

Supreme People's Court Services and Safeguards for China's Defense and the Military

Susan Finder

Supreme People's Court Opinion on Military 2014/2017/2021, China

This brief article explains how China's political leadership uses the court system to achieve some of its national defense policy objectives. Improving China's national defense and modernizing its military is what in Chinese is called a national strategy (国家战略). China's national strategies include diplomacy, economics, science and technology, and military affairs. They are focused on the medium-term rather than on the long-term. A national strategy is embodied in the formal planning documents formulated and major official speeches articulated by the paramount leader or set of senior leaders at the apex of power.¹

Under the leadership of the President (and the General Secretary of China's Communist Party) Xi Jinping, China is seeking to modernize and professionalize its armed forces. Among the strategic goals are to make military service an honored profession, terminate the involvement of the armed forces and armed police in civilian commercial operations, and improve the workings of China's military-industrial complex. Other policy objectives relevant to this article include improving military morale

¹ Andrew Scobell, Edmund J. Burke, Cortez A. Cooper III, Sale Lilly, Chad J. R. Ohlandt, Eric Warner, J.D. Williams – *China's Grand Strategy: Trends, Trajectories, and Long-Term Competition* (Rand Research Report) (2020) at ix, 10-11.

and conditions for veterans, particularly the 300,000 or so military personnel demobilized by the end of 2017. This article shows how the Supreme People's Court (SPC), China's apex court, mobilizes the court system to do its part to achieve the leadership's policy objectives concerning national defense and the military.

National defense is not the only national strategy for which the Chinese courts have provided services and safeguards. The political leadership has decided that the Chinese courts are a necessary force in accomplishing their policy goals, and for that reason, President Xi Jinping has demanded that the courts (and other legal institutions) provide services and safeguards for many Communist Party (CCP or Party) policies.² For those unfamiliar with the Chinese court system, China has a separate military and civilian court system. Under military reforms, the status of the military courts (and procuratorates) has been elevated.³ The PLA Military Court has the status of a provincial higher people's court, with basic level and intermediate level courts.

An official definition of 'services' and 'safeguards' (guarantees) is lacking, but the phrase has been a critically important concept in Chinese political discourse since Xi Jinping became the General Secretary of the CCP in 2012. It is used to convey the concept that the relevant institution will fully fulfill its function (职能) in Chinese governance, implement the relevant policies or initiatives of the Party and government in its specialist area, to ensure that it advances the goals of the Party and the state's initiative or policies. The legal basis for the SPC's role is a clause in Article 2 of the Organizational Law of the People's Courts, calling on the courts to 'safeguard (guarantee) the legal uniformity, dignity, and authority of the State and guarantee the smooth progress of the building of socialism with

² Over the years, slightly different phraseology has been used: 2013: http://www.gov.cn/ldhd/2013-01/28/content_2321165.htm; 2014: <http://cpc.people.com.cn/n/2014/0109/c6409424065903.html>; 2015: 习近平：把政法工作摆到经济社会发展全局中谋划 履行好维护国家和社会安定重大责任 http://111.205.184.229/2015-01/20/content_11170812.htm; 2016: <http://news.12371.cn/2016/01/22/ARTI1453471166051925.shtml>; 2017: <http://politics.people.com.cn/n1/2017/0113/c1024-29019620.html>; 2018: this uses services and guarantees http://www.xinhuanet.com/legal/2018-01/22/c_1122296147.htm; 2019: http://www.xinhuanet.com/politics/leaders/2019-01/16/c_1123999899.htm; 2020: <https://www.china-court.org/article/subjectdetail/id/MzAwNMhJM4ABAA.shtml>

³ China's National Defense in the New Era, 25 July 2019, https://www.chinadaily.com.cn/a/201907/25/WS5d38f349a310d83056400dc1_5.html

Chinese characteristics'.⁴

The policies described in this article have been recently codified in military-related legislation promulgated in June 2021. The first is the Law of the People's Republic of China on the Protection of the Status, Rights and Interests of Military Personnel (Law on Protecting the Military and its Personnel).⁵ At the same time, the national legislature, the National People's Congress (NPC) Standing Committee amended the counterpart law directed towards providing legal protection for military facilities, the 1990 Military Facilities Protection Law of the People's Republic of China, previously amended in 2014.⁶ These laws together act as a skeletal legal framework for institutions of the Party and government to provide special protections and preferential treatment to the military and its personnel, including veterans. In relation to the Chinese courts, these two laws do not 'make new laws' but instead place in legal form Party policy that has long existed but is made more workable through codification.

