БЕЛОРУССКИЙ
ГОСУДАРСТВЕННЫЙ
УНИВЕРСИТЕТ

ЖУРНАЛ
БЕЛОРУССКОГО ГОСУДАРСТВЕННОГО УНИВЕРСИТЕТА

МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ

JOURNAL
OF THE BELARUSIAN STATE UNIVERSITY

INTERNATIONAL RELATIONS

Издается с 2017 г.
Выходит один раз в полугодие

2

2025

МИНСК
БГУ

UDC 327(510+6)

CHINA'S POLICY TOWARDS THE AFRICAN UNION: FORGING A STRATEGIC PARTNERSHIP

O. P. RUBO [a]

[a] *Belarusian State University, 4 Niezaliezhnasci Avenue, Minsk 220030, Belarus*

Abstract. The People's Republic of China has been developing a strategic partnership with the African Union in order to strengthen its continental influence through expanded economic cooperation, security engagement, and diplomatic support. This article analyses Chinese white papers and other policy documents on its approach to Africa, examines how it formulates and implements its foreign policy strategy towards a continental regional organisation, and identifies the main areas of cooperation. Crucially, while deepening bilateral relations with African states, China increasingly promotes multilateral frameworks, positioning the African Union as central force to consolidating regionalism and advancing Chinese interests. Engagement with the African Union secures support for Chinese initiatives at regional and global levels. Aligning the Belt and road initiative with the African Union's Agenda 2063 ensures coordinated, complementary efforts towards socio-economic advancement and multi-level security provision.

Keywords: People's Republic of China; African Union; strategic partnership; African Union commission; Belt and road initiative; Agenda 2063; sustainable development; peacekeeping; security.

Образец цитирования:
Рубо ОП. Политика Китая в отношении Африканского союза: формирование стратегического партнерства. *Журнал Белорусского государственного университета. Международные отношения*. 2025;2:3–8 (на англ.).
EDN: SRKVBD

For citation:
Rubo OP. China's policy towards the African Union: forging a strategic partnership. *Journal of the Belarusian State University. International Relations*. 2025;2:3–8.
EDN: SRKVBD

Автор:
Олеся Петровна Рубо – кандидат исторических наук, доцент; заместитель декана факультета международных отношений.

Author:
Olesya P. Rubo, PhD (history), docent; deputy dean, faculty of international relations.
rubo@bsu.by

Журнал Белорусского государственного университета. Международные отношения. 2025;2:3–8
Journal of the Belarusian State University. International Relations. 2025;2:3–8

ПОЛИТИКА КИТАЯ В ОТНОШЕНИИ АФРИКАНСКОГО СОЮЗА: ФОРМИРОВАНИЕ СТРАТЕГИЧЕСКОГО ПАРТНЕРСТВА

О. П. РУБО[1)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*

Аннотация. Китай активно развивает стратегическое партнерство с Африканским союзом, стремясь укрепить свое влияние на континенте путем расширения экономического сотрудничества, укрепления мер безопасности и предоставления дипломатической поддержки. Анализируются белые книги и другие политические документы Китая, посвященные политике страны на Африканском континенте, отражаются особенности формирования и реализации внешнеполитической стратегии в отношении континентальной региональной организации, выявляются основные направления взаимодействия. Делается вывод о том, что Китай наравне с активным развитием двусторонних отношений с африканскими странами последовательно продвигает и поддерживает многосторонние форматы взаимодействия, выделяя Африканский союз как ключевую силу в укреплении регионализма, продвижении своих политических и экономических интересов. Взаимодействие с Африканским союзом позволяет Китаю обеспечить поддержку своих инициатив на региональном и глобальном уровнях. Сопряжение китайской инициативы «Один пояс, один путь» с документом Африканского союза «Повестка дня – 2063» обеспечивает взаимосвязанность и взаимодополняемость усилий сторон в целях социально-экономического развития и обеспечения безопасности на различных уровнях.

Ключевые слова: Китай; Африканский союз; стратегическое партнерство; Комиссия Африканского союза; инициатива «Один пояс, один путь»; Повестка дня – 2063; устойчивое развитие; миротворчество; безопасность.

China is expanding its presence in Africa, viewing the continent as a significant economic and political partner. Supporting the African Union (AU) constitutes a core element of Beijing's regional strategy. Beyond traditional bilateral relations, China has progressively emphasised regional cooperation and development in Africa since the early 2000s. The principal drivers of this shift are China's growing interest in ensuring stability to protect investments and stimulate economic growth in Africa. Including regional organisations such as the AU in the Sino-African dialogue offers China additional platforms to enhance cooperation and extend influence. Simultaneously, this multilateral approach strengthens Africa's position compared to purely bilateral formats.

This article characterises China's policy towards the African Union, focusing on establishing and developing their strategic partnership.

Researches D. H. Shinn and J. Eisenman [1] examine China's strategy towards Africa, including how it has approached building a strategic partnership with the African Union. Scholar Yin Qun argues that the China recognises the AU's leading role in promoting regional integration and maintaining peace and security in Africa. Yin Qun further contends that Chinese regionalism policy aims primarily to create a China-led regional order and secure partner support for its diplomatic initiatives and large-scale strategic programmes beyond economic interests alone [2].

Evolving China – AU relations as an instrument for advancing Beijing's geostrategic and political interests across Africa are viewed in D. Kapyata's dissertation [3]. This mutually beneficial cooperation accommodates both parties' priorities and helps them achieve their objectives. Wang Jiangwei and Zou Jing maintain that China's political strategy, grounded in multilateralism, is evident in its active engagement with regional organisations and support for African regionalism [4]. G. Lammich points out that China aims to strengthen ties with the AU because it sees the institution as a key security actor on the continent; China sees the AU as a strategic partner for promoting alternative norms in peacekeeping, implicitly challenging the prevailing liberal paradigm [5]. Russian researcher A. A. Zabella explores how multilateral cooperation between China and Africa develops within the Forum on China – Africa cooperation (FOCAC), in which the AU participates [6]. She considers these forums crucial in producing strategic documents that shape the future course of China – Africa relations. D. C. Murphy and S. van Hoeymissen address expanding Sino-AU security cooperation [7; 8]. The article also draws on the works of Ch. Olden, A. Alao, Zhang Chun, L. Barber [9], B. Wekesa [10], K. Anning [11], P. Mthembu [12], P. Mthembu, F. Mabera [13], E. I. Zelenev, M. A. Soloshcheva [14], Y. I. Malevich and Zhang Yulin [15], among others.

The study employs systemic and structural-functional approaches, alongside comparative methods and content analysis, to examine China's policy formation and implementation towards the AU.

China's foreign-policy strategy towards African states rests on three pillars [2, p. 191–192]. Firstly, it integrates diplomatic and financial instruments to enhance the country appeal to partners. Secondly, development investments facilitate the transfer of skills, knowledge, and technology. Thirdly, China is increasingly engaging with complex political challenges within Africa.

The Forum on China – Africa cooperation serves as the primary platform for developing China's relations with African states and the AU. China initiated FOCAC in 1999, inviting all 53 African nations and the Organisation of African Unity (OAU) commission. The inclusion of the OAU commission as an observer emphasised its institutional role in regional affairs. Summits of heads of state and ministerial conferences have since convened every three years.

The inaugural FOCAC meeting convened in Beijing during October 2000, aiming to establish a new strategic partnership. Its outcome, the Beijing declaration of the forum, outlined a regional strategy for China-African relations. China subsequently launched its active political-economic engagement with Africa under the formally announced strategy «Going out» in 2002 [14, p. 108].

It took China six years after establishing FOCAC to formulate a comprehensive foreign-policy strategy for Africa, though initial engagement principles were stated as early as the 1950s. This new direction in Chinese foreign policy took shape at the turn of the century, as Beijing steadily increased its aid and support for African development.

The AU succeeded the OAU in 2002. This continental body strengthens interstate cooperation in political, economic, social, and cultural affairs. The AU's involvement has been instrumental in coordinating and advancing projects agreed under FOCAC.

China positions itself as a proponent of multilateral cooperation, regarding FOCAC as an effective platform for dialogue and consultation between the PRC and Africa [6, p. 36]. Chinese foreign policy prioritises strengthening ties with the AU. China has expressed interest in the AU becoming a substantial stabilising force for regional security.

After the third FOCAC summit, China published its first white paper «China's Africa Policy» in 2006. This document proposed a «new type of strategic partnership» between China and African states, based on political equality, mutual trust, mutually beneficial economic cooperation, and cultural exchange[1]. The white paper stresses that China highly values the AU's role in preserving peace, ensuring regional stability, and fostering African solidarity and development. The white paper signals strong Chinese backing for the AU's regional and international influence, coupled with an offer of comprehensive support[2].

Official recognition of African regionalism and China's pledge to support it marked the beginning of China's efforts to promote regional integration and develop new cooperative frameworks with the AU and subregional bodies. Deepening China – AU collaboration reflected China's pursuit of a more sustainable, strategically coherent partnership through multilateral institutions. Beijing had already implemented this approach successfully with the EU and ASEAN, underscoring the value of multilateral cooperation.

China has expanded its engagement with Africa from bilateral to regional formats. This multi-level approach maximises efficiency and pragmatism in relations with African states. Despite ongoing doubts about the African Union's ability to advance continental integration, Beijing intensified dialogue and significantly increased financial support, believing the AU had the potential to become a key continental actor.

China's multilateral approach recognises that a regional strategy in Africa would advance economic development and extend its long-term continental objectives. In China's view, consolidating efforts against cross-border threats would advance socio-economic progress and safeguard Chinese investments in Africa. Consequently, Beijing regards the AU and sub-regional bodies as instruments for promoting its strategic interests [5, p. 50].

In 2005, China became the first country to appoint a permanent representative to the AU, strengthening cooperation between the two[3]. Subsequent coordination of China's initiatives with the AU through FOCAC contributed significantly to peace and stability in Africa. China's recognition of the AU as an important security actor and its active role in peacekeeping reflect a pragmatic stance on sovereignty and non-interference, allowing for greater Chinese involvement in African security matters. An AU expert meeting in September 2006 identified the lack of coherence among African states in their dealings with China as limiting the partnership's potential. They noted that the AU must form the basis for a strategic partnership, articulating the continent's interests more clearly [11, p. 151]. The November 2006 third FOCAC summit in Beijing enabled a formal PRC – AU strategic dialogue mechanism, established in 2007. Annual meetings, supplemented by consultations on pressing international and security issues, followed. The FOCAC action plan (2013–2015) also mandated subcommittees on various China – Africa relations aspects, operational in later years [5, p. 51].

Since 2009, China has been the principal trading partner for many African countries[4], advancing trade,

[1]Full Text: China's second Africa policy paper // China Daily : website. URL: https://www.chinadaily.com.cn/world/XiattendsParisclimateconference/2015-12/05/content_22632874.htm (date of access: 17.10.2025).

[2]China's African policy // China.org.cn : website. URL: http://www.china.org.cn/english/features/focac/183721.htm (date of access: 17.10.2025).

[3]China opens permanent mission to AU // Embassy of the People's Republic of China in the Republic of South Africa : website. URL: http://za.china-embassy.gov.cn/eng/jbwzlm/zfgxss/zyjw/201505/t20150508_7684463.htm (date of access: 17.10.2025).

[4]China and Africa in the new era: a partnership of equals // Ministry of Foreign Affairs of the People's Republic of China : website. URL: https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367447.html (date of access: 12.10.2025).

economic, and infrastructure projects that have contributed significantly to economic growth. Beijing also ranks among the key financiers of sustainable development on the continent. In its bilateral relations, China benefits from a notable power advantage, enabling it to promote its interests effectively. Nonetheless, regional and sub-regional organisations allow China to engage simultaneously with multiple states and, in some cases, to coordinate programmes and positions more quickly and efficiently [1, p. 52].

China affirms its respect for the AU's core principles, particularly conflict resolution. At the same time, the PRC insists on non-interference in African states' internal affairs and presents itself as a neutral observer. In its African policy, China refrains from judging internal political matters and highlights the AU's superior competence in addressing regional issues. Beijing strongly advocates for regional organisations to lead efforts concerning internal matters, including early-warning systems and responses to conflicts or humanitarian crises. China remains deeply concerned that the UN might become an instrument for powerful states to intervene in the affairs of weaker ones [8, p. 95–96].

The elevation of the AU from observer to full FOCAC member in 2011 positioned it as an important intermediary in China – Africa dialogue. J. K. Shinkaiye, Chief of the AU delegation, conveyed the AU commission Chairperson's appreciation for China's recognition of this status. He noted that the AU heads of state and government mandated the commission to oversee cooperation between African states and China[5].

While including regional organisations in the China – Africa dialogue strengthens Africa's bargaining position relative to purely bilateral relations, China expects several advantages from engaging with continental bodies. In particular, engaging the AU as a representative of African interests significantly reduces negotiation costs compared with maintaining bilateral dialogues with the 54 African states. This approach legitimises China's continental-level involvement [5, p. 51], acknowledges the AU's leading role as mediator and coordinator, and enables more effective implementation of joint projects and initiatives.

To strengthen political ties with the AU, China allocated a 200 mln US dollars grant for a modern headquarters in Addis Ababa, inaugurated in January 2012. Designed in China and built by Chinese specialists with Chinese materials on land provided by Ethiopia, the building remains under Chinese technical maintenance despite its official handover to the AU [2, p. 78; 3, p. 150].

