



The Law of Foreign Missions and Media in U.S.-China Relations

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The United States and People’s Republic of China (PRC or China) compete in a variety of legal regimes, ranging from [multilateral trade bodies](#), to [human rights law](#), to [international maritime law](#) in the South China Sea. In some contexts, such as [supply chain controls](#) and [export restrictions](#), the United States has leveraged legal frameworks in an effort to “[decouple](#)” its relations from problematic aspects of China’s government and economy. In 2020, this strategic separation expanded along a new axis: restrictions on foreign media outlets and foreign missions in each other’s territory.

According to the [Foreign Correspondents’ Club of China](#), China revoked or limited more foreign journalists’ press credentials in 2020 than at any time since the aftermath of the 1989 [Tiananmen Square events](#). Also in 2020, the United States capped the number of staff at some China-based media outlets operating in the United States by designating the outlets as “foreign missions” that are “substantially owned or effectively controlled” by the PRC. Later that year, the United States and China demanded reciprocal consulate closures and placed tit-for-tat restrictions on diplomatic access in each other’s territory. [Media outlets report](#) that, during the March 2021 [meeting](#) between the United States and China in Alaska, PRC officials discussed the possibility of reversing these measures as part of a broader proposed plan to improve the [U.S.-China relationship](#).

This Sidebar examines the series of escalating actions concerning foreign media and missions, outlines the legal framework for the measures, and analyzes their relevance for Congress.

Restrictions on Journalists

Although restrictions on foreign journalists in China reached new heights in 2020, U.S. media outlets have expressed concern over their ability to report in China for many years. PRC law [requires](#) resident foreign journalists to have a press card and visiting foreign journalists to possess a short-term journalist visa in order to engage in news coverage and reporting. During the Obama Administration, several U.S. media outlets [asserted](#) that China revoked, declined to renew, or shortened the validity of their press credentials in response to unfavorable coverage about the PRC or its high-level officials. The Foreign Correspondents’ Club of China [reported](#) incidents in which PRC officials intimidated and harassed

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journalists, limited access to [regions](#) with large ethnic minority populations, and refused to grant new accreditations to journalists. The PRC disputed these characterizations and cited other reasons for its treatment of the press and credentialing decisions, such as alleged [visa violations](#). During the Trump Administration, American media companies [continued to report](#) that the PRC mistreated their journalists and limited press credentials, often in retaliation for negative coverage.

In recent years, the United States has instituted its own limitations on China-based media companies in the United States. In 2018, the U.S. Department of Justice (DOJ) [directed](#) the American subsidiary of China Global Television Network (CGTN) to register under the Foreign Agents Registration Act ([FARA](#)). Discussed in this [CRS Report](#), FARA [requires](#) companies operating under the direction or control of a foreign principal to register with DOJ if they engage in certain political activities or public advocacy. FARA's definition of [political activities](#) includes certain efforts to influence the American public's view of foreign policy and foreign governments. While FARA excludes "[bona fide news or journalistic activities](#)," this exception only applies to companies that are owned and controlled predominately by American citizens. CGTN is not American-owned. Rather, it is an [international media organization](#) operated by China's [national television station](#), China Central Television (CCTV). CGTN argued that, because it exercised editorial independence from the PRC, it did not engage in covered political activities. However, DOJ rejected this view and concluded that CGTN intended to influence Americans' perception of China by serving as a "[mouthpiece for Chinese government and Communist Party policies](#)." CGTN's American division ultimately [registered](#) under FARA in 2019 in response to DOJ's determination.

In February 2020, the U.S. Department of State (State Department) used its authority under the [Foreign Missions Act](#) to [designate](#) as "foreign missions" five China-based media entities operating in the United States: Xinhua, CGTN, China Radio International, China Daily Distribution Corporation, and Hai Tian Development USA. Federal law defines [foreign mission](#) as any entity involved in diplomatic or consular activities or that is "substantially owned or effectively controlled by" a foreign government. According to the [State Department](#), the five designated outlets met the definition because they are "organs of the Chinese one-party state propaganda apparatus" and are "subject to the control of the Chinese government." Entities designated under the Foreign Missions Act must take certain steps to increase the transparency of the operations, such as notifying the State Department about [personnel](#) and [property holdings](#) and following other requirements that apply to foreign embassies and consulates. The State Department also [limited](#) the number of Chinese nationals working for the five outlets, which reduced their collective number of Chinese national employees in the United States from 160 to 100.