To illustrate the accomplishments of the court system in achieving its goals of providing 'services and guarantees to national defense and the military', Zhou Qiang, SPC President, stated in his March 2021 report to the National People's Congress:

[The courts] strengthened military rights protection work...served the building of national defense and military reform and promoted the unity of the military and government and the military and civilians...10,418 military-civilian-commercial cases were concluded, resolutely defending the dignity and honor of military personnel, and safeguarding the legitimate rights and interests of military personnel. Continued to do a good job in providing judicial services for the next phase of the cessation of military business operations and safeguarded the legitimate rights and interests of the military and the legitimate interests of the masses [ordinary people] in accordance with the law. In conjunction with the Ministry of Veterans Affairs, etc., issued an opinion to increase the degree of assistance in judicial relief for retired soldiers... Other courts took the initiative to send law into the military camps,

⁴ Article 2, Organic Law of the People's Courts, last amended in 2018, bilingual version available at: <https://npcobserver.com/legislation/peoples-courts-organic-law/>

⁵ See <https://npcobserver.com/legislation/law-on-the-protection-of-the-status-rights-and-interests-of-military-personnel/>

⁶ See <https://npcobserver.com/legislation/military-facilities-protection-law/>

opening up green channels for military rights protection....⁷

The SPC has issued several policy documents, not linked to any dispute, to implement leadership policy as expressed in Party and government documents that relate to national defense and the military. This type of SPC policy document is not unique to the area of national defense and the Chinese military but is a type of soft law document issued by the SPC. Under the leadership of Xi Jinping, the SPC has issued many more of these documents that provide 'judicial services and safeguards' of the type that SPC President Zhou Qiang mentioned in his speech. As this author has written elsewhere, these documents create and transmit to the lower courts new judicial policy, update previous judicial policy, establish new legal guidelines that may be eventually crystallized in judicial interpretations and direct the lower courts, but cannot be cited in judicial judgments or rulings.⁸ They are generally linked to an important Party or state strategy or initiative, in this case, national defense.⁹

It is generally recognized, particularly within China, that its political leadership uses documents as an expeditious way of governance. As a professor of politics and law in the Party's Central Party School wrote:

By comparison [with law], with documents, matters are handled economically...In general, however, while there are corresponding procedures for documents, these are not hard and fast procedural requirements, so adjustments can easily be made in them as the situation requires. For China, which is ruled by an exemplary advanced political party, this means that this is still essentially rule by the elite. China's primary goal remains becoming a rich country with a strong military (富国强兵) All other values must be subordinated to this goal.¹⁰

As shown in this article, the Party leadership rarely communicates

⁷ See http://www.gov.cn/xinwen/2021-03/15/content_5593012.htm

⁸ Judicial interpretations are issued by the SPC and sometimes together with the Supreme People's Procuratorate, not linked to a specific case or controversy, that have the appearance of legislation. See more at: Susan Finder, *The Supreme People's Court and Interpreting the Law Revisited*, 10 July 2015, <https://supremepeoplescourtmonitor.com/2015/07/10/the-supreme-peoples-court-and-interpreting-the-law-revisited-part-one/>

⁹ Susan Finder, *The Soft Law of the Supreme People's Court*, 16 November 2020, <https://supremepeoplescourtmonitor.com/2020/11/16/the-soft-law-of-the-supreme-peoples-court/>

