the WTO, WCO, G20, and UNCITRAL), regional level (e.g., rules against zeroing in trade remedies in China-Korea FTA, and a possible China-centered FTA network¹³⁶ that may build on the its previous FTAs and the Regional Comprehensive Economic Partnership), and domestic level (like FTZs). China's new pathway of rule reshaping includes rule development (the maximized use of soft law under BRI, the incremental effects of infrastructure and private contracts on standard setting that are catalyzed by development finance and treaties¹³⁷) and interpretation (the increased role of domestic courts). Selected reshaping could cover various issues, ranging from trade remedies, e-commerce, FinTech (and CBDC), data localization, specific standard-setting (e.g., "China Standards 2035" launched in 2018¹³⁸), internet sovereignty, and international finance (like international payment and infrastructure finance given China's financial clout¹³⁹).

Second, the influencing factors of selective reshaping are perception and conception, complementarity, and legitimacy. Selective adaptation was affected by the three factors of perception of external rules, complementarity between external rules and local regulatory imperatives, and legitimacy (usually domestic legitimacy in China). While these factors still remain relevant, selective reshaping is affected more by the following factors: (i) conception (like designing the BRI as an unprecedented extra-regional initiative); (ii) complementarity between external practices and China's preferences. These preferences include an enhanced role in international governance, the expansion of trade, investment and finance, and the response to external dynamics and challenges in China's rise; and (iii) international legitimacy.

Third, selective reshaping is a possible game changer concerning international institutions and rules, and will likely enable China to translate its economic power into governance power if the obstacles can be properly managed. Selective reshaping reflects China's philosophy of "constant dripping wears away a stone". The "stone" here appears to be selected existing rules and institutions that China intends to reshape given its preferences. Each individual rule and institutional development may not be necessarily highly groundbreaking. It is observed

¹³⁶ deLisle, UNIVERSITY OF ILLINOIS LAW REVIEW ONLINE, 67 (2018).

¹³⁷ Shaffer & Gao, UC IRVINE SCHOOL OF LAW RESEARCH PAPER NO. 2019-21, 2 (2019).

¹³⁸ *Id.* at, 8.

¹³⁹ PRASAD, xvii. 2017.

that China's strategy "so far has appeared relatively transactional, and thin in providing durable international public goods."¹⁴⁰

Meanwhile, the vision of BRI indicates the efforts to seek new global governance models.¹⁴¹ China is increasingly involved in sponsoring "new international economic organizations or initiatives on matters concerning trade, investment, currencies, bond issuance, credit rating and others."¹⁴² The AIIB is deemed to represent "a dramatic rearranging of international institutions,"¹⁴³ and may play a more important role in the future. BRI is likely to "alter or supplement" current multilateral and regional institutions,¹⁴⁴ through new extra-regional institutions (like the AIIB, BRF, ICDPASO as a deliverable of the BRF in 2019 regarding dispute prevention and settlement,¹⁴⁵ and a possible China-led mediation mechanism¹⁴⁶) and domestic ones (e.g., the CICC). The new institutions that China has created or might create could generate rules.¹⁴⁷

Finally, there is likely to have an increasingly widening gap between China's approach and the approach of developed economies in IELO. BRI is observed to provide "an alternative and parallel global institutional architecture to the postwar Western order".¹⁴⁸ China has transformed into a country with "the capacity and will to alter the rules and institutions."¹⁴⁹ On the other side, the US-led liberal order has been "put under severe strain" by President Trump.¹⁵⁰ China's rise in international governance may require the US to take partial steps towards adaptation and accommodation.¹⁵¹ One could face increasingly different pathways that mainly consist of soft law (BRI-style one) and hard law (the US-style trade treaties) respectively, which have different rules, approaches and rationales. The US will be likely to react, particularly in respect of its bilateral economic relationship with China and other arenas including the WTO. The effects of external dynamics (like trade war) on selective reshaping remain to be seen.

To sum up, the selective reshaping paradigm provides a new and holistic conceptual framework for understanding the future of China's engagement with IELO. It endeavors to explain idea formation in complex settings like China, which deserves close attention.

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¹⁴⁰ deLisle, UNIVERSITY OF ILLINOIS LAW REVIEW ONLINE, 68 (2018).

¹⁴¹ Chinese National Development and Reform Commission, et al., *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road*(Mar. 28, 2015), available at http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html.

¹⁴² Paradise, JOURNAL OF CHINESE POLITICAL SCIENCE, 154 (2016).

¹⁴³ Rotblat, UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS, 359 (2017).

¹⁴⁴ Peter K. Yu, *Building Intellectual Property Infrastructure Along China's Belt and Road*, TEXAS A&M UNIVERSITY SCHOOL OF LAW LEGAL STUDIES RESEARCH PAPER NO. 18-52, 13-14 (2018).

¹⁴⁵ Chinese Ministry of Foreign Affairs, Part III, Item 11. 2019.

¹⁴⁶ Guo Tao, *International Mediation Summit 2018 Held in Changsha*(2018), available at <http://cicc.court.gov.cn/html/1/219/208/209/1112.html> ("the coordination and integration of the internal and external mediation working mechanism")

¹⁴⁷ deLisle, UNIVERSITY OF ILLINOIS LAW REVIEW ONLINE, 71 (2018).

¹⁴⁸ DAVID SHAMBAUGH, CHINA'S FUTURE 162 (Polity Press. 2016).

¹⁴⁹ deLisle, UNIVERSITY OF ILLINOIS LAW REVIEW ONLINE, 66 (2018).

¹⁵⁰ De Graaff & Van Apeldoorn, INTERNATIONAL AFFAIRS, 130 (2018).

¹⁵¹ Id. at, 115.

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