Former Chinese President Jiang Zemin's «going out» strategy accelerated China – Africa relations. President Xi Jinping amplified this trend through the Belt and road initiative. Though initially incorporating only select North and East African coastal states in the 21st-century Maritime Silk Road, China has since signed memoranda of understanding with fifty-two continental countries[6].

In 2014, China dispatched a mission to the AU, opening a new phase in relations. In March 2015 the mission became permanent, based at the AU headquarters in Addis Ababa. This move served to deepen diplomatic links with African states and reflected Beijing's commitment to multilateral diplomacy [13, p. 9]. The commission viewed this as proof of China's dedication to Africa's prosperity. The mission's political, economic, cultural, and security sections facilitate comprehensive cooperation. Reflecting on high-level Chinese visits to the AU at the mission's opening, AU commission Chairperson Nkosazana Dlamini-Zuma stated: «China has always regarded Africa as a strategic partner», adding that its extensive experience with AU member states «will help advance our relationship». The Chair affirmed AU readiness to collaborate with China and elevate bilateral relations. Vice-Foreign Minister Zhang Ming noted that the mission would enhance China's coordination of major projects across the continent and intensify its diplomatic efforts[7].

Ahead of the 2015 FOCAC summit in Johannesburg, China released its second Africa policy paper. Substantially longer and more specific than its 2006 predecessor, the paper details concrete projects and commitments whilst incorporating the FOCAC declaration and action plan. It sets out broad parameters for FOCAC's future, ensuring alignment with China's stated Africa policy [12].

China's updated African policy and expanded cooperation with the AU reflect Beijing's goal to achieve strategic aims and optimise interaction within FOCAC and similar platforms. These moves also signal Africa's growing importance within China's foreign policy priorities [13, p. 9]. Official discourse holds core Chinese interests face mounting threats across various world regions, whilst economic development provides the necessary foundation for building a peaceful society [16, p. 20]. Consequently, China links security intrinsically with development, prompting a push to bolster its security posture on the continent. This perspective motivates its strengthened security presence on the continent, demonstrating an increased focus on balancing these interconnected priorities [17, p. 15]. Under President Xi Jinping, development initiatives and peacekeeping contributions form interlinked elements of China's Africa strategy in Beijing's view [16, p. 22].

The second FOCAC summit and sixth ministerial conference convened on 4–5 December 2015 in Johan-

[5]Report of the Chairperson on the activities of the commission covering the period July to December 2011 // Portal of African Union. URL: https://portal.africa-union.org/DVD/Documents/DOC-AU-WD/EX%20CL%20688%20(XX)%2.pdf (date of access: 18.10.2025).

[6]*Hariz H.* The GGI: an era for strengthening Africa's global presence // Beijing Review : website. URL: https://www.bjreview.com/Opinion/Governance/202510/t20251029_800420441.html (date of access: 17.10.2025).

[7]China opens permanent mission to AU // Embassy of the People's Republic of China in the Republic of South Africa : website. URL: http://za.china-embassy.gov.cn/eng/jbwzlm/zfgxss/zyjw/201505/t20150508_7684463.htm (date of access: 27.05.2025).

nesburg, South Africa. During the summit, China and the AU signed a Memorandum of understanding on linking the 54 African states through transport and other communication networks, accelerating cooperation in this sector [2, p. 89]. Co-chairing the summit with South Africa's President Jacob Zuma, President Xi Jinping proposed upgrading the China – Africa «new type of strategic partnership» to a «comprehensive strategic and cooperative partnership». The AU welcomed closer partnership with China, anticipating enhanced poverty reduction and food security across the continent. The Belt and road initiative, now a cornerstone of Chinese foreign policy, turned regional multilateralism into a new paradigm. Institutionalising such cooperation offers Beijing an innovative means of advancing its regional and global interests [18, p. 4, 16].

According to E. I. Safronova, the deployment of Chinese peacekeeping troops in some African states serves a «dual-purpose» function. In 2015, President Xi Jinping pledged 100 mln US dollars in military aid to the AU over five years to support the creation and training of standing police and rapid-response military units [19, p. 308].

In 2018, the FOCAC linked the Belt and road initiative with the AU's Agenda 2063, national development plans of African states, and the UN's 2030 Agenda for sustainable development. In December 2020, China and the AU signed an agreement to promote the Belt and road initiative and implement Agenda 2063 effectively. Representing the first such document signed with a regional body under the Belt and road initiative framework, this agreement reflects the strategic alignment of both parties [2, p. 94]. Both initiatives target sustainable development, infrastructure improvement, and higher living standards. This accord constitutes the first China-regional organisation partnership under the Belt and road initiative framework. Nonetheless, the AU's Agenda 2063 remains largely aspirational, and its practical implementation is subject to legitimate doubts. China, however, believes that alignment with the Belt and road initiative can accelerate the agenda's execution [15, p. 41].

China and the AU actively support each other on the international stage. Their positions converge on issues ranging from national sovereignty and multilateralism to multipolarity and human rights. This convergence challenges Western influence whilst consolidating the Global South. The AU has yet to formulate a unified strategy for its relations with China. The accelerating pace of inter-state relations in Africa and the adoption of the AU's Agenda 2063 provide a foundation for formulating this unified policy approach.

In 2022, China actively promoted the AU's accession to the G20 during the Bali summit. During a meeting between President Xi Jinping and the President of Senegal and AU Chair Macky Sall, the African leader thanked his Chinese counterpart for being the first to publicly endorse AU membership of the G20. A year later, the AU became the second regional organisation – after the EU – to join the G20 as a permanent member[8].

In November 2021, the FOCAC in Dakar adopted the Dakar action plan (2022–2024) and a Declaration on China – Africa cooperation until 2035. Both parties committed to deepening cooperation, accelerating regional integration, and aligning the Belt and road initiative with Agenda 2063 and the UN 2030 Agenda for sustainable development[9].

Subsequently, the ninth FOCAC ministerial meeting convened in Beijing on 4–5 September 2024. President Xi Jinping addressed the opening ceremony, where China and the AU reaffirmed their shared commitment to deepening their strategic partnership. Xi Jinping proposed elevating China – Africa relations to an «all-weather community of shared destiny for a new era» and stressed that joint efforts would drive modernisation across the Global South[10].

Foreign Minister Wang Yi noted that the world faces its most profound changes in a century, entering a new phase of turbulence and transformation. The collective development of Global South nations, represented by China and Africa, significantly shapes global progress. Wang Yi asserted that FOCAC's collaborative endeavours would strengthen China-African solidarity, enhance cooperation, and propel modernisation throughout the Global South. China places special emphasis on promoting the five principles of peaceful coexistence, seeking equality and fairness in international relations. The Chinese side further offered early support for the African Union joining the G20[11]. Following the Forum's ministerial meeting the Beijing declaration on creating an all-weather China – Africa community of shared destiny for a new era and the FOCAC Beijing action plan (2025–2027) were issued[12].

[8]«We are all in the same boat» – Xi Jinping calls for cooperation within the G20 amid global uncertainty // People's Daily Online. URL: https://russian.people.com.cn/n3/2024/1116/c95181-20243076.html (date of access: 27.05.2025) (in Russ.).

[9]Dakar declaration of the eighth Ministerial conference of the Forum on China – Africa cooperation // Forum on China – Africa cooperation : website. URL: http://www.focac.org/eng/zywx_1/zywj/202201/t20220124_10632443.htm (date of access: 22.07.2025).

[10]Xi Jinping attended the opening ceremony of the Beijing summit of the Forum on China – Africa cooperation and delivered a keynote address // Embassy of the People's Republic of China in the Russian Federation : website. URL: http://ru.china-embassy.gov.cn/rus/zgxw/202409/t20240908_11487195.htm (date of access: 27.05.2025) (in Russ.).

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Crucially, empowering regional institutions within China – Africa relations reflects a deliberate strategy by both sides. China views it as a way to conduct foreign policy with less pressure and reduced risk of external intervention. The African side sees it as a means to counter Western economic dominance, limit external interference in internal affairs, and advance integration across the continent.

Consequently, China followed a bilateral approach in its relations with African states for an extended period. In recent years, however, this approach has been systematically complemented by a multilateral strategy in which the AU assumes an increasingly important role as a strategic partner of China. The AU, with its extensive peacekeeping experience and influence in resolving regional conflicts, is regarded by China as a key instrument for reinforcing its position on the continent. China's strategy toward this intergovernmental body rests on a strategic partnership that aligns the Belt and road initiative with the AU's Agenda 2063 to stimulate infrastructure development, trade and sustainable growth, and to build an all-weather China – Africa community with a shared future, coordinated with the development agenda of Global South nations. This expands China – Africa cooperation, creates more favourable conditions for Chinese investment, and lowers the transaction costs inherent in purely bilateral engagement.

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Received by editorial board 06.11.2025.

UDC 327(520+510)«1931/1937»

JAPANESE AUTHORITIES' POLICY TOWARD THE JEWISH DIASPORA IN HARBIN (1931–1937)

MENG TIANXIANG[a]

[a]*Belarusian State University, 4 Niezaliezhnasci Avenue, Minsk 220030, Belarus*

Abstract. After the 1917 October Revolution and the Russian Civil War, Russian Jews settled in Harbin, forming the Far East's largest Jewish community by 1920. This article examines the difficult years of the Jewish diaspora in Harbin from 1931 to 1937, through some dimensions: identity of its status in Manchukuo, persecution by Russian fascists, and Japanese suppression of dissent. Drawing on archival sources and literature, it is shown that Japanese policy entailed systematic oppression, economic exploitation, and harsh repression, largely executed in collaboration with the antisemitic All-Russian fascist party.

Keywords: Japan; Manchukuo; Jewish diaspora; Harbin; All-Russian fascist party.

ПОЛИТИКА ЯПОНСКИХ ВЛАСТЕЙ В ОТНОШЕНИИ ЕВРЕЙСКОЙ ДИАСПОРЫ В ХАРБИНЕ (1931–1937)

МЭН ТЯНЬСЯН[1)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*

Аннотация. После Октябрьской революции 1917 г. и гражданской войны русские евреи поселились в Харбине, образовав крупнейшую еврейскую общину на Дальнем Востоке к 1920 г. Тяжелый период жизни еврейской диаспоры в Харбине в 1931–1937 гг. рассматривается с разных точек зрения: сохранения еврейской идентичности в Маньчжоу-Го, преследования со стороны русских фашистов и подавления протестов представителей диаспоры японскими властями. Анализируется политика японских властей в отношении еврейской диаспоры в Харбине в рассматриваемый период. На основе архивных данных и литературных источников показывается, что эта политика характеризовалась систематическими преследованиями, репрессиями и экономической эксплуатацией, осуществляемыми в основном в сотрудничестве с антисемитской Всероссийской фашистской партией.

Ключевые слова: Япония; Маньчжоу-Го; еврейская диаспора; Харбин; Всероссийская фашистская партия.

Introduction

The 20th century witnessed transformative events including the Russian Revolution, Russo-Japanese War, and World War II. These conflicts changed the course of global history. Harbin's Jewish community, examined here, reflects this wider context. Investigating the policies of the Japanese authorities toward this community offers valuable insight into this turbulent period.

Currently, no dedicated monographs on this subject exist in China or Belarus. Several broader studies, however, provide essential context. Belarusian expert

Образец цитирования:
Мэн Тяньсян. Политика японских властей в отношении еврейской диаспоры в Харбине (1931–1937). *Журнал Белорусского государственного университета. Международные отношения*. 2025;2:9–14 (на англ.).
EDN: PUSDIY

For citation:
Meng Tianxiang. Japanese authorities' policy toward the Jewish diaspora in Harbin (1931–1937). *Journal of the Belarusian State University. International Relations*. 2025;2:9–14.
EDN: PUSDIY

Автор:
Мэн Тяньсян – аспирант кафедры истории нового и новейшего времени исторического факультета. Научный руководитель – кандидат исторических наук, доцент А. А. Кондраль.

Author:
Meng Tianxiang, postgraduate student at the department of modern and contemporary history, faculty of history.
mengtianxiang99@gmail.com
https://orcid.org/0009-0000-5780-6839

on Russian diaspora history N. Ablova authored the work «From the history of Russian-Jewish emigration in China» [1]. As a key chapter in the book «Jewish emigration from Russia. 1881–2005», her work reconstructs the development of the Russian-Jewish diaspora in China and provides essential contextual evidence. I. Kovalchuk-Koval's Russian-language memoir «The date with memory» [2] offers eyewitness accounts of Jewish life in Harbin under Japanese authorities and Russian fascists, supplying valuable primary material.

Other works specifically explore the relationship between Russian fascism and Japanese authorities during this period. John J. Stephan's study «The Russian fascists: tragedy and farce in exile, 1925–1945» [3], E. Oberländer's article «The All-Russian fascist party» [4], S. Hohler's research «Fascism in Manchuria: the Soviet-China encounter in the 1930s» [5], and A. Vespa's book «Secret agent of Japan» [6] all document the dual persecution suffered by Harbin's Jews as an expression of antisemitic policy. B. Bresler's work «Harbin's Jewish community, 1898–1958: politics, prosperity, and adversity» [7] – written by a Russian-Jewish scholar raised in Harbin – provides a coherent account of the community's development. Japanese researcher Chizuko Takao contributes further perspectives through the articles «Russian-Jewish Harbin before World War II» [8] and «Prewar Japan's perception of Jews and the Harbin Jewish community» [9], analysing Japan's policies in the region in 1932–1941.