¹⁰ Zhang Xuebo, 文件治国的历史观察: 1982—2017, 学术界 No 9 September 2017, (translated by David Cowhig) <https://gaodawei.wordpress.com/2021/01/09/2017-zhang-xuebo-observations-on-the-history-of-rule-by-document-1982-2017/>

directly with the SPC, but instead, the intermediate Party (and sometimes the state) institutions communicate new policies in the form of documents, most often issued to multiple Party and state organs of which the SPC is one. At the same time that this indicates to the observer the status of the SPC and the court system in Chinese governance, it also shows that the SPC and the court system have a unique role in it. One of the most important goals of these documents, listed below, is reshaping and reorganizing fragmented Party and government policy across many Party and state institutions. The goal is to implement better policy related to national defense and the military, called 'protecting military rights', (涉军维权), as President Zhou Qiang mentioned in his speech. The term 'military rights' does not have a specific definition but includes better protecting the rights of the People's Liberation Army (PLA), the armed police (now under PLA command), military personnel, and veterans.

The remainder of this article examines how the SPC seeks to achieve the political leadership's policy goals. The next section describes the documents by which Party and state policy relevant to protecting military rights is transmitted to the SPC. The section following it lists and summarizes the documents that the SPC has issued or is drafting to implement these goals and concludes with the author's thoughts on the significance of these documents and the work of the SPC in this area.

Party and Government Policy Related to Better Legal Protection of Military Interests

I have been able to identify several Party and government policy documents that inform the SPC that the courts need to take measures to better protect military interests. The authorities did not release the full text of most of these documents to the public, although the official Chinese press issued detailed summaries. There is no legal requirement to release such documents. It is generally recognized both in China and abroad that there is a high degree of secrecy related to military matters.

In April 2014, Central Political Legal Committee and the General Political Department of the PLA (the PLA's highest Communist Party organization) issued 'Improving the protection of the rights of the military, military personnel, and military dependents' (关于加强维护国防利益

和军人军属合法权益工作的意见) (PLA Legal Protection Opinion).

This document is directed towards improving the legal protection of China's national defense, military, military personnel, and military dependents. The SPC was only one of the lists of many institutions to which the document was issued. Among the others were:

Supreme People's Procuratorate

Ministry of Public Security

Ministry of Civil Affairs

Ministry of Justice

Ministry of Finance

Ministry of Human Resources and Social Security

Ministry of Land and Natural Resources

National Civil Air Defense Office

National Leading Group on Double Support

(On the military side, presumably, the General Political Department issued it to the military counterparts of many of the above authorities, including the PLA Military Court and PLA Military Procuratorate, but the press release did not specify)

Although the specific details of the PLA Legal Protection Opinion are unavailable, the principal objectives are clear from press summaries. One principal objective of the Party leadership was to coordinate better institutional policies related to protecting the interests of the military and its personnel, including policies of the courts.

As is usual practice in the drafting of multi-institutional documents, the SPC was consulted on its content.¹¹ It is likely that the SPC internally consulted specific substantive departments or tribunals. Through the mechanism and specific policies, the SPC was tasked to find methods of improving or resolving significant issues related to the siloed military and civilian systems. The siloed systems meant that civilian courts faced dif-

¹¹ See <https://supremepeoplescourtmonitor.com/2014/04/18/will-new-supercommittees-resolve-the-plas-complicated-legal-problems/>

difficulties in resolving a range of legal issues involving the military authorities, and PLA institutions and personnel also had difficulties relating to the civilian court system.

Related to the PLA Legal Protection Opinion was a Fall 2014 State Council and Central Military Commission policy document on improving legal aid work to military personnel and their families. In China, legal aid is provided to those who pass a means test in a limited category of civil cases, and more recently, much more broadly in criminal cases.¹² To implement the broad requirements of the PLA Legal Protection Opinion and the Fall 2014 document, the SPC issued its own policy documents to guide its own work and that of the lower courts, described in the following section.