The day after the State Department's foreign missions designation, PRC officials [revoked](#) three *Wall Street Journal* reporters' press credentials and expelled the journalists. China's Foreign Ministry [stated](#) that the action was in response to an editorial titled "[China is the Real Sick Man of Asia](#)," which criticized China's financial policy and response to the Coronavirus Disease 2019 outbreak. In March 2020, China [required](#) all U.S. nationals working for *The New York Times*, *The Washington Post*, and *The Wall Street Journal* whose press credentials were set to expire by the end of the year to cease working as journalists in China within ten days. PRC officials [described](#) the action as part of its "countermeasures" to the State Department's foreign missions designation. In international legal parlance, [countermeasures](#) are acts that normally would breach international law but are permissible when "[taken in response to a previous international wrongful act](#)" by another country, among other conditions. The affected U.S. companies stated that the measures would require most Americans on their staff to depart China. The PRC also required the three companies, along with *Time* and Voice of America, to provide written declarations about their staff, finances, operation, and real estate in China.

In May 2020, the U.S. Department of Homeland Security (DHS) instituted the United States' next restrictive measures when it issued a [Final Rule](#) limiting the period of admission for journalists from mainland China (excluding journalist from Hong Kong and Macau) to no more than 90 days. [Section 101\(a\)\(15\)\(I\)](#) of the Immigration and Nationality Act allows a representative of "foreign information

media” to obtain a nonimmigrant visa provided, among other conditions, that the applicant’s home country allows reciprocal access to American journalists. Historically, the United States allowed foreign journalists to remain on these visas so long as they remained employed and continued to pursue the same professional activity. According to DHS, the new 90-day limitation was necessary to achieve greater reciprocity between the United States and China in light of China’s treatment of American journalists and “suppression” of independent reporting. The next month, the State Department designated the U.S. operations of four more China-based media outlets—CCTV, *The People’s Daily*, *Global Times*, and China News Service—as foreign missions. According to the State Department, the designations were based on the entities’ roles as “propaganda outlets,” and not driven by the content they produced.

After an interlude in mid-2020 when relations pivoted to consulate closures and constraints on diplomats, discussed below, the focus on foreign journalists resumed in September 2020. That month, U.S. media sites reported that China delayed renewing expiring press credentials for journalists at CNN, *The Wall Street Journal*, Bloomberg News, and Getty Images. The next month, the United States designated six more Chinese outlets as foreign missions: *Yicai Global* (also known as China Business Network), *Jiefang Daily*, *Xinmin Evening News*, *Social Sciences in China Press*, *Beijing Review*, and *Economic Daily*. The State Department described the entities as “state-backed propaganda outlets” disguised as independent news agencies. In May 2021, the North American subsidiary of Xinhua News Agency (Xinhua)—the press outlet of the Communist Party of China—registered as a foreign agent under FARA. DOJ had directed Xinhua’s North American arm to register in 2020, reasoning that the outlet seeks to influence the American public’s perception of China and publishes stories that “promote only one viewpoint—that of the [PRC].”

Foreign Missions and the First Amendment

Some observers in China’s media and government argue that the United States’ foreign missions designations undermine First Amendment freedoms of the China-based media companies. State Department officials counter that the designations increase transparency of the outlet’s operations, and do not restrict the content of their reporting or limit what they can publish in the United States. In addition, at least one U.S. court in 1988 rejected a First Amendment challenge to a foreign mission designation. In *Palestine Information Office v. Shultz*, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the State Department did not violate the First Amendment’s guarantees of free speech and free association when it designated the Palestine Information Office in Washington D.C. as a foreign mission and demanded the office’s closure. The *Shultz* court reasoned that the executive branch was operating at the “apex” of its powers when acting in the field of foreign affairs and under express congressional authorization in the Foreign Missions Act. The court concluded that the designation followed First Amendment standards because: (1) the State Department had constitutional and statutory authority; (2) regulating foreign missions advanced an “important government interest;” (3) the designation was “unrelated to the suppression of free expression;” (4) and the measures were “no greater than essential” to further the government’s interest.