Son of A. J. Kaufman, Harbin Jewish leader, whose name is T. Kaufman provides compelling primary material in his memoir «The Jews of Harbin live on in my heart » [10]. The research of T. D. Dubois «Rule of law in a brave new empire: legal rhetoric and practice in Manchukuo» [11] analyses the legal framework enforced by Japanese authorities, presenting a legal perspective on their policies toward the Jewish community. The monograph of H. Dicker «Wanderers and settlers in the Far East: a century of Jewish life in China and Japan» [12] adds important supplementary data on the diaspora's livelihoods, career paths, and religious life. Liu Shuang's book «History of the Jewish diaspora in Harbin» [13] presents a local perspective, enriching the analysis with information on the community's economic and cultural integration into the city.

This study aims to outline the main policies and mechanisms applied by the Japanese authorities toward Harbin's Jewish community between 1931 and 1937 and to assess the effects of these measures on the community itself. Objectives of the study are following:

1) to analyse Japanese policies addressing the identity of Harbin's Jewish community, focusing on the establishment of the Bureau for Russian Emigrants (BREM) and collaboration with the All-Russian fascist party;

2) to examine the nature and extent of collaboration between Japanese authorities and the All-Russian fascist party in persecuting Harbin's Jews, including the Simon Kaspe affair and other antisemitic crimes;

3) to investigate the repressive measures used by Japanese authorities against Jewish community protests, such as targeting leaders and applying economic pressure on Jewish businesses;

4) to assess the political, legal, economic, and social consequences of these policies on Harbin's Jewish community during 1931–1937.

The author draws on Soviet policy archives from the Digital library of historical documents of the Russian Federation and original materials from the Jewish Telegraphic Agency. Methodologically, it adopts a comparative and transnational approach. Quantitative data including demographics and business losses supplements discourse analysis of propaganda and suppression tactics. A postmodern, multi-causal framework reveals how Harbin's Jewish diaspora suffered persecution on multiple fronts.

Policies for Jewish identity

The construction and operation of the Chinese Eastern Railway (CER) created a unique state within a state in Manchuria – the CER alienation zone. From 1903 to 1920, it was known as happy Croatia after CER director D. L. Horvat. His administration fostered an unusual degree of national and religious tolerance. The Jewish diaspora in Harbin and the CER alienation zone thrived without violence or persecution. By the early 1920s, Harbin had become the Far East's largest Jewish centre, earning titles such as the Jerusalem of the Far East and Eastern Zion [1, p. 168–170].

Even before Japan occupied northeastern China in 1931 and established Manchukuo in 1932, Jewish identity in Harbin was already contested. One outcome of the October Revolution was the Soviet government's 1921 revocation of citizenship for political exiles, which left many stateless[1]. This decision imposed new restrictions on Jews who had fled Russia seeking safety and opportunity in Harbin. Consequently, the children of these stateless migrants were also classified as persons without nationality in China, a status that often led to their gradual incorporation into Chinese citizenship. Under the Nationality law of the Republic of China, individuals aged 20 or over (with some exceptions for stateless persons) who had lived continuously in China for five years, had previously resided for ten consecutive years, or were born on Chinese soil, could apply for naturalisation[2].

[1]Agreement between the USSR and Manchukuo on the cession to Manchukuo of the rights of the USSR in relation to the Chinese Eastern Railway of 23 March 1935, as well as acts related to the agreement // Digital library of historical documents : website. URL: https://docs.historyrussia.org/ru/nodes/350671 (date of access: 10.09.2024) (in Russ.).

[2]Nationality law of the Republic of China // Open object book : website. URL: http://read.nlc.cn/OutOpenBook/OpenObjectBook?aid=416&bid=84689.0 (date of access: 27.08.2025) (in Chin.).

This situation also restricted prospects for emigration to countries with strict barriers against Asian arrivals. White Australia policy, for example, severely limited such movement[3]. Harbin's mid-1930s police records document approximately 7000 Jewish residents. Within this population, 4500 were stateless. Among those with citizenship documentation, 1200 held Soviet passports, 350 Polish, 160 Lithuanian, and 150 Chinese[4].

Japan had allied with White Russian forces during the Russian Civil War, and this collaboration continued in Manchukuo. The BREM, founded in December 1934 by the Japanese military administration in Harbin, embodied this alliance. Senior positions in BREM were held by leading figures of K. Rodzaevsky's All-Russian fascist party. All Russians in Manchukuo were required to register their political, social, religious, educational, and cultural activities through BREM. For Russian Jewish emigrants, dealing with antisemitic officials during registration proved deeply troubling. Without a BREM card, securing employment became increasingly difficult [2, p. 125].

The Jewish diaspora in Harbin thus lost not only their nationality but also their legal identity. They became «double refugees», first from bolshevism and then from fascism. In both practical and legal terms, Jews experienced a complete erosion of identity and the stripping away of fundamental rights. This extended beyond inequality to economic, political, and religious obliteration. Jewish possessions could be seized at will. Lives could be forfeited without consequence. Plundering and attacks against the community grew increasingly common [3, p. 176–177].

After Manchukuo's establishment, Japan employed various tactics to destabilise the CER's operations and increase pressure on the USSR. It repeatedly manufactured disputes, including the arrest of Soviet employees and staged incidents meant to heighten tension. This culminated in the 12 March 1935 agreement whereby the USSR sold the railway to Manchukuo. Under its terms, all Soviet personnel received dismissal compensation before repatriation[5]. This forced some Jewish railway workers and families in Harbin to return to the USSR.

Meanwhile, Soviet policies during the Great Purge worsened the diaspora's plight. On 20 September 1937, the Commissar of Internal Affairs issued Operational order No. 00593 concerning roughly 25 000 former Harbin residents in the USSR: «Most of this group are agents tied to Japanese intelligence; they have been sent repeatedly from Manchukuo to the USSR on espionage, sabotage, and terrorist missions»[6] (translated by us. – *Meng Tianxiang*). Some returning Jews faced arbitrary execution or gulag imprisonment from the Soviet authorities, deterring remaining community members from repatriation.

Japanese cooperation with the All-Russian fascist party

As Japan strategically asserted control over northern Manchuria – historically within Russia's sphere of influence – the authorities took extreme measures. They arrested and expelled Soviet officials associated with the CER system. The slogan «Asia for Asians» provided rhetorical cover for these actions. Among the stateless refugees from Russia, a clear alliance existed between Japan's Kwantung Army and the Russian Fascist Party.

General Araki Sadao, noted for his staunch anti-communism within the Imperial Japanese Army, openly supported the party in direct opposition to the USSR. K. Rodzaevsky, head of the All-Russian fascist party and editor of the newspaper «Nash put'» («Our Path»), received strong support from Japanese authorities. His organisation became a useful instrument for consolidating Japanese control in Manchukuo [4].

From 1931, Harbin served as the main centre of the All-Russian fascist movement. Their publications – including the daily «Nash put'», periodical «Natsiya» («Nation»), and various pamphlets – disseminated anti-communist and antisemitic propaganda to strengthen White émigré nationalism. The propaganda closely resembled German nazi messaging, with «Azbuka Fashizma» («The ABCs of fascism») identifying two main enemies in its opening chapter: the Soviet state and the Jewish people [5, p. 51–52]. After Manchukuo's formation, party membership surged dramatically. Numbers grew from merely 200 in 1931 to approximately 5000 by 1933 – a 25-fold increase within two years [3, p. 89]. The party established a training school in Harbin by 1932, aligned with Japanese interests [4, p. 162].

Economic inequality between long-standing Harbin residents and later refugees, combined with overcrowding and limited employment, created severe hardship, especially for young people [3, p. 77–79]. Many people who joined the All-Russian fascist party turned to crime for money. The relatively affluent Jewish community, whom they resented, became prime targets for kidnapping.

[3]White Australia policy // National Museum of Australia. URL: https://www.nma.gov.au/defining-moments/resources/white-australia-policy (date of access: 28.08.2025).

[4]Japanese Foreign Ministry Archives. File on the situation of nationalities of Former Russian subjects. D23028 (in Jpn.).

[5]Agreement between the USSR and Manchukuo on the cession to Manchukuo of the rights of the USSR in relation to the Chinese Eastern Railway of 23 March 1935, as well as acts related to the agreement // Digital library of historical documents : website. URL: https://docs.historyrussia.org/ru/nodes/386047 (date of access: 18.09.2024) (in Russ.).

[6]Operational order of the NKVD of the USSR of 20 September 1937 No. 00593 «On the operation to repress former employees of the Chinese Eastern Railway and re-emigrants from Manchukuo» // Ibid. URL: https://docs.historyrussia.org/ru/nodes/49318 (date of access: 12.09.2024) (in Russ.).

Police departments harboured criminal gangs specialising in kidnappings and extortion. Wealthy Jews in Manchukuo's major cities became frequent targets, forced to pay large ransoms for their release [6, p. 96].

Rough estimates suggest that about two-thirds of those abducted were Jews, and that one-third of all victims died, either executed or killed in captivity [7, p. 209]. Victims typically paid ransoms silently, recognising their captors often operated with police complicity. The police of the Japanese puppet regime routinely protected members of the All-Russian fascist party, as shown in the 1933 kidnapping at the hotel «Moderne», known as the Simon Kaspe affair.

Japanese Gendarmerie interpreter Kostya Nakamura orchestrated this international scandal, recruiting Russian fascist leader K. Rodzaevsky and Harbin police inspector N. Martynov (who commanded 15 criminals) [6, p. 195–207]. After Simon Kaspe's funeral, the All-Russian fascist party's newspaper «Nash put'» published 30 articles defaming Harbin's Jews [5, p. 138]. These articles appeared along Harbin's main commercial streets. When Jews tore down the posters and appealed to the police, officials refused to help. Their response made clear that the newspaper «Nash put'», like other newspapers, operated under state supervision; the posters had official approval, and removing them was treated as a criminal act [5, p. 143–144].

In October 1934, six members of the All-Russian fascist party, including N. Martynov, were finally arrested. They went on trial before the Harbin District Court in March 1936. Four received death sentences, and two were given life imprisonment, although none of these penalties stood. In February 1937, Manchukuo's Supreme Court in Xinjing (Changchun) acquitted all defendants and deported them to Dairen, today's Dalian [8, p. 46–47]. N. Martynov resumed his duties as a Harbin municipal police inspecto [3, p. 167].

The Japanese Gendarmerie also directed night-time attacks in which two Russian offenders repeatedly smashed the windows of local synagogues. Repairs proved futile as the attacks continued with stones and bricks until restoration efforts ceased. Congregations worshipped despite broken windows, enduring temperatures of −30°C [6, p. 230]. On the night of 1 March 1934, the New Synagogue on Diagonalnaia Street was thoroughly wrecked, its windows completely destroyed. By dawn, the building was unfit for use, and services were suspended due to unbearable cold [5, p. 154].

Repression of Jewish protests

The murder of Simon Kaspe by Russian fascists in December 1933 provoked anger across Harbin's Jewish community and among many other residents. His funeral became an unprecedented public event. Multiethnic mourners accompanied the hearse to the Jewish cemetery, chanting «Death to Japanese militarists!». Jewish-owned shops across the city closed for the day. Fearing escalation, authorities reinforced local police with 250 Japanese gendarmes and an infantry regiment from Tsitsihar [6, p. 208]. Meanwhile, the newspaper «Manshu nippo» («The Manchurian Daily News») criticised the disruption caused by the procession and the resulting commercial closures [8, p. 56].

As the procession passed the New Synagogue, A. J. Kaufman, the Zionist leader of Harbin's Jewish community, addressed the mourners. He declared: «The Jewish people were the first in the world to proclaim the commandment "Thou shalt not kill". We do not seek vengeance, but demand legal protection for life and property. The state authorities have an obligation to establish peace. The Japanese military and Manchukuo authorities must crack down on and eradicate those bandits who incite public hatred toward Jews and sow discord among citizens» [9, p. 40]. The newspaper «Manshu nippo» reported on A. J. Kaufman's outspoken anti-Manchukuo remarks made publicly on the street. This drew sharp criticism from right-wing newspapers in Harbin, which condemned A. J. Kaufman for opposing the Manchukuo authorities.

At a public gathering of the Jewish community, A. J. Kaufman delivered another forceful speech [5, p. 141]. He declared that any nation permitting bandits and assassins to harm innocent people had no right to exist [10, p. 114]. In Manchukuo, questioning the regime's legitimacy was treated as a serious political offence. The police had broad authority to arrest anyone suspected, even vaguely, of «state sabotage» [11, p. 300].

This brought A. J. Kaufman considerable trouble. The Imperial Japanese Army's Tokumu Kikan intelligence agency summoned A. J. Kaufman. Agents subjected him to intense verbal abuse and threatened expulsion from Manchukuo [6, p. 208].

In late winter 1934, Japanese authorities forced A. J. Kaufman and Harbin Jewish Council (HEDO) leaders to recant their previous positions and affirm Manchukuo's legitimacy. On 8–10 March 1934 A. J. Kaufman and HEDO published open letters in the Jewish newspaper «Rupor» («Horn») and in the Russian-language newspaper under Japanese control «Kharbinskoe vremia» («Harbin Time»). In these statements, A. J. Kaufman explicitly withdrew any previous criticisms of law enforcement or government integrity. The letters praised the handling of kidnappings by local police and expressed gratitude for the equal treatment of all citizens regardless of ethnicity or religion. The communiqués urged Harbin's Jewish residents to remain calm and conduct themselves peacefully [5, p. 142].