In February 2016, the Central Military Commission issued a notice ordering the Chinese military and armed police to stop providing all paid services within three years with the Central Military Commission. The full text of the document (Notice on the military and armed police forces stopping entirely compensated services) (关于军队和武警部队全面停止有偿服务活动的通知) has not been made public, only summaries have been shared.¹³ The SPC established a leading small group (equivalent to a project team) headed by one of the senior leaders of the SPC soon thereafter.¹⁴

In 2016, the Central Committee and Central Military Commission issued a document on military-civil fusion. Although it did not specifically mention intellectual property rights, a State Council notice on reforming intellectual property rights institutions called for the promotion of military-civil fusion of intellectual property rights.¹⁵ In 2018, the Notice of the General Office of the Equipment Development Department of the Central Military Commission of the Office of the State Intellectual Property Office on the Pilot Work of Military-Civilian Fusion of Intellectual Property included provisions on resolving defense-related patents. The link to the SPC and patent rules is found in a 2020 notice of the

¹² Fu Hualing, *Pro Bono, Legal Aid, and the Struggle for Justice in China* (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3743658

¹³ See http://www.mod.gov.cn/shouye/2017-05/31/content_4781764.htm

¹⁴ *Id.*

¹⁵ Notice of the General Office of the State Council on Issuing the Overall Plan for the Intellectual Property Right Comprehensive Administration Reform Pilot Program, <http://lawinfochina.com/display.aspx?id=26068&lib=law>

Inter-Ministerial Joint Conference on the Implementation of the Intellectual Property Strategy of the State Council, headquartered at the China National Intellectual Property Administration. Article 25 of that Notice designates the SPC, along with the Equipment Development Department of the Central Military Commission, the National Defense and Technology Bureau, and the State Intellectual Property Office, to amend the Defense Patent Regulations and start work on a judicial interpretation on defense patent matters. The SPC is one of many members of the Inter-Ministerial Joint Conference. An official definition of an inter-ministerial joint conference states:

... is established to negotiate and handle matters involving the responsibilities of multiple departments of the State Council. It is established with the approval of the State Council. The member units communicate in a timely manner and coordinate differing opinions. It is a work mechanism for enabling the smooth implementation of a task (responsibility). It is the highest-level joint meeting system of administrative agencies.¹⁶

As described below, the SPC is one of many institutions issuing a document to improve legal aid to veterans. The SPC policy document on providing legal aid and judicial assistance to veterans is based on prior documents of a Party organization focusing on legal matters: the SPC, Ministry of Justice, and the Supreme People's Procuratorate, including:

The 2014 Note of the CPC Political-Legal Commission, the Ministry of Finance and the SPC on Issuing the Opinions on Establishing and Improving the System of State Judicial Aid (for trial implementation);¹⁷

The 2016 Opinions of the SPC on Strengthening and Regulating the State Judicial Relief Work of the People's Courts¹⁸ and the experience of the courts in providing better legal assistance to soldiers and their families.

¹⁶ See <https://supremepeoplescourtmonitor.com/2021/03/05/how-the-supreme-peoples-court-coordinates-with-other-party-and-state-organs/>

¹⁷ See https://www.spp.gov.cn/spp/zd gz/201512/t20151208_109020.shtml

¹⁸ See <http://www.lawinfochina.com/display.aspx?id=26011&lib=law&EncodingName=big5;>
http://www.legaldaily.com.cn/index/content/2021-01/19/content_8411167.htm

How the SPC Provides Judicial Services and Guarantees

The SPC has issued three principal documents to provide better judicial services and guarantees to China's national defense and the military. The fourth document appears to still be in the draft. The SPC released the full text of only one of these documents, which is not unusual for military-related documents:

October 2014: Opinion on Expanding Capacity in Safeguarding the Interests of National Defense, Guaranteeing the Rights and Interests of Military Personnel, and Military Dependents (关于进一步发挥职能作用维护国防利益和军人军属合法权益的意见)(Expanding Capacity Opinion) (public);

January 2017: Notice on Doing Well Work in Providing Judicial Safeguards for the Stopping of Paid Services by the Military and Armed Police (Stopping Paid Services Notice) 《最高人民法院关于做好为军队和武警部队全面停止有偿服务提供司法保障工作的通知》(confidential);¹⁹

January 2021: Opinion on Strengthening the Provision of Judicial Assistance to Retired Military Personnel (关于加强退役军人司法救助工作的意见), a multi-institutional document (confidential);

(A judicial interpretation on defense patent issues does not appear to have yet been promulgated).

The discussion below will summarize these SPC documents and include some brief analyses.