Reciprocal Consulate Closures and Restrictions on Diplomats

In the summer of 2020, U.S.-China relations advanced to a different legal front when the two countries made reciprocal demands for consulate closures and limited diplomats’ access in each other’s territory. The international legal regime governing consular relations largely is set forth in international agreements, to which the United States and China are parties, including the Vienna Convention on Consular Relations (VCCR) and a 1980 bilateral Consular Convention. These treaties require consular officials to observe the domestic law of the country in which they are located and to refrain from interfering with the country’s “internal affairs.” At the same time, a breach of these obligations or any other treaty provision is not a prerequisite to a country’s demand for a consulate closure. Rather, the

treaties contemplate that consular relations, offices, and personnel must be established based on mutual consent, and that a country can withdraw that consent. Accordingly, consulate closures and other narrowing of diplomatic relations often fall into the category of *retorsions*—acts that are “unfriendly” but do not violate international law—rather than countermeasures or breaches of international law.

In July 2020, the United States withdrew its consent for China to operate its consulate in Houston, Texas. Former Secretary of State Michael R. Pompeo [described](#) the Houston consulate as a “hub of spying and intellectual property theft,” and executive branch officials [stated](#) that China used the consular premises and officials to support grant fraud, trade secret theft, and other activities that violate U.S. law and threaten national security. China [denies](#) those allegations. Later that week, China [instructed](#) the United States to close its consulate in Chengdu (located in southwestern China) in what its Foreign Ministry officials [described](#) as a response to the Houston closure.

In September 2020, former Secretary Pompeo [announced that](#) senior PRC diplomats in the United States would be required to obtain the State Department’s approval before visiting university campuses, meeting with state and local government officials, or hosting cultural events with more than 50 people outside China’s embassy and consular premises in the United States. American diplomats have long [reported](#) that the PRC requires advance approval for similar activities in mainland China and that China’s Foreign Ministry often denies permission. The Foreign Missions Act authorizes the Secretary of State to afford foreign diplomats the same “benefits” that their countries provide to American diplomats abroad. The State Department treats [domestic travel as a benefit](#), and it places travel restrictions on diplomats from [select foreign countries](#) that are designed to mirror restrictions U.S. diplomats face in those nations. Secretary Pompeo [described](#) the September 2020 policy as intending to attain such reciprocity.

The United States argues that the PRC limited American diplomats’ movement and access in China well before 2020, and that it implemented the recent measures to “[level the playing field](#)” rather than obtain a diplomatic advantage. In a 1980 legal opinion, DOJ’s Office of Legal Counsel (OLC) [interprets](#) international law to permit the United States to respond to a country that imposes restrictive travel zones on U.S. diplomats by imposing reciprocal restrictions on that country’s diplomats inside the United States as long as the restrictions do not contravene the Vienna Convention on Diplomatic Relations (VCDR). OLC’s interpretation focuses largely on [Article 47](#) of the VCDR, which allows a country to “discriminate” against another state by applying the VCDR’s provisions in a “restrictive” manner in response to another party’s prior restrictive application. This provision incorporates a “[rule of reciprocity](#)” that applies in all diplomatic relations, according to the [International Law Commission](#), a U.N.-based body that prepared the early drafts of the VCDR.