In February 1935, a delegation from the American Jewish Congress met with Japanese Ambassador Yoshi Saito in Washington, urging an investigation into allegations against the Japanese administration in Manchukuo and advising the government to protect Harbin's Jewish residents from potential provocations. Similarly, Jewish delegations from Shanghai approached the American Consul General and the British Minister in Manchukuo, seeking protection for Harbin's Jews. Meanwhile, the Japanese officials in Manchukuo, determined to dominate commerce, pressured Harbin's Jewish businesses to liquidate. Japanese traders frequently became buyers. Jewish merchants resisting forced transfers saw their lives and property threatened[7].

In March 1935, Morishima Morito, the Japanese Consul General in Harbin, invited A. J. Kaufman and I. Berkovich, a member of the Harbin Jewish community presidium[8]. Amid rising antisemitic unrest, Morishima Morito assured local Jewish leaders of the government's goodwill towards Jews. He expected these leaders to promote a favourable view of Japan among Jewish communities abroad[9]. Displeased by negative reports of anti-Jewish sentiment in foreign media, he requested a list of Jews who had expressed complaints externally [5, p. 156].

The Japanese authorities soon retaliated. Seeking to counter criticism from abroad, Japanese authorities initiated covert police actions in mid-1935. They targeted prominent Jewish institutions, including the Great Synagogue, which was surrounded by police and subjected to an exhaustive search. Officers inspected drawers, boxes and even the Holy Ark containing the Torah scrolls, looking for weapons and prohibited literature. Soon after these incidents, and coinciding with Yom Kippur, the harassment intensified. Police raided other sites, including Rabbi Levin's home and the residence of A. J. Kaufman [5, p. 157].

By late 1935, the Jewish community in Harbin faced severe repression. Attacks occurred daily in the streets, yet victims rarely reported them. Many feared arrest by the military police and confinement in cellars where detainees were allegedly held indefinitely and tortured. These assaults continued with the tacit support of the Manchukuo police[10].

Economic repression was equally severe. Until 1932, Jewish businesses had been central to Harbin's commercial life: non-Soviet Russians and Russian Jews controlled 33 % of the city's trade, whilst the Japanese held only 8 %. By 1934, nearly all major Jewish firms were either Japanese-controlled or forced into joint operations. Japanese interests monopolised shipbuilding, soy processing, and flour milling. Authorities reorganised the grain exchange, compelling Harbin Exchange president Y. Kabalkin to resign. Between 1932 and 1936, over 30 Jewish shops closed with 1.961 million yuan losses. By 1939, Japanese-funded enterprises controlled 12 % of core industries and 30 % of trade [12 p. 42–43; 13, p. 75].

Conclusions

Japanese policy toward Harbin's Jewish diaspora between 1931 and 1937 involved systematic persecution, violent repression, and economic exploitation, carried out largely in partnership with the antisemitic All-Russian fascist party.

First, Japanese authorities institutionalised discrimination by establishing the BREM, linked to K. Rodzaevsky's fascists. This required Russian immigrants to register with the fascist-controlled bureau, forcing Jews to obtain documents from antisemitic officials. BREM stripped Harbin's Jewish diaspora of legal protection, rendering them double refugees – stateless under Soviet policy and legally exposed under Japanese rule. This denied them fundamental rights.

Second, Japanese authorities actively collaborated with the All-Russian fascist party. They permitted the publication of extremist antisemitic propaganda like the newspapers «Nash put'» and «Natsiya», which identified Jews alongside the USSR as primary enemies. Manchukuo police, controlled by Japan, further collaborated with Russian fascists by providing judicial immunity for antisemitic crimes. Inspector N. Martynov of the Harbin Municipal Police directly participated in the 1933 Simon Kaspe affair. Though six Russian fascists received initial sentences in 1936, the Supreme Court overturned these in 1937. They released all convicts, and N. Martynov resumed his police duties.

Finally, Japan suppressed Jewish resistance in Harbin. Authorities deployed 250 gendarmes and an infantry regiment to quell protests at Simon Kaspe's funeral in December 1933. Notably, the Imperial Japanese Army's Tokumu Kikan intelligence agency summoned Jewish leader A. J. Kaufman, threatening him over critical remarks. They compelled him to publicly praise Manchukuo officials, urge restraint, and acknowledge «satisfactory» police handling of the kidnappings. Following American and British Jewish protests in 1935, Japan implemented policies dismantling Jewish religious and economic activities. By late 1935, Harbin's Jewish community faced comprehensive repression.

[7]Events in review // Jewish Telegraphic Agency : website. URL: https://www.jta.org/archive/events-in-review-5 (date of access: 20.09.2024).

[8]World press digest // Ibid. URL: https://www.jta.org/archive/world-press-digest-71 (date of access: 20.09.2024).

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Received by editorial board 12.11.2025.

UDC 341

TRANSNATIONAL SECURITY: CONCEPT, SYSTEM, AND RESPONSES TO CONTEMPORARY CHALLENGES AND THREATS

V. V. MERKUSHIN[a]

[a]*Belarusian State University, 4 Niezaliezhnasci Avenue, Minsk 220030, Belarus*

Abstract. From the standpoint of contemporary international law, this article examines the formation of a new collective security framework – transnational security. It addresses the concept and characteristics of transnational security, its relationship to collective and national security, and the institutional aspects of its mechanisms. The study of transnational security offers a more integrated and up-to-date perspective on international security as a whole. Transnational security addresses challenges and threats beyond exclusive national jurisdiction that are not adequately addressed by the existing collective security arrangements envisaged in Chapter VIII of the UN Charter. Transnational security emerges from international legal cooperation targeting cross-border organised crime and associated threats, including terrorism, cybercrime, armed conflict, illicit economies, emergencies, corruption, and unlawful activities by non-state actors.

Keywords: transnational security; collective security; regional security; national security; transnational organised crime; modern challenges and threats; international law.

Acknowledgements. The author is grateful to doctor of science (law), professor E. F. Douhan for expert evaluation and constructive feedback on the article draft.

Образец цитирования:
Меркушин ВВ. Транснациональная безопасность: понятие, система, противодействие современным вызовам и угрозам. *Журнал Белорусского государственного университета. Международные отношения*. 2025;2:15–20 (на англ.).
EDN: ZOGTFI

For citation:
Merkushin VV. Transnational security: concept, system, and responses to contemporary challenges and threats. *Journal of the Belarusian State University. International Relations*. 2025;2:15–20.
EDN: ZOGTFI

Автор:
Владимир Владимирович Меркушин – кандидат юридических наук, доцент; докторант.

Author:
Vladimir V. Merkushin, PhD (law), docent; doctoral researcher.
valdshin@mail.ru

Журнал Белорусского государственного университета. Международные отношения. 2025;2:15–20
Journal of the Belarusian State University. International Relations. 2025;2:15–20

ТРАНСНАЦИОНАЛЬНАЯ БЕЗОПАСНОСТЬ: ПОНЯТИЕ, СИСТЕМА, ПРОТИВОДЕЙСТВИЕ СОВРЕМЕННЫМ ВЫЗОВАМ И УГРОЗАМ

В. В. МЕРКУШИН [1)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*

Аннотация. С позиции современного международного права исследуются актуальные проблемы формирования новой системы коллективной безопасности – транснациональной безопасности. Особое внимание уделяется понятию и характеристике транснациональной безопасности, определению ее места и роли в контексте коллективной и национальной безопасности, анализируются институциональные аспекты механизма транснациональной безопасности. Исследование проблем транснациональной безопасности подразумевает современный более системный взгляд на проблемы международной безопасности в целом. В сферу деятельности транснациональной безопасности входят все вопросы, которые имеют отношение к противодействию вызовам и угрозам, не подпадающим под исключительную национальную юрисдикцию, и в должной мере не охватываются возможностями системы коллективной безопасности в соответствии со ст. VIII Устава ООН. Транснациональная безопасность представляет собой формирующийся феномен, «выросший» из международно-правового сотрудничества в сфере борьбы с трансграничной организованной преступностью и релевантно связанными с ней иными вызовами и угрозами, такими как международный терроризм, киберпреступность, вооруженные конфликты, теневая экономика, чрезвычайные ситуации, коррупция, противоправная деятельность негосударственных субъектов и пр.

Ключевые слова: транснациональная безопасность; коллективная безопасность; региональная безопасность; национальная безопасность; транснациональная организованная преступность; современные вызовы и угрозы; международное право.

Благодарность. Автор выражает благодарность доктору юридических наук, профессору Е. Ф. Довгань за высочайшую экспертную оценку и конструктивные рекомендации при подготовке настоящей статьи.

Introduction

A pressing issue in international law today concerns the theoretical foundation and normative framework for addressing existing and emerging threats to state security.

The Preamble of the UN Charter identifies international peace and security, good neighbourliness, sustainable development, fundamental human rights, and human dignity as primary targets of such threats. Yet the current concept of «security» differs significantly from that which informed the UN Charter [1, p. 27]. This divergence arises because modern threats to state security, both internationally and domestically, present a fundamentally new character and scale.

These phenomena typically exist in symbiotic relationships. Within this context, the primary threat is transnational organised crime and its associated challenges: corruption, international terrorism, armed extremism, illicit trafficking in drugs and weapons (including weapons of mass destruction), human trafficking (especially of women and children), irregular migration, refugee flows, cybercrime, piracy, smuggling, money laundering, and the spread, sometimes deliberate, of infectious diseases.

The term «transnational threats», as used by UN specialists[1], aptly describes these issues and aligns with the concept of «transnational security». However, while the term «transnational threats» is well defined, the concept of transnational security remains underdeveloped in international law doctrine.

Comprehensive studies of this issue are virtually absent. Available scholarship [2–4] analyses only particular aspects of cross-border security, diverting from the core problem to focus on narrow issues (such as specific threat types or specialised organisational activities), thus losing consistency and focus.

Clarifying this gap requires acknowledging transnational security as an emerging international legal phenomenon, possessing distinct system-forming features and elements that differentiate it from established concepts such as «collective security» and «national security». This view supplements the universally acknowledged principle of security's indivisibility[2], even

[1]For example, the Encyclopedia Britannica repeats this approach and points out that «transnational threats, security threats that do not originate in and are not confined to a single country. Terrorism, organized international crime, and the possible acquisition of weapons of mass destruction (WMD) by nongovernmental groups are commonly cited as examples of transnational threats» (here and further translated by us. – *V. M.*). See: Transnational threats // Britannica : website. URL: https://www.britannica.com/topic/transnational-threat (date of access: 04.01.2025) (in Russ.).

[2]Conference on security and co-operation in Europe final act // Organization for Security and Co-operation in Europe : website. URL: https://www.osce.org/files/f/documents/5/c/39501.pdf (date of access: 04.01.2025).

though that principle is not always observed in practice because of bloc-based interpretations and priorities[3]. On the contrary, it creates additional scope for developing original security mechanisms using existing and generally recognised legal instruments.

At present, this system rests mainly on the United Nations Convention against transnational organised crime of 15 November 2001 and its three protocols, the United Nations Convention against corruption of 31 October 2003, the Single convention on narcotic drugs of 30 March 1961, the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 20 December 1988, the International convention for the suppression of the financing of terrorism of 9 December 1999, and related treaties.

The ongoing processes of institutionalisation – for example, the admission of the Republic of Belarus to the Shanghai Cooperation Organisation (SCO)[4], the expansion of BRICS competences and the growth in its membership[5] – show that the emerging order is not only multipolar, but also «multi-union». This configuration underpins both collective and transnational security.

Today, the regionalisation of international relations increasingly displaces globalist approaches to constructing a «rules-based» order. It enhances the role and capacity of regional organisations and their security regimes, such as the CIS, ASEAN, CSTO, NATO, EU and the OAS. In practice, the Euro-Atlantic and Eurasian security architectures form key pillars of transnational security.

Accordingly, this article aims to develop and substantiate a model of transnational security grounded in existing mechanisms of collective (regional) security, particularly in the context of combating transnational organised crime.

Results and discussion

The concept and characteristics of transnational security. Currently, no unified concept of transnational security exists. Western legal scholarship examines some of its dimensions [2–6], but in the post-Soviet states the subject remains largely unexplored. To construct a working concept of «transnational security», it is useful to start from the lexical meaning of the term. It consists of two core elements that underlie the methodology for studying this phenomenon. The first element is the word «security»[6], which authoritative encyclopaedias describe as «the most important guarantee of human development». Threats to security fall into three categories: 1) those endangering individuals, society and the state; 2) those targeting government directly; 3) those affecting primarily individual citizens. The second element is lexeme «transnational» which means «not confined to the territory of a single state, extending beyond its borders and covering several countries»[7]. For example, S. Ozhegov and N. Shvedova's explanatory dictionary adopts a dichotomous approach. It interprets the first component of «transnational», *trans-* as «movement through a certain space… located outside something», while the second component *national* denotes features specific to a particular nation, that is, inherent in it [7, p. 398].

Some international law scholars (for example, A. F. Douhan) interpret the term «security» in two main ways. In a narrow sense, it means the absence of inter-state armed conflict, reflecting the understanding at the UN Charter's adoption. In a broader sense, security has expanded in response to the internationalisation of contemporary challenges and threats, leading to the concept of comprehensive and indivisible security after the adoption of the UN Charter and up to the present [1, p. 27–28]. Professor T. Franck supports this view. In his analysis of evolving threats to international peace and security, he emphasises their deliberately exported and cross-border character [8, p. 601].