Expanding Capacity Opinion

Although not entitled a 'Services and Safeguards Opinion', the Expanding Capacity Opinion has many commonalities with other such documents, starting with the structure. It starts with a description of the relevant political documents and concepts, which are relevant to the lower

¹⁹ See <http://www.court.gov.cn/zixun-xiangqing-37782.html>

courts. The second section notifies the lower courts about current relevant judicial policy. The third section provides guidance on operational mechanisms, and the last section relates to institutional and personnel matters. The policies and notification from the SPC give a glimpse of the broad range of legal issues facing the military and military personnel.

The purpose of the initial section is two-fold. The first is to notify the lower courts of the political goals, background and principles of the Opinion. The second is to signal to the political-legal hierarchy that the policies that the SPC sets out in the body of the Opinion are harmonized with the latest policies of the Party and the Government. During the Xi Jinping era, harmonization with the latest Party policy is particularly important.

The second section informs the lower courts of court policy to be implemented in support of the particular goal. It informs the courts of any changes from previous policy and what the lower courts must do in support of that policy goal. That section is the longest. This one contains a reminder about relevant law, as is common, about criminal and civil jurisdiction in military-related cases, indicating that the SPC believes that the lower courts needed this reminder.²⁰ The SPC provides new guidance for the lower courts to be more hospitable to military-related parties and provide some advisory services to members of the military. Courts with many military-related parties are encouraged to create a special window in the litigation services hall where potential litigants can be advised on their claim, to give these cases preference ('green light') on procedures, and are given guidance on to deal with the dispute more rationally. That latter language indicates that too many military-related disputes are resolved through physical fights. For military members who have a valid legal claim, courts are encouraged to designate a team of judges to deal with those cases. Soldiers stationed in remote locations are encouraged to use online or other methods to file their cases. Provincial High Courts and their regional military commands have jointly issued documents to make this possible.²¹

One important aspect of the 2014 Expanding Capacity Opinion was to give PLA soldiers better access to legal services in the area of ordinary

²⁰ *Id.*

²¹ See http://eng.mod.gov.cn/news/2017-12/25/content_4800757.htm

civil matters and, in particular, improving and broadening legal aid systems. It is for matters like this that the PLA Protection Opinion was needed because without the involvement of the Ministry of Justice, the regulator of lawyers, there would be no mechanism for ensuring that lawyers would provide pro-bono legal services to soldiers. As to why better legal services to soldiers are needed, among the reasons is that ordinary soldiers are generally confined to their military bases, have few holidays, and have little way to access lawyers or other personnel that could provide legal advice. Most ordinary soldiers in the PLA are recruited from the countryside, although more recent recruitment is targeting urban and more educated recruits.²² The Opinion explains that judicial assistance means exempting or reducing court fees for poor military families in civil cases such as:

Support payments (to the elderly);

Child support;

Compensation payments (to the disabled or families of the deceased).

The 2014 Expanding Capacity Opinion, for example, directs the lower courts to take the initiative to assist soldiers and military dependents who qualify in receiving legal aid. What this means is that courts should reach out to local justice bureaus. In some provinces or municipalities, such as Zhejiang and Shenzhen, the local judicial bureau, or bureau, has worked detailed regulations with the local military district to establish legal aid centers for military personnel and their dependents, under which local law firms have concluded agreements to provide legal advice²³ and lawyers who can assist them with legal-related problems.

The Expanding Capacity Opinion directs lower courts to punish crimes related to national defense and the military harshly, such as harming military weapons and equipment, military installations, military communications, gathering hostile crowds to disrupt military facilities, and committing fraud by impersonating military personnel or creating fraudulent military documentation. Military-related civil cases that the SPC

²²Marcus Clay, https://www.airuniversity.af.edu/Portals/10/CASI/Books/Understanding_the_People_of_the_PLA.pdf

²³ See http://sft.zj.gov.cn/art/2017/1/16/art_1229107411_439870.html; http://sf.sz.gov.cn/ztlz/mssstz/flyz/mssskzqk/content/post_8371493.html

considers, requiring special treatment, are ones involving military land, the construction of new military facilities and the administration of areas with military installations properly, to avoid or resolve disagreements with the civilian population, especially those that could cause public protests and to ensure that superior resources are truly used in accordance with laws and regulations to enrich the core national defense capabilities.