The day after the Secretary’s September 2020 announcement, China’s Ministry of Foreign Affairs [responded](#) that the travel restrictions violated the VCCR, the 1980 bilateral Consular Convention, and the VCDR. PRC officials did not specify which treaty provisions they believe the United States breached, but restrictions on diplomats’ access can implicate [provisions](#) that afford diplomats “[freedom of movement and travel](#)” outside of restricted national security zones. China later responded to the State Department’s measures by formally announcing [reciprocal restrictions](#) on U.S. diplomats in mainland China and expanding those restrictions to American diplomats in Hong Kong.

Congressional Interest and Considerations

Some Members of recent Congresses have introduced legislation that would influence foreign missions and media access in U.S.-China relations. In the 117th Congress, the Strategic Competition Act of 2021 (S. 1169) would require the U.S. Agency for Global Media (discussed in this [CRS Insight](#)) to take steps to counter the [international influence](#) of China’s state-controlled media outlets. In the 116th Congress, the World Press Protection and Reciprocity Act (S. 3818, H.R. 7001) would have required the President to create a plan to enhance reciprocity and global access for U.S. news outlets. The Chinese-Backed Media

Accountability Act in the 116th Congress (S. 4797) would have required the State Department's Bureau of Consular Affairs to ensure that the United States does not issue more of certain categories of visas to journalists from "Chinese state-run media organizations" than China issues to journalists from the United States. The Chinese Media Reciprocity Act of 2011 in the 112th Congress (H.R. 2899) would have limited [foreign media visas](#) for "state-controlled media worker[s]" from China to the same number of visas the PRC issues to U.S. employees of the [Broadcasting Board of Governors](#), such as Voice of America and Radio Free Asia.

Should Congress seek to control directly consulate closures and diplomatic movement, it may face constitutional constraints. The Constitution vests the President with what the Supreme Court describes as the "[vast share of responsibility](#)" to conduct foreign relations. In [OLC's view](#), the President has "[exclusive authority to conduct diplomacy](#)" for the United States, and any legislation that interferes with the President's power to determine the "[form and manner](#)" in which the United States maintains diplomatic relations is unconstitutional. At the same time, the Supreme Court has never held that the President has complete control over foreign affairs and diplomacy. Rather, in *Zivotofsky v. Kerry* (discussed in this [Legal Sidebar](#)), the Supreme Court quoted Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, and explained "[i]n foreign affairs, as in the domestic realm, the Constitution 'enjoins upon its branches separateness but interdependence, autonomy but reciprocity.'"

Despite the executive branch's claims to exclusive authority, Congress has enacted legislation dictating the status of foreign consulates on some occasions. Most recently, the Tibetan Policy and Support Act of 2020, passed as part of the Consolidated Appropriations Act, 2021 ([FY21 Omnibus](#)), provides that the Secretary of State "may not authorize the establishment of any additional consulate of the [PRC] until such time as a United States consulate in Lhasa, Tibet is established" or the Secretary of State issues a national security waiver. President Trump released a [statement](#) critiquing aspects of the FY21 Omnibus, but he did not mention the Tibet provisions or raise constitutional objections to the omnibus bill at large. By contrast, President Reagan issued a [signing statement](#) raising separation-of-powers objections to consular control provisions in a [foreign relations authorization act](#) passed in 1987. One provision [barred](#) use of appropriated funds to close any U.S. consular or diplomatic post abroad, unless an exception applied. Another [section](#) prohibited the Union of Soviet Socialist Republics (USSR) from occupying a new consulate until the United States was able to occupy permanent consular facilities in Kiev. President Reagan's [signing statement](#) stated he would seek to repeal these provisions, which Congress later [did](#) in [legislation](#). Similarly, President Carter issued a [signing statement](#) objecting to a [1979 law](#) that identified ten U.S. consulates that "shall not be closed" or "shall be reopened as soon as possible[.]" President Carter argued that "Congress cannot mandate the establishment of consular relations at a time and place unacceptable to the President."

Ultimately, the dividing line between congressional and executive control over foreign consulates and diplomatic relations is not defined perfectly, but Congress maintains power to influence these issues through its constitutional authorities, including "[power of the purse](#)," advice and consent to [appointment of ambassadors](#), and legislative authority over [foreign commerce](#).

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