Accordingly, scholars working in international law doctrine, Western securitisation theory and related fields – including M. Sheehan [4], B. Buzan and L. Hansen [9], D. Baldwin [10], M. Lichty, G. Arcudi and M. Vonlanten [11], L. Shelley [12], and T. Krussmann [13] – have increasingly emphasised the problem of transnational organised crime and its associated risks, challenges and threats to state security.

At present, transnational organised crime constitutes a particularly serious international legal phenomenon. It involves the systematic commission of unlawful acts by criminal organisations and other actors, in more than one state, in violation of international and national law, for the direct or indirect acquisition of financial or material gain and other benefits. Such activity threatens the security of states.

In sum, transnational organised crime lies at the core of the concept of transnational security. It encompasses diverse threats to both national and international security, including illicit drug and arms trafficking,

[3]Sergey Lavrov's press conference on the results of Russian diplomatic activities in 2024 // Youtube : website. URL: https://www.youtube.com/watch?v=jjLZwn5x-NA&t=6613s (date of access: 14.01.2025) (in Russ.).

[4]Belarus has become a member of the SCO // BelTA. URL: https://belta.by/politics/view/belarus-stala-chlenom-shos-645532-2024/ (date of access: 06.04.2024) (in Russ.).

[5]Lukashenko approves Belarus' participation strategies in SCO and BRICS // mail.ru. URL: https://news.mail.ru/politics/64450870/?frommail=1&utm_partner_id=625 (date of access: 06.01.2025) (in Russ.).

[6]Security // Dictionaries : website. URL: https://rus-brokgauz-efron.slovaronline.com/12580-%D0%91%D0%B5%D0%B7%D0%BE%D0%BF%D0%B0%D1%81%D0%BD%D0%BE%D1%81%D1%82%D1%8C (date of access: 06.04.2024) (in Russ.).

[7]Transnational // Academic : website. URL: https://translate.academic.ru/transnational/en/ru/ (date of access: 04.04.2024) (in Russ.).

trafficking in persons, irregular migration, corruption, money-laundering and related criminal conduct[8].

The issue of transnational organised crime presents dual significance: both for clarifying contemporary state security threats and for identifying additional elements required to develop and justify the proposed security framework.

In this context, several key questions arise in building a model of transnational security. First, what are the principal, objective factors that drive the emergence of transnational security from the standpoint of international law? Second, who are the actual and potential actors posing threats to such security? Third, what are the main avenues for developing international legal mechanisms to counter transnational crime today? Fourth, what obstacles will inevitably confront the establishment of a transnational security system, given the constraints of international law (in particular, unilateral sanctions and over-compliance)? Fifth, how, and with what degree of effectiveness, can states (notably the Republic of Belarus) safeguard the implementation of their national interests?

Subsequent sections propose a concrete framework for addressing these questions.

Transnational security in the context of national and collective security systems. From a systemic perspective, the concept of transnational security relates closely to the concepts of «national security» and «international (collective) security». In relation to national security, transnational security involves extending security measures beyond national jurisdiction to protect state interests. This occurs in contexts of competing jurisdictions or critical situations involving state and non-state actors. Regarding collective security, transnational security operates as a distinct international legal regime most effectively implemented through regional arrangements for collective (international) security.

Unlike collective security, whose primary object under international law is international peace and human security and whose participants are the principal subjects of international law (states), the sphere of transnational security extends to additional actors. Alongside states, it may encompass individuals and legal persons that lack international legal personality, such as multinational corporations, international non-governmental organisations and private military and security companies. Subjects of transnational security can also affect national interests and generate new threats to international peace and security, such as transnational organised crime and international terrorism, «through direct participation in world politics, including in various kinds of conflict» [14, p. 299–302].

In our view, the legal scope of transnational security differs from that of national security in four key aspects: 1) spatial and territorial reach (national security is generally confined to the state's territory, where its competent authorities can act effectively); 2) threat actors (threats to transnational security are usually posed by persons or entities acting in a personal or corporate capacity, without official state authority); 3) types of threats (these are often not covered by Chapter VII of the UN Charter, but remain compatible with the principles and norms of international law and with domestic legislation); 4) types of jurisdiction (measures may extend beyond national territory to protect legitimate state interests (extraterritorial jurisdiction), potentially creating competing jurisdictional claims). I. V. Fisenko has noted, using the example of criminal law's spatial operation, that this framework rests on territorial and national principles derived from state sovereignty [15, p. 163].

This raises concerns about protecting national interests within limited legal frameworks, especially amid unilateral sanctions, compliance challenges, and instances of over-compliance [16]. Such constraints represent vulnerability factors for national interests.

The jurisdictional debate also highlights another key issue: the outer boundaries of the legal configuration of transnational security. This concerns the transfer, or «export», of national interests beyond national jurisdiction to the territory of a foreign state, for example, to conduct intelligence or operational-search activities as well as to other domains, such as outer space for reconnaissance satellites, the high seas, and cyberspace, for similar purposes. This put the question of how authorised entities will provide legal, technical, and other assistance under such conditions, and on what legal basis.

When government or non-state actors enter such «risk zones» in international relations, their actions may conflict with other national interests or international law norms, creating «security zones of national interests». This occurs particularly where the threat to national interests exceeds its immediate realisation – for instance, in cases involving the potential use and proliferation of nuclear and other weapons of mass destruction.

Consequently, transnational security should be understood as a distinct security system of states, grounded in an international legal framework for countering transnational organised crime and related contemporary

[8]See: 9[th] United Nations Congress on the prevention of crime and the treatment of offenders // Digital library : website. URL: https://digitallibrary.un.org/record/172272?v=pdf#files (date of access: 06.04.2024) ; Draft Bangkok declaration synergies and responses: strategic alliances in crime prevention and criminal justice // United Nations : website. URL: https://www.un.org/webcast/crime2005/statements/25draftbkkdeclaration.pdf (date of access: 09.04.2024) ; Resolution adopted by the Economic and Social Council on 23 July 2019. E/2019/30 // Ibid. URL: https://documents.un.org/doc/undoc/gen/n19/233/90/pdf/n1923390.pdf (date of access: 14.01.2025) ; Resolution adopted by the Economic and Social Council on 23 July 2024. E/RES/2024/9 // Ibid. URL: https://documents.un.org/doc/undoc/gen/n24/229/17/pdf/n2422917.pdf (date of access: 14.01.2025).

challenges and threats (including international terrorism and its financing, money laundering, corruption and cybercrime). States implement this system through specialised cooperation between states and international organisations, primarily regional organisations, as well as other competent actors such as international non-governmental organisations and, in certain cases, individuals and legal persons.

Organisational and legal aspects of transnational security. On the one hand, universal institutional mechanisms function under the strategic direction of UN organs and institutions, supported by specialised international organisations such as the International Criminal Police Organization, the Financial Action Task Force on Money Laundering, the Eurasian Group on Combating Money Laundering and Financing of Terrorism, and the Group of States against Corruption.

On the other hand, regional organisations play an equally important part – namely the CIS, CSTO, SCO, EU, NATO, CE, and OSCE among others (these organisations are introduced and discussed on p. 4).

While these universal organisations possess a certain degree of specialisation, regional organisations tend to be more multifunctional and enjoy broader capabilities. As A. F. Douhan notes, «like the UN, [they] can operate across various domains and employ multiple means of maintaining international peace and security, including… countering modern challenges and threats» [1, p. 38]. Drawing on Chapter VIII of the UN Charter, the scientist characterises regional organisations as both an «element» and a «mechanism for unified collective security» [1, p. 39]. The new Concept of national security of the Republic of Belarus for 2024 (Chapter 2, para 9) underlines the importance of this mechanism for Belarus' national interests.

Building on A. F. Douhan's research, which proposes treating counter-measures to modern challenges and threats as an independent element of collective security [1, p. 38], we identify objective features that reveal an emerging, though not yet fully articulated, framework of «transnational security».

First, contemporary cross-border threats originate from state territories and from the activities of government agencies and institutions tasked with ensuring national security. Second, an established international legal mechanism now counters these threats. It is strategically coordinated by the United Nations, particularly in the suppression of transnational organised crime and associated threats such as drug trafficking, human trafficking, corruption and terrorist financing, and is grounded in the 2000 UN Convention against transnational organised crime.

Other international bodies and organisations, especially regional ones, also regulate cooperation between states in combating transnational organised crime by creating various institutional and legal instruments. Within the CIS, for example, interstate crime-control programmes are implemented, model laws are developed to harmonise member states' legislation, joint tactical operations, exercises, training and retraining of personnel are conducted, information is exchanged, and specialised databases are established.

Current trends in international relations shape our understanding of transnational security and reveal a further trend. Globalisation (particularly in the global economy) combined with advances in information and communication technologies and digital platforms, now enable the isolation of «toxic» actors through unilateral sanctions and over-compliance. This primarily affects states that resist the prevailing Western order, dominated uncompromisingly by the United States and its NATO allies.

On the one hand, contemporary international law displays a systemic anomaly: key actors interpret and apply its principles and rules in an arbitrary manner, including in the fields of disarmament and nuclear safety, and in efforts to counter international terrorism and transnational organised crime. On the other hand, regionalisation is progressing through the growing influence of new Eurasia-oriented regional organisations (such as the CIS, SCO, ASEAN and CSTO).

The mandates of these organisations now cover a widening range of threats. Alongside international terrorism and transnational organised crime (including drug and human trafficking), they address irregular migration, cyber threats, infectious diseases and the proliferation of weapons of mass destruction [17, p. 9], among other issues.

By contrast, the residual competences of Euro-Atlantic regional organisations (NATO, the EU, the Council of Europe, the OSCE, etc.) are increasingly undermined by their own practice. They set unilateral priorities and apply international law selectively, for example by imposing unfounded targeted sanctions and freezing the assets of individuals and legal entities from sanctioned states.

Conclusions

This article offers an initial examination of the emergence of a transnational security system from the perspective of international law.

Future research will yield fresh perspectives on contemporary security challenges and generate practice-oriented recommendations for integrating transnational dimensions into national and collective security systems.

This approach will enhance understanding of international law principles and norms whilst strengthening state accountability in addressing emerging challenges and threats, particularly within international security and sustainable development frameworks.

The extensive reach of transnational organised crime, which underpins many threats to transnational security, exemplifies a troubling trend: unscrupulous actors in international relations are willing to exploit adapted legal instruments, primarily domestic ones, to pursue narrow private or corporate interests.

States may also circumvent international legal obligations in two ways: 1) by prioritising national security concerns; 2) by promoting responses to non-existent or artificially created «classic» threats (armed conflicts, international terrorism, human rights violations, and corruption) within international intergovernmental organisations. The development of cyberspace and advanced technologies is unprecedented in its potential for criminal misuse. It may therefore become a key area for examining how a transnational security system could operate.

For the Republic of Belarus, active engagement in shaping the conceptual development of transnational security and its proactive promotion through cooperation with interested partners (particularly regional organisations) could mark a qualitative step in consolidating its international standing. Such engagement would also support the effective pursuit of national interests across various dialogue platforms, including those concerned with international law, peace, and security.

For states in close geographical proximity, the primacy of national interests determines the evolution of a specific form of transnational security often described as «cross-border security». In this context, it refers to mechanisms for countering challenges and threats along the external frontiers of states within a given region (for example, in the CIS).

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Received by editorial board 07.06.2025.

UDC 341.24.016

A HIDDEN FUNCTION OF US SECONDARY SANCTIONS: BLOCKING THE RIGHT TO DEVELOPMENT

M. J. STRAUSS[a]

[a]*Centre d'Etudes Diplomatiques et Stratégiques, 10 rue Sextius Michel, Paris 75015, France*

Abstract. This article strengthens existing arguments that US secondary sanctions violate international law. It proposes that they constitute a restrictive business practice that obstructs the right to development. Such sanctions penalise trade and competition that economists consider essential for development. By deterring foreign companies from doing business with states or major economic actors targeted by US primary sanctions, secondary sanctions effectively reserve the target's market for US companies once sanctions are lifted. Secondary sanctions, operating internationally, meet the definition of restrictive business practices that the UN Conference on trade and development has sought to curtail domestically. It may therefore offer a mechanism for challenging them on such grounds.

Keywords: secondary sanctions; anti-competitive measures; restrictive business practices; United States; UNCTAD.

СКРЫТАЯ ФУНКЦИЯ АМЕРИКАНСКИХ ВТОРИЧНЫХ САНКЦИЙ: ПРЕПЯТСТВОВАНИЕ РЕАЛИЗАЦИИ ПРАВА НА РАЗВИТИЕ

М. Дж. ШТРАУС[1)]

[1)]*Центр дипломатических и стратегических исследований,*
ул. Секстью Мишель, 10, 75015, г. Париж, Франция

Аннотация. Анализируется существующая аргументация о противоправности вторичных санкций США с точки зрения международного права. Выдвигается мнение о том, что они представляют собой ограничительную деловую практику, препятствующую реализации права на развитие. Подобные санкции наносят ущерб торговле и конкуренции, которые экономисты считают необходимыми условиями развития. Удерживая иностранные компании от ведения бизнеса с государствами или крупными экономическими субъектами, подпадающими под первичные санкции США, вторичные санкции фактически резервируют рынок санкционируемого государства для американских компаний на период, который начнется после отмены санкций. Вторичные санкции, действующие в международном масштабе, соответствуют определению ограничительной деловой практики, с которой Конференция ООН по торговле и развитию стремится бороться на национальном уровне. В связи с этим конференция может оспаривать подобные меры на указанных основаниях.