A long section of the Opinion addresses mediating military-related disputes in the first instance, to maintain the principle of unity between the military and civilians. The Chinese legal system has a long tradition of stressing the importance of mediating disputes. The SPC has specific recommendations for courts mediating military and civilian parties, with special instructions for military parties, enable dispute settlement and involve more senior military personnel if the dispute is considered major. The objective is to achieve a resolution that is an organic unity of legal, social and political results (法律效果、社会效果和政治效果). This latter phrase is an important one in the Chinese judiciary.

Other content in the Opinion addresses how to improve the enforcement of civilian judicial decisions, with a separate section on civilian courts providing information about the law and exercising rights to the military.

The third section of the Opinion is directed at improving how the courts achieve the above goals and improving the quality and positive impact of the courts' work in the form of specific guidance. First, the SPC advised the lower courts to designate a group of judges to handle these cases who are both capable politically and professionally. In the Chinese context, these skills are particularly needed to deal with military-related legal matters. Next, the SPC advised improving the working relationship between the civilian and military courts. One article directed local civilian courts to contact local military courts to establish a mutually beneficial relationship. The SPC directed the civilian courts to provide training and other expertise to their military colleagues. Local courts, particularly in areas with many military bases and disputes involving the military, have concluded memoranda of understanding with local military courts. Other guidance includes encouraging local courts to designate certain personnel to work on military-related cases, lower-level courts to report on military-related cases to higher-level courts, and working with the local Party leadership to smooth relationships between civilian and military

authorities. For local courts, cases involving the military can be troublesome because military institutions may or may not turn over evidence or otherwise cooperate with civilian courts, so establishing a working relationship is helpful.

Stopping Paid Services

The 2017 SPC Notice on Doing Well Work in Providing Judicial Safeguards for the Stopping of Paid Services by the Military and Armed Police (Stopping Paid Services Notice), as mentioned above, is available only in summary on the SPC's website. The notice provides guidance to the lower courts on facilitating the decision to stop paid services by the military and armed police. Much of the guidance is related to the 2014 Opinion but focused on stopping within two years commercial arrangements in which the military and armed police were involved. This decision led to a great deal of litigation, particularly by commercial parties that had leased military real estate. Therefore, the judicial policy section of the Stopping Paid Services Notice required courts to resolve conflicts and disputes promptly and properly at all stages: case filing, trial, and enforcement. 'Promptly and properly' meant giving the cases a priority in case acceptance and hearing, and ease the process of enforcement, to do its part to achieve the goal of stopping paid services by the military and armed police. In the course of these cases, the courts need to achieve the Party and state's multiple goals – extracting the military and armed police from commercial arrangements, maintaining the prestige of the military and armed police while doing so, compensating civilians for their business losses, maintaining the image of the army and ensuring that ordinary people think that the army and armed police serve the people and the courts have provided justice.

In the section with guidance on achieving the above policy goals, the Notice directed lower courts to increase specialized judicial measures and cooperate with other authorities, using the multiple functions of the Chinese judiciary to achieve goals of the national leadership in the local environment. The guidance recommends research on related cases and summarizing prior work to guide their own future work and that of others.

Similar to the 2014 Opinion, the Notice recommends cooperating with the local Party and state leadership and using mediation and other

alternative dispute mechanisms for resolving social conflicts and disputes. Analogous to the 2014 Opinion, the goal is to achieve the organic unity of legal, political, and social effectiveness.

In 2017, the official press published an article praising the work by the Beijing No 1 Intermediate People's Court in protecting military rights and indirectly holding it up as a model.²⁴ It is one of the Beijing courts with the most military-related cases. The cases relate to military institutions, military personnel, military structures, and military-use land so that the court hears major military-related cases in the first instance and many military-related appeals. The court, therefore, was facing a large increase in cases when the military exited business operations. The court followed general guidance to designate a special collegiate panel (three-judge panel) to hear military rights cases, who have proper political qualifications (all are Party members), are highly educated, and have more than five years of trial experience. The court and its counterpart military court, the Military Court, directly under the headquarters of the PLA, concluded a joint cooperation agreement after several rounds of negotiation.

The content of the agreement (according to press reports) followed the principles in the 2014 Opinion. The civilian court agreed to establish special arrangements for the military to file cases with designated personnel, compile military-related statistics, designate dedicated personnel to hear these cases, with simple cases heard quickly, complicated cases considered carefully, and make more use of mediation to ensure that disputes are resolved. As this author has written elsewhere, case closing numbers are one of the important metrics for courts.²⁵ The agreement calls for greater exchanges between the two courts on dealing with military-related petitioning (petitioning related to a military-related matter) and includes provisions related to criminal, civil and administrative cases and the entire judicial process from case acceptance to enforcement.²⁶

These types of arrangements are becoming more and more common,

²⁴ See http://rmfyb.chinacourt.org/paper/html/2017-01/15/content_120859.htm?div=0

²⁵ Susan Finder, *Supreme People's Court Gears Up for the 19th Party Congress*, 25 September 2017, <https://supremepeoplescourtmonitor.com/2017/09/25/supreme-peoples-court-gears-up-for-19th-party-congress/>

²⁶ Susan Finder, *Two Beijing Courts Cooperate on Military-Related Cases*, 4 August 2018, <https://globalmjreform.blogspot.com/2018/08/two-beijing-courts-cooperate-on.html>

with regional arrangements between military areas and relevant civilian courts and other institutions in political-legal institutions, more recently including the recently established veterans' affairs bureaus.²⁷

In July 2019, SPC President, Zhou Qiang, announced that the first phase of this work had been successfully completed.²⁸ A search of the SPC's case database, which shows partial statistics on the number of court decisions related to extracting the military and armed police from the business shows that the peak of about 2,400 cases was in 2018 but continued into 2019 (about 391) and 2020, with some cases (22) decided in the first half of 2021. It is likely that many cases were settled, but of the ones that when to judgment, most of the cases were decided on the intermediate or basic level court level, but the SPC heard at least thirteen related cases.

Strengthening Judicial Assistance to Veterans

As of this writing, the latest SPC policy document to support the military is the January 2021 Opinion on strengthening the provision of judicial assistance to retired military personnel. As described in detailed press reports, the Opinion requires courts to take measures to improve judicial assistance to veterans, focusing on eight types of veterans. The policy document promotes coordination among institutions to better assist veterans, designating financial support from the state as a last resort, with a preference for compensation obtained through civil or administrative proceedings, to better improve the status of veterans and promote social harmony and stability. Local governments have resettlement and other obligations to veterans, depending on their rank in the military. The complicated regulations are explained in the footnoted article.²⁹

Similar to the earlier documents, the Opinion calls for establishing a judicial assistance work mechanism for veterans to enable better coordination, requiring the courts, administrative institutions in charge of lawyers, and other organs to link with local veterans affairs departments and

²⁷ See http://www.moj.gov.cn/Department/content/2020-09/10/612_3255791.html

²⁸ See <https://www.chinacourt.org/article/detail/2019/07/id/4204573.shtml>

²⁹ See generally, Ma Chengkun and John Chen, *System Overload? The 2015 PLA Force Reduction, Military-Locality Relations, and the Potential for Social Instability* (2019) https://ndupress.ndu.edu/Portals/68/Documents/Books/Chairman-Xi/Chairman-Xi_Chapter-17.pdf?ver=2019-02-08-112005-803

other relevant institutions to deliver relevant services.

Only a few press reports can be found of cooperation between local courts and veterans affairs bureaus on enabling veterans to receive judicial assistance (a type of legal aid), but that is likely to increase over time.

Civil-Military Fusion: Intellectual Property Issues

The 2014 Expanding Capacity Opinion contained one line relating to the national leadership's decision to promote civil-military fusion: provide judicial support for the scientific development of military core industries and military industry enterprises in accordance with the law. One small aspect of that relates to intellectual property.