Ключевые слова: вторичные санкции; антиконкурентные меры; ограничительная деловая практика; Соединенные Штаты Америки; ЮНКТАД.

Образец цитирования:
Штраус МДж. Скрытая функция американских вторичных санкций: препятствование реализации права на развитие. *Журнал Белорусского государственного университета. Международные отношения*. 2025;2:21–25 (на англ.).
EDN: HQMPCX

For citation:
Strauss MJ. A hidden function of US secondary sanctions: blocking the right to development. *Journal of the Belarusian State University. International Relations*. 2025;2:21–25.
EDN: HQMPCX

Автор:
Майкл Джон Штраус – доктор философии (международные отношения и дипломатия); профессор международного права и международных отношений.

Author:
Michael J. Strauss, doctor of philosophy (international relations and diplomacy); professor of international law and international relations.
m.strauss@wanadoo.fr

Introduction

While the adverse impact of international sanctions, including unilateral measures, on the right to development[1] is well documented [1], this article addresses the specific harm to development caused by enforcing unilateral sanctions through secondary sanctions. This article argues that, because secondary sanctions aim to dissuade companies in non-sanctioning states – often developing nations – they prevent potentially significant economic contributions to development.

States apply sanctions to coerce the target into changing its conduct by withholding goods and services (and, in the case of individuals, certain state-granted rights). The sanctions prohibit entities within the sanctioning state from transacting with the target. Because this prohibition extends to business enterprises, it creates an inherent dilemma: while companies in the sanctioning state are barred, foreign companies outside its jurisdiction can fill the void. When these companies engage, they reduce pressure on the target, weakening the sanctions' coercive effect[2].

Sanctioning states have used two primary methods to address circumvention. One is to build coalitions that apply similar measures against the same target. This reduces the number of jurisdictions where companies may legally trade with the sanctioned party and can potentially enhance effectiveness[3]. Yet this approach is imperfect: it widens opportunities for companies in non-sanctioning countries by removing additional competitors. The prospects of increased trade with the sanctioned party can induce states to resist geopolitical pressure to join such coalitions[4]. Others decline because their existing links with the target are substantial[5], or if they maintain close political relations with the target[6].

The other method to fight the circumvention of sanctions is applied by the most prolific sanctioning country, the United States, often to supplement its role in sanctioning coalitions; it involves using secondary sanctions against foreign companies that do business with the targeted party. Under this mechanism, businesses anywhere in the world conducting transactions with US sanctions targets may themselves face American restrictions.

Secondary sanctions typically bar targeted firms from conducting business in the United States, excluding them from the world's largest economy. They also bar access to the US financial system, which remains essential for international commerce[7]. The threat of such consequences against economically significant foreign firms can prove sufficient to prompt their home governments to join US sanctions[8], closing circumvention avenues.

The dubious legality of secondary sanctions

Under international law, the legality of secondary sanctions has been widely questioned, raising the prospect of formal challenges. Even before these measures became routine in US policy, one case prompted complaints to the WTO dispute settlement procedure, although it did not reach judgment because a domestic court ruling in the United States rendered it moot. In that dispute, brought in 1998, the European Commission and Japan both claimed that the United States violated the WTO Agreement on government procurement after a US state, Massachusetts, banned its government from contracting with any entity that also conducted business with Myanmar, a country accused of human rights violations[9]. The ban faced simultaneous domestic challenge in a US case concerning state versus federal powers. It was lifted when the Supreme Court ruled it unlawful[10] [2, p. 47].

[1] Impact of unilateral coercive measures on economic, labour and social rights: report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan. 16 July 2025 // United Nations : website. URL: https://docs.un.org/en/A/HRC/60/36 (date of access: 24.11.2025). Para. 67.

[2] *Kaca E.* Dual-use items: EU seeks to limit circumvention of the sanctions on Russia // The Polish Institute of International relations : website. URL: https://pism.pl/publications/dual-use-itemseu-seeks-to-limit-circumvention-of-the-sanctions-on-russia (date of access: 12.05.2025).

[3] *Forrer J.* Aligning economic sanctions // Atlantic Council : website. URL: https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/aligning-economic-sanctions (date of access: 12.05.2025) ; *Sonali Chowdhry S., Hinz J., Kamin K., Wanner J.* Brothers in arms: the value of coalitions in sanctions regimes // German Institute for Economic Research : website. URL: https://www.diw.de/documents/publikationen/73/diw_01.c.857116.de/dp2021.pdf (date of access: 12.05.2025). P. 3, 15–16.

[4] *Coldal L.* The role of third countries in the effectiveness of economic sanctions. Bergen : Univ. of Bergen, 2023. P. 13.

[5] *Forlani M.* Economic sanctions and their side effects: the EU food industry case study. London : Kings College London, 2022. P. 109–114.

[6] Kazakhstan does not join sanctions imposed on Russia, says Kazakh foreign minister // Asia-Plus. 26 Dec. 2022.

[7] *Collins-Chase E. J.* Sanctions primer: how the United States uses restrictive mechanisms to advance foreign policy or national security objectives // US Congress : website. URL: https://www.congress.gov/crs-product/R47829 (date of access: 12.05.2025). P. 9–10.

[8] *Forlani M.* Economic sanctions and their side effects… P. 107–109.

[9] United States – measure affecting government procurement. 9 September 1998 // World Trade Organization : website. URL: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/88-3.pdf&Open=True (date of access: 12.05.2025).

[10] United States – measure affecting government procurement: communication from the Chairman of the Panel. 12 February 1999 // Ibid. URL: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/88-5.pdf&Open=True (date of access: 12.05.2025).

While the aborted WTO case involved a specialised aspect of international trade law related to government procurement, other challenges to secondary sanctions invoke broader principles of international law. One argument is that these measures breach the customary principle of non-intervention in the affairs of other states: by extending US jurisdiction to punish foreign companies for activities lawful where they occur, secondary sanctions interfere with other states' domestic legal systems, foreign relations and trade[11] [3].

Another ground is that secondary sanctions breach states' obligations to respect, protect and fulfil human rights. Like primary sanctions, they violate the rights of targeted individuals – such as denying due process guaranteed by the International covenant on civil and political rights[12] – and harm those connected or dependent on the sanctioned party[13].

It is also argued that secondary sanctions, similar to primary measures, are unlawful because the UN Charter assigns the legal power to authorise sanctions to the UN Security Council[14]; individual states lack such power except in limited circumstances unrelated to the reason for using secondary sanctions [4, p. 87]. The UN General Assembly has repeatedly condemned «unilateral coercive measures» – typically sanctions imposed without Security Council approval – as violations of international law[15].

An additional argument: impeding development

This paper proposes a further basis for contesting the lawfulness of secondary sanctions: by punishing, or threatening to punish, foreign companies for engaging with entities targeted by US sanctions, they harm the human right to development in every country where such business is lawful. Secondary sanctions suppress two elements central to national development – trade and competition – by acting as anti-competitive measures.

While development encompasses many interrelated aspects, the economic dimension remains paramount. Exporting goods and services constitutes a critical component of development. The World Bank describes trade as «a powerful driver of development»[16] and one of its economists has termed export growth «a vital feature of countries' development experience and performance» [5]. Other economists characterise it as «an essential component in reaching development objectives»[17].

Trade thus forms an integral part of exercising the right to development[18] and of fulfilling related entitlements – notably, the right to an adequate standard of living, and the associated rights to health, food and housing, and other specific rights. The significance of trade for development is reflected in various WTO and General agreement on tarifts and trade measures granting developing countries preferential access to foreign markets[19].

Relevantly, unilateral sanctions predominantly originate from developed states with larger, more diversified economies than those of developing nations, and their substantial trade links with targets enable meaningful coercive pressure [6, p. 88]. As more states join sanctions coalitions, fewer developed countries remain where companies might be exposed to US secondary sanctions. Moreover, due to the size and diversity of their economies, secondary sanctions imposed in these countries generally have a limited effect relative to their total economic activity.

This leaves nations outside these coalitions, particularly developing countries with fewer firms able to engage in international trade, at greater risk in two respects. First, their companies face higher likelihood of secondary sanctions. Second, such measures impose more substantial impacts on domestic economies and development.

In theory, primary sanctions against states or major economic actors could create opportunities for developing countries, as their businesses can fill the gaps left by sanctioning states. However, these benefits are outweighed by the more direct and acute human rights harms that primary sanctions inflict [7, p. 117–218]. Still, they do create favourable business conditions for companies in non-sanctioning states by offering them an accessible and sometimes sizable market while also insulating them from competitors in the sanctioning jurisdictions.

However, US secondary sanctions suppress these opportunities by deterring businesses in all other states

[11] Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions: report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan. 15 July 2022 // United Nations : website. URL: https://docs.un.org/en/A/HRC/51/33 (date of access: 12.05.2025). Para 13.

[12] Ibid. Para 14, referring to Art. 14–15 of the International convenant on civil and political rights.

[13] Ibid. The association or dependence may be direct or indirect.

[14] Articles 39, 41 of the UN Charter.

[15] Human rights and unilateral coercive measures: General Assembly resolution 79/167 of 19 December 2024 // United Nations : website. URL: https://docs.un.org/en/A/RES/79/167 (date of access: 12.05.2025).

[16] Trade has been a powerful driver of economic development and poverty reduction // World Bank : website. URL: www.worldbank.org/en/topic/trade/brief/trade-has-been-a-powerful-driver-of-economic-development-and-poverty-reduction (date of access: 03.05.2025).

[17] *Kose M. A., Mulabdik A., Vorisek D.* Trade policy for developing economies // Vox.eu. URL: https://cepr.org/voxeu/columns/trade-policy-developing-economies (date of access: 04.05.2025).

[18] The right to development: General Assembly resolution 58/172 of 11 March 2004 // United Nations : website. URL: https://docs.un.org/en/A/RES/58/172 (date of access: 12.05.2025). Para 14–15.

[19] Legal basis for preferential market access for goods from least developed countries // Ibid. URL: www.un.org/ldcportal/content/legal_basis_ldc_preferential_market_access (date of access: 02.05.2025).

from replacing US companies – or those from allied sanctioning countries – which must cease dealings with the target under primary sanctions. Essentially, secondary sanctions freeze the US share of the target's market and hold it open for US companies to resume business there when the sanctions end. This inherent feature remains unstated: once primary sanctions are lifted, the quickest way for the sanctioned party to restore disrupted economic activity is to revive previously established business ties[20], which can include «a shared history of complex prior interactions» [8, p. 264].

Secondary sanctions can therefore be understood as a restrictive business practice that suppresses competition both now, by preventing it from developing, and later, by discouraging future market entry. Though ostensibly preventing circumvention of primary sanctions[21], they penalise foreign businesses – especially in developing countries – to discourage commercial relationships that prove difficult to displace once sanctions expire[22].

Competition, like trade, is essential to development. Unlike trade, however, no global legal framework specifically addresses state conduct in international competition, though its role in national growth is well recognised. As early as 1960, the GATT's contracting parties recognised that «business practices which restrict competition in international trade may hamper the expansion of world trade and the economic development in individual countries»[23].

As with trade, competition proves vital for economic growth[24] [9, p. 15]. It possesses «paramount importance» in fostering conditions for economic expansion [10, p. 1], making it another critical factor in national development. Conversely, anti-competitive practices cause economic harm that undermines development [11, p. 5]; they obstruct the emergence and flourishing of business skills and capabilities [11, p. 14–15] and thereby restrain the capacity of states to exercise the right to development. Moreover, a UNCTAD report notes that «developing countries… tend to be more vulnerable to anti-competitive practices» for a number of reasons, such as having smaller and less diversified economies and having limited experience and resources to ensure that competition can thrive [11, p. 14].

Measures that suppress competition are typically addressed domestically through laws and regulations. Yet anti-competitive measures imposed internationally undermine development potential. As UNCTAD notes, with national economies increasingly integrated into the global system, «no country can escape the effects of anti-competitive practices originating outside their national borders» [11, p. 14]. Research has focused mainly on international cartels and similar arrangements [12], but the same reasoning applies to any conduct that suppresses cross-border competition. US secondary sanctions fall squarely within this category.

A novel path for challenging secondary sanctions

The right to development was elaborated in 1986 in the UN Declaration on the right to development[25]. Although considered soft law and thus non-binding on states [13], efforts have been underway[26] since 2018 to create a legally binding treaty that would include «halting all measures that might have a negative impact on the right to development»[27]. Another relevant non-binding instrument is the Set of multilaterally agreed equitable principles and rules for the control of restrictive business practices (here and further the Set), which calls for «eliminating or effectively dealing with restrictive business practices… adversely affecting international trade, particularly that of developing countries, and the economic development of these countries»[28]. When states agreed the Set in 1980, US secondary sanctions did not exist. Yet such sanctions fit squarely within the practices it aims to curtail.

While binding obligations on the right to development remain pending, the Set provides a possible avenue through which UNCTAD could examine secondary sanc-

[20]Increase in Swedish exports to Iran. 4 February 2018 // Swedish Export Credit Agency : website. URL: www.ekn.se/en/about-ekn/news-and-events/newsroom/increase-in-swedish-exports-to-iran/ (date of access: 12.05.2025).

[21]Treasury disrupts Russia's sanctions evasion schemes: press release. 15 January 2025 // US Department of the Treasury : website. URL: https://home.treasury.gov/news/press-releases/jy2785 (date of access: 12.05.2025).

[22]*Forrer J.* Economic sanctions: sharpening a vital foreign policy tool // Atlantic Council : website. URL: https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/economic-sanctions-sharpening-a-vital-foreign-policy-tool (date of access: 12.05.2025). P. 8.

[23]General agreement on tariffs and trade. Restrictive business practices: decision of 18 November 1960 // World Trade Organization : website. URL: https://www.wto.org/Gatt_docs/English/SULPDF/90740130.pdf (date of access: 12.05.2025). P. 17 ; Restrictive business practices: arrangements for consultations. 2 June 1960 // World Trade Law : website. URL: https://www.worldtradelaw.net/document.php?id=misc/rbp2.pdf&mode=download (date of access: 12.05.2025). P. 2–3.

[24]*Macedo e Silva J. D.* The macroeconomic impact of competition: a panel data approach. Porto : Universidade do Porto, 2021.

[25]Declaration on the right to development: General Assembly resolution 41/128 of 4 December 1986 // United Nations : website. URL: https://docs.un.org/en/A/Res/41/128 (date of access: 12.05.2025).

[26]The right to development: Human Rights Council resolution 39/9 of 27 September 2018 // Ibid. URL: https://docs.un.org/en/A/HRC/RES/39/9 (date of access: 12.05.2025).

[27]The right to development: Human Rights Council resolution 57/19 of 10 October 2024 // Ibid. URL: https://docs.un.org/en/A/HRC/RES/57/19 (date of access: 12.05.2025). P. 3.

[28]The United Nations set of principles and rules on competition. 2000 // UNCTAD : website. URL: https://unctad.org/system/files/official-document/tdrbpconf10r2.en.pdf (date of access: 12.05.2025). Section F.

tions[29]. It contains a procedure for resolving disputes between states concerning domestic measures to control anti-competitive practices. Although this process does not establish a tribunal to issue rulings, it seeks mutually acceptable solutions through consultation and depends on voluntary corrective actions. At present, it does not have jurisdiction over anti-competitive practices themselves.

Despite these limitations, the procedure can still be applied to secondary sanctions. The Set's periodic «Review Conferences» have adapted it in the past to reflect emerging needs[30]. Several considerations support a further adjustment to address measures to restrict lawful commerce outside the jurisdiction imposing them: 1) the Set aims to prevent restrictive business practices from impeding development[31]; 2) UNCTAD recognises that cross-border anti-competitive practices, not only domestic measures, affect this aim; 3) the proliferation of US secondary sanctions has multiplied the presence of international anti-competitive measures, and 4) the absence of multilateral rules regulating such conduct enables it to obstruct development with few checks.

Using the Set's consultation procedure would highlight the contrast between secondary sanctions and the Set's purpose, principles and rules. It could establish precedents for legal challenges connected to future binding obligations on the right to development.

Challenging US secondary sanctions in this context depends on revealing their function as anti-competitive business restrictions that inhibit the exercise of the right to development. Support for establishing their inconsistency with international law may come from an unexpected source: the United States. Before expanding its use of secondary sanctions, the US Government acknowledged that international anti-competitive conduct harms key components of development[32].

That secondary sanctions constitute anti-competitive conduct follows directly from their nature and aims. Arguing that they breach international law by obstructing the right to development can therefore reinforce other claims regarding their illegality.

Conclusions

The threat and use of secondary sanctions in enforcing unilateral measures can deter firms in developing countries from expanding abroad, even when they play no role in the sanctions regime. They consequently suppress growth opportunities for international trade, inhibiting the right to development. The effects may outlast the sanctions' duration, as they can operate as barriers that preserve markets for firms from the sanctioning state with established commercial links. A possible remedy lies in adapting the rules against restrictive international business practices developed by the UNCTAD.

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[30]The United Nations Set of principles and rules on competition: implementation after 40 years. New York : United Nations, 2025. P. 15.

[31]The United Nations set of principles and rules on competition. 2000 // Ibid. URL: https://unctad.org/system/files/official-document/tdrbpconf10r2.en.pdf (date of access: 12.05.2025). Section A.

[32]Intergovernmental group of experts on competition law and policy, roundtable on the impact of cartels on the poor: contribution by the United States of America (8–10 July 2013, Geneva) // Ibid. URL: https://unctad.org/system/files/non-official-document/IGE2013_RT2_USA_en.pdf (date of access: 12.05.2025).

Журнал Белорусского государственного университета. Международные отношения. 2025;2:26–41
Journal of the Belarusian State University. International Relations. 2025;2:26–41

UDC 341.645(8)

FROM EUROPEAN TRADITION TO LATIN AMERICAN REALITY: TOWARD ESTABLISHING THE ROLE OF ADVOCATE GENERAL IN THE COURT OF JUSTICE OF THE ANDEAN COMMUNITY

W. M. KÜHN [a]

[a]*Court of Justice of the European Union, 1 Rue du Fort Niedergrünewald, Luxembourg 2925, Luxembourg*

Abstract. This article examines the office of the Advocate General at the Court of Justice of the European Union and evaluates the case for its incorporation into the Court of Justice of the Andean Community. Using comparative analysis, it delineates the functions, contributions, and institutional guarantees that define the Advocate General in the European context, highlighting its role in ensuring jurisprudential coherence, the development of law, and the legitimacy of supranational adjudication. The article further analyses the historical, political, and budgetary reasons for the absence of this office in the Andean system, including national sovereignty concerns, the economic-commercial emphasis of integration, and the Andean Community's financial constraints. Drawing on the existing Andean legal framework, it identifies the normative and procedural mechanisms required to introduce an Advocate General within the Court of Justice of the Andean Community. The article argues that such adoption would strengthen homogeneity, the unity of the legal order, and the transparency of decision-making. Finally, it contends that this reform would enhance judicial dialogue between the Court of Justice of the Andean Community, Court of Justice of the European Union and other international courts, thereby consolidating member state and legal practitioner confidence in the regional integration system.

Keywords: Advocate General; Court of Justice of the Andean Community; institutional reform; integration law; judicial legitimacy; judicial dialogue; European Union.

ОТ ЕВРОПЕЙСКОЙ ТРАДИЦИИ К ЛАТИНОАМЕРИКАНСКОЙ ДЕЙСТВИТЕЛЬНОСТИ: К ВОПРОСУ ОБ УЧРЕЖДЕНИИ ИНСТИТУТА ГЕНЕРАЛЬНОГО АДВОКАТА ПРИ СУДЕ АНДСКОГО СООБЩЕСТВА

В. М. КЮН [1)]

[1)]*Суд Европейского Союза, ул. Форт Нидергрювальд, 1, 2925, г. Люксембург, Люксембург*

Аннотация. Исследуется институт генерального адвоката при Суде Европейского союза и рассматривается целесообразность его внедрения в систему Суда Андского сообщества. С помощью сравнительно-правового анализа раскрываются функции, значение и гарантии, характеризующие институт генерального адвоката в европейской правовой системе. Особое внимание уделяется его роли в обеспечении единообразия судебной практики, развитии права и укреплении легитимности наднационального правосудия. Рассматриваются историко-политические и бюджетные причины отсутствия данного института в андской системе, включая опасения государств-членов относительно ограничения национального суверенитета, преимущественно экономико-торговую направленность интеграционных процессов и финансовые ограничения Андского сообщества. С опорой на действующую нормативно-правовую базу андской интеграции выявляются правовые и процессуальные механизмы, необходимые для учреждения института генерального адвоката при Суде Андского сообщества. Обосновывается тезис о том, что введение данного института

Образец цитирования:
Кюн ВМ. От европейской традиции к латиноамериканской действительности: к вопросу об учреждении института генерального адвоката при Суде Андского сообщества. *Журнал Белорусского государственного университета. Международные отношения*. 2025;2:26–41 (на англ.).
EDN: JFCSDV

For citation:
Kühn WM. From European tradition to Latin American reality: toward establishing the role of Advocate General in the Court of Justice of the Andean Community. *Journal of the Belarusian State University. International Relations*. 2025; 2:26–41.
EDN: JFCSDV

Автор:
Вернер Мигель Кюн – доктор права; советник.

Author:
Werner Miguel Kühn, doctor of law; legal advisor.
werner.kuhn@curia.europa.eu

будет способствовать обеспечению однородности и единства правопорядка, а также повышению транспарентности процесса принятия судебных решений. Утверждается, что подобная реформа поспособствует налаживанию судейского диалога между Судом Андского сообщества, Судом Европейского союза и другими международными судебными органами, укрепит доверие государств-членов и юридического сообщества к региональной интеграционной системе.

Ключевые слова: генеральный адвокат; Суд Андского сообщества; институциональная реформа; интеграционное право; легитимность правосудия; судейский диалог; Европейский союз.

Introduction

Regional integration in Latin America has advanced significantly in recent decades, with the Andean Community (CAN) emerging as one of the region's most stable frameworks for economic and legal cooperation [1, p. 137]. Within this architecture, the Court of Justice of the Andean Community (TJCA) plays an essential role in uniformly interpreting and applying the Cartagena agreement and its complementary instruments. However, unlike other supranational courts, such as the the Court of Justice of the European Union (CJEU), the TJCA lacks an internal mechanism allowing for an independent legal analysis prior to judicial deliberations. This gap impedes the systematisation of legal criteria, reduces jurisprudential consistency and diminishes transparency in judicial reasoning. The CJEU's Advocate General offers a compelling model: by issuing independent opinions, Advocates General bring clarity, coherence, and technical depth to the decision-making process. European experience demonstrates that such intervention strengthens legal unity, fosters jurisprudential development, and enhances institutional legitimacy.

This article analyses the role of the Advocate General at the CJEU, identifies its contributions to European case-law, and explores its potential adaptation to the TJCA. Through comparative analysis and assessment of normative-procedural feasibility, it demonstrates how instituting an Advocate General could enhance legal coherence, increase transparency, and raise the technical quality of the TJCA's decisions. The study combines doctrinal review, analysis of landmark CJEU rulings, and examination of the CAN's legal framework to propose a structured implementation roadmap. This roadmap specifies appointment criteria, functions, terms of office, and integration mechanisms. The article also offers a reference framework that may guide the transplantation of this office into other supranational judicial systems where it has not yet been considered.

At an event hosted by the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Germany), when questioned why the Advocate General – expressly authorised in the TJCA's founding treaty – remains unimplemented, a judge from the TJCA present at the said event cited the court's «limited» caseload[1]. This justification was striking, as it appeared to understate this institution's multiple functions and potential. Years later, a discussion with two CJEU Advocates General in Luxembourg revived this exchange and highlighted the absence of an Andean equivalent. This article, therefore, deepens understanding of an institution now essential to the EU's supranational judicial system.

The Advocate General at the Court of Justice of the European Union

Legal basis. The Advocate General is among the CJEU's most distinctive institutional features. Its legal basis derives from Art. 19 of the Treaty on European Union (TEU), which establishes the CJEU's role in safeguarding the uniform interpretation and application of EU law, and Art. 252 of the Treaty on the functioning of the European Union (TFEU), which governs the designation, status, and essential functions of the advocates general.

Status, appointment and rotation (permanence) system. Article 253 of the TFEU provides that member state governments appoint Advocates General by common accord for renewable six-year terms. Before appointment, the panel established under Art. 255 of the TFEU – comprising former CJEU members and jurists of recognised standing – assesses each candidate's suitability to perform the duties of judge or Advocate General and issues an opinion. This procedure reflects the Union's institutional balance, characteristic of European integration: member states participate directly in appointments, while appointees enjoy full independence once in office. In practice, several advocates general have served consecutive terms, providing the CJEU with continuity and accumulated expertise. The position requires individuals whose independence is beyond doubt and who either qualify for the highest judicial offices in their respective countries or possess recognised legal competence.

The CJEU currently employs eleven advocates general under a combined system of permanent and rotating appointments. Five positions are permanently allocated to member states with the greatest demographic

[1]As G. García Brito explains, the number of cases was initially small, but between 2007 and 2019 there was an exponential increase in requests for preliminary rulings. In this respect, in the opinion of the author of this work, the absence of advocates general before the TJCA is no longer justified [2, p. 194].

and political weight[2], while the remaining six rotate periodically among other member states. This system balances institutional stability – through continuous representation by certain states – with the equality principle, ensuring all countries can periodically appoint an Advocate General. Following recent judicial reforms, the General Court (the first-instance jurisdiction) now hears preliminary ruling requests in specific matters. Consequently, three General Court judges serve as advocates general when required, underscoring the office's importance for the development of the case-law[3].

Regarding status, the TFEU expressly equates advocates general with CJEU judges in respect of independence, immunities, and obligations. They may not receive instructions from any government, institution, or party, and must maintain the same impartiality and objectivity required of judges. This structural parallelism is not merely formal: it confirms the advocates general are not advisers or auxiliary officials but full European magistrates vested with a distinct institutional mandate. They may intervene at hearings[4] and pose questions necessary to clarify legal and factual issues, exercising the same prerogatives as the reporting judge or chamber members [4, p. 260]. They also hold equivalent protocol rank to judges, and the First Advocate General – elected triennially by peers – ranks above certain more senior judges. Significantly, the advocates general do not participate in electing the CJEU President, reinforcing their independence and institutional autonomy from the judicial college.

The First Advocate General assigns pending cases among the college members, considering individual workloads and enforcing fundamental rules, including the prohibition against advocates general hearing cases connected to their countries of origin to safeguard impartiality [5, p. 6]. Beyond case distribution, the First Advocate General exercises specific procedural prerogatives, including the authority to propose case review where no appeal lies, when «a serious risk to the unity or coherence of union law» arises under Art. 256(2) of the TFEU.

Embedding the office of Advocate General in the TFEU has constitutional significance. It is not an ancillary device that could be created by internal rules, but a structural element of the union's judicial design, intended to ensure the technical quality and transparency of adjudication. The Advocate General distinguishes the CJEU from other international tribunals, where judicial deliberation typically occurs exclusively among judges without independent preliminary assessment.

Functions and procedural dynamics. Article 252 of the TFEU states that the CJEU is «assisted» by advocates general. The contours of that assistance are examined below. The Advocate General's principal mission is to deliver written, public, and reasoned opinions in assigned cases. These opinions provide exhaustive legal analysis of disputed issues and propose concrete resolutions[5]. A specific linguistic regime governs these opinions[6]. Although not binding on the CJEU, Advocate General opinions fulfil following essential functions widely recognised by both doctrine and judicial practice:

- interpretative and systematising function (the opinions create, consolidate, and clarify legal principles guiding CJEU case law);
- unity and coherence function (they ensure uniform application of EU law across member states, reinforcing consistency in the European legal order);
- transparency and legitimacy function (as public documents, the opinions make accessible the reasoning that informs judicial decisions, thereby strengthening the CJEU's democratic legitimacy);
- procedural efficiency function (the Advocate General's detailed technical analysis facilitates judicial deliberation, enabling judges to decide cases with greater speed and rigour; advocates general are consulted in advance on key procedural matters – such as scheduling hearings, requesting clarifications from the parties or authorising third-party interventions – underscoring their central role in the CJEU's internal operations);
- innovative function (the advocates general often anticipate novel legal solutions, exploring interpretative avenues that have, on occasion, marked turning points in the evolution of EU law).

The procedural dynamic that defines the role of the Advocate General is characterised by one essential feature: their exclusion from the judges' final deliberation. Once the opinion is delivered, the Advocate General's participation formally ends. This institutional design preserves the autonomy and impartiality of the analysis and prevents CJEU internal discussions from influencing their views, while providing the court with a distinct «second institutional voice».

Notably, each deliberation opens with the chamber's decision whether to follow the Advocate General's opinion [6, p. 1144], a determination that turns on the weight and cogency of its reasoning [7]. Likewise, advocates

[2]Some member states always have an Advocate General at the CJEU. Until 2013, only the four major founding states (Germany, France, Italy and Spain) had a permanent job. Poland was incorporated following the enlargement of the EU and the institutional adjustment of the Treaty of Nice (Lisbon).

[3]The scope of the reform as regards the appointment of advocates general before the General Court is analysed in [3, p. 99].

[4]It should be noted, in significant detail, that the Advocate General joins the courtroom and leaves it at a different door than judges, a gesture which symbolises and highlights their independence from them.

[5]Article 252(2) of the TFEU defines the function of the Advocate General as «to make, with complete impartiality and independence, reasoned submissions on cases which, in accordance with the Statute of the CJEU, require his intervention».

[6]French is the working language of the CJEU, so the judgments are originally drafted in this language and then translated into the other official languages of the EU. The Advocate General, on the other hand, has the power to draw up his opinion in the official language of his choice – either the official language of his country of origin or the language of his choice for professional reasons – which are subsequently translated.

general are not bound by their counterparts' opinions in related cases. They develop their reasoning autonomously. This independence enriches the judicial debate and enables the court to consider alternative approaches before delivering judgment.

The Advocate General typically delivers an opinion in cases of particular significance or those raising novel legal questions [4, p. 301]. In some matters, the opinion addresses only the most complex issues (*conclusions ciblées*). The «general meeting» – comprising all CJEU members (judges and advocates general) – decides whether an Advocate General will intervene. This body also allocates cases to chambers and determines procedural matters, such as scheduling hearings or formulating questions to the parties [8].

Historically, opinions were read in full at the hearing, allowing parties and the public to hear the complete legal analysis. However, for reasons of procedural economy and in view of the high volume of cases handled by the CJEU, this practice has gradually been replaced by an abbreviated reading during the hearing. At present, only the operative part of the opinion – that is, the Advocate General's proposed solution – is read aloud at the hearing [9, p. 532]. The full text is published the same day on the CJEU's website, ensuring accessibility and procedural transparency.

Empirical studies confirm that the CJEU adopts all or part of advocates general's opinions in a high percentage of cases. Scholarship often cites a convergence approximately 80 %[7] rate, though precise quantification proves difficult. Even when the CJEU departs from them, these opinions retain significant doctrinal and academic value, as scholars and subsequent courts frequently cite them in textbooks, commentaries, and judgments. When the CJEU follows the Advocate General's opinion, it often expressly incorporates elements of that reasoning in its judgment. Conversely, when the court diverges from such opinions, it seldom refutes them directly, instead constructing its reasoning autonomously.

Compliance with the due process principle. Advocate general's opinions provide independent, nonbinding guidance to the CJEU on legal interpretation. As they lack direct legal effect on parties' procedural positions and are not judicial decisions, parties cannot appeal their content. The CJEU's case law[8] confirms that challenges to opinions on these grounds are inadmissible. Nevertheless, the parties may safeguard their right of defence through a specific mechanism: requesting the reopening of the oral phase under Art. 83 of the Rules of Procedure of the CJEU. Reopening may be warranted, inter alia, where the Advocate General's opinion introduces new elements or addresses issues not debated at the hearing. This mechanism balances the Advocate General's functional independence with the adversarial principle.

The European Court of Human Rights (ECtHR) has likewise held that the institution of the Advocate General is compatible with the fair-trial guarantees in Art. 6 of the European convention on human rights. In Emesa Sugar N. V. against the Netherlands[9], the ECtHR held that the inability to challenge the Advocate General's opinions does not violate the adversarial principle, since such opinions are non-binding, presented at public hearings, and based on parties' existing arguments. Similarly, in Kress v. France[10] – concerning the commissaire du gouvernement before the Conseil d'État – the ECtHR clarified that the participation of a body providing an independent and non-decisional legal analysis is compatible with a fair trial, provided transparency and the separation of functions are maintained.

In Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U. A. against the Netherlands[11], the ECtHR concluded that preventing parties from responding to the Advocate General's Opinion before its oral presentation does not infringe the adversarial principle. The CJEU's Rules of Procedure provide compensatory mechanisms – such as reopening the oral phase when the opinion introduces new or decisive elements – that ensure procedural balance between the parties. Thus, the ECtHR reaffirmed that the EU judicial system, including the Advocate General as a «second institutional voice», provides protection equivalent to the ECHR and aligns fully with the European human rights framework.

Accordingly, the Advocate General serves as an impartial auxiliary of the CJEU, tasked with enriching the legal debate and safeguarding the general interest of EU law, without taking part in judicial deliberation. The absence of a right to reply to the Advocate General's opinions does not undermine procedural fairness, provided that the parties enjoy full opportunity to present arguments and that independent and impartial judges retain exclusive decision-making authority.

The cabinet of an Advocate General. At the CJEU, *référendaires* (legal secretaries or law clerks) are highly qualified jurists who assist both the judges and the advocates general. Their work ensures the technical soundness, internal coherence, and clarity of the CJEU's legal reasoning. Each member's cabinet typically comprises three to five *référendaires* drawn from academia,

[7] According to the internal statistics of the cabinet J. Kokott speaks of a percentage of more than 86 %. See: *Kokott J.* Der EuGH als Motor des europäischen Integrationsprozesses? // C. H. Beck : website. URL: https://rsw.beck.de/docs/librariesprovider51/nldocs/nl_jus_kurzinterview_kokott.pdf?utm_source=chatgpt.com (date of access: 08.09.2025).

[8] CJEU order of 4 February 2000, Emesa Sugar in case C-17/98. EU:C:2000:69.

[9] ECtHR judgment of 13 January 2005, Emesa Sugar N. V. against the Netherlands. Appl. No. 62023/00.

[10] ECtHR judgment of 7 June 2001, Kress v. France. Appl. No. 39594/98.

[11] ECtHR judgment of 20 January 2009, Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U. A. against the Netherlands. Appl. No. 13645/05.

national or supranational administrations, private practice, or the judiciary. Proficiency in multiple EU languages and familiarity with various national legal systems enable them to operate effectively in an international environment where diverse legal traditions converge. Given their expertise and experience, *référendaires* are often appointed as CJEU judges or advocates general after years of service as legal advisers, thereby ensuring continuity and the accumulation of institutional knowledge within European case law [10, p. 569].

Within the cabinets of the advocates general, *référendaires* play a central role in drafting opinions – the instruments through which the Advocate General independently and comprehensively analyses the legal questions raised in each case [11, p. 369]. Their work begins with in-depth legal and doctrinal research, reviewing applicable European legislation, prior CJEU case law, and often comparative or international law to provide additional perspectives and identify solutions tested in other systems [12, p. 251]. This ensures rigorous substantiation of the Advocate General's arguments and situates each case within a broad interpretative framework.

The *référendaires* then collaborate in drafting the opinions to ensure clarity, coherence, and legal rigour. They organise arguments logically, highlight relevant precedents, and propose interpretative structures comprehensible both within the CJEU and to external legal practitioners. They prepare analytical notes and summaries integrating case law, regulatory background, and potential alternative interpretations, providing a comprehensive case overview.

The *référendaires* also coordinate information flows within the CJEU, liaising with judges' chambers and the administrative services to secure consistent and coherent case handling. Their involvement identifies all relevant issues and establishes a thorough grounding for legal arguments before the Advocate General formulates the final opinion. As legal advisers, the *référendaires* deliver specialised technical support, conduct preliminary case analysis, and formulate recommendations that guide the Advocate General in fulfilling their institutional mission.

Although the Advocate General bears formal responsibility and signs the opinions, the *référendaires'* work proves decisive for technical quality, interpretative coherence, and document clarity. Their assistance enables the Advocate General to concentrate on critical evaluation, the strategic orientation of legal reasoning, and the formulation of innovative solutions, while the *référendaires* ensure systematic, comprehensive, and legally sound argumentation. In essence, the *référendaires* constitute the operational core of legal support that enables the Advocate General to perform their functions of analysis, interpretation, and guidance effectively in the development of the CJEU's case law.

Historical evolution and impact on case law. The Advocate General's origins lie in the French tradition of the *commissaire du gouvernement*, an official within the *Conseil d'État* (Council of State). This official independently presented legal analyses of administrative cases [13, p. 535]. Despite the title, they did not represent the government; rather, they prepared and publicly presented an independent opinion (conclusions) intended to guide the judicial decision. Though non-binding, these opinions exerted significant influence by clarifying, systematising, and lending coherence to legal reasoning. Drawing on this model, the drafters of the 1951 Treaty of Paris introduced the office into the Court of Justice of the European Coal and Steel Community (ECSC), recognising the need for a mechanism to ensure interpretative coherence and transparent legal foundations within the new supranational jurisdiction.

Although inspired by a national institution, the Advocate General acquired distinctive features from the outset. The office-holder enjoys the same independence and immunity as judges and the office is tasked with contributing to the development of the EU's autonomous legal order. The office thus represents a legal transplant adapted to the supranational level that has become indispensable for the technical quality, legitimacy, and coherence of CJEU jurisprudence. Over 70 years of judicial practice, the office has acquired characteristics that clearly distinguish it from its national antecedent.

Scholars widely interpret the Advocate General's office as compensating for the absence of dissenting opinions in the CJEU model [14, p. 18]. Prohibiting separate opinions aimed to safeguard the unity, coherence, and authority of the emerging community legal order, preventing judicial fragmentation from undermining institutional legitimacy. This choice, however, limited public expression of diverse legal perspectives within the court. Accordingly, scholars observe that the Advocate General largely substitutes for dissenting opinions [15, p. 197]. Advocates general's opinions, presented publicly and independently, balance this limitation by manifesting interpretative plurality without diminishing the judgment's binding force. Although not dissenting opinions in the strict sense, they operate as a functional equivalent, offering the legal community a critical and complementary perspective that has significantly shaped European jurisprudence [10, p. 572].

The institution has evolved alongside European integration itself. In its early decades, few advocates general served, and their intervention was reserved for cases of particular complexity or political sensitivity. However, as the integration system expanded its competences and the court's caseload grew, the participation of advocates general became more systematic and consolidated their institutional status. Although not every case requires an opinion, they now intervene across a wide range of fields, including economic freedoms, competition, fundamental rights, procedural law, and the EU's external relations.

Advocates general have decisively shaped the evolution of European case law. Several paradigmatic examples demonstrate this influence:

• in Rewe-Zentral AG, Advocate General introduced the notion of «mandatory requirements» that may justify national restrictions on trade within the common market. His opinion enabled the court to establish the principle of mutual recognition, ensuring that products lawfully marketed in one member state could circulate freely in others, except in duly justified cases. The clarity and systematisation of Advocate General's reasoning were adopted almost in their entirety by the CJEU, consolidating a foundational framework for EU free trade[12];

• in Keck and Mithouard, Advocate General proposed a distinction between «selling arrangements» and «product requirements», to prevent the principle of free movement of goods from being applied too rigidly. The court adopted this distinction, defining the scope of Art. 34 of the TFEU and consolidating the doctrine on measures affecting product marketing. This preserved the balance between European integration and national legislative autonomy[13];

• in the Bosman