Chinese legislation has created a separate military intellectual property system, with a separate defense intellectual property office. The legislation itself and related issues mean that defense inventions cannot be easily marketized. It also requires a high degree of secrecy. The dispute resolution mechanism to resolve disputes over rights to defense-related intellectual property cannot be easily resolved. Due to the closed-off military intellectual property system, the civilian courts have great challenges in hearing-related cases. The SPC has been tasked with working with the Central Military Commission to issue a judicial interpretation of the amended Defense Patent Regulations.³⁰ A partner at one of China's leading law firms commented on the intellectual property issues relating to national defense:

Intellectual property rights are unclear, and interests are unclear. Especially for R&D units or individuals that have technological achievements, the possession and use rights enjoyed by them are not exclusive. The technological achievements are not liquid, so there is no profitability, so R&D units and individuals are easily discouraged. The individual's enthusiasm for technological innovation and achievement transformation [into something marketable] are not incentivized.³¹

³⁰ *Advancement Plan for the In-Depth Implementation of the National Intellectual Property Strategy and Accelerating the Building of an Intellectual Property Right Power in 2020*, <http://www.lawinfochina.com/display.aspx?id=33330&lib=law>

³¹ See <https://www.chinalawinsight.com/2018/04/articles/corporate-ma/%E6%B5%85%E6%9E%90%E6%88%91%E5%9B%BD%E5%86%9B%E6%B0%91%E8%9E%8D%E5%90%88%E5%8F%91%E5%B1%95%E6%B3%95%E5%BE%8B%E5%88%B6%E5%BA%A6%EF%BC%88%E4%B8%80%EF%BC%89/>

Conclusion

Through this brief analysis of how the SPC protects military rights, some of the special characteristics of the Chinese court system and its interactions with the national defense and military system can be seen. It is a court system with commonalities and differences with other Party and state institutions and also with courts in other jurisdictions. The analysis has shown that the Chinese political leadership views the courts as useful in its social governance. As the article hints, the Chinese public is increasingly conscious of its rights under the law and is willing to go to court to defend them, even against an institution as powerful as the military. Too many soldiers and military personnel appear to be unaware of the need to comply with the law, or the SPC would not encourage 'bring the law into the military bases' activities. This analysis also provides small glimpses into the challenges of the PLA in achieving its long-term goal of becoming a modern professional army.

It is difficult to make an informed, independent assessment of the effectiveness of the policy documents described above, except to say that it seems to be a work in progress and that many civilian judges would rather not be involved in military-related cases because of their political sensitivity, difficult nature, and limited skills transferability in case the judge resigns. Three civilian court judges published a rare assessment on their court's website:

...the actual effectiveness of military-related rights protection regulations is limited. Most of the laws and regulations on the protection of military rights and interests provide broad principles and are not specific enough.... The handling of military-related cases has become increasingly complicated. With the continuous deepening of social and economic development and reforms to strengthen the army, the legal issues involved in the field of national defense and army building have shown an increasing and diversified development trend year by year...The working mechanism of military rights protection is not operating smoothly... ³²

It appears that much work is needed to create a legal framework that will meet the needs of China's political leadership, military officers, and

³² See <http://xzzy.chinacourt.gov.cn/article/detail/2020/08/id/5426566.shtml>

soldiers and civilians, one piece of which is making military service a viable career option for some of China's law graduates. It is particularly necessary as the PLA becomes more involved with the world outside China's border. It also appears that further development is needed to make competent and low-cost legal services available for China's veterans. It is only if trained legal personnel are better integrated into China's military services will many of the measures described above no longer be necessary.



Susan Finder is the Distinguished Scholar in Residence at the Peking University School of Transnational Law (STL), Shenzhen, China. She is a scholar of China's judicial system (in comparative perspective). Her current research concentrates on Supreme People's Court and Chinese judicial reforms, much of which is published on her blog, the Supreme People's Court Monitor (最高人民法院观察). The blog is widely cited in books, academic journals, PhD theses and government reports. This is Susan's second career in academia, and she comes to STL after twenty years in China-related practice at Freshfields Bruckhaus Deringer (and other firms), in legal publishing and (briefly) as a securities regulator. In her first academic career (at what is now the City University of Hong Kong) she published the first comprehensive study of the operations of the Supreme People's Court. The author would like to express her appreciation to Mark Jia for commenting on an earlier draft of her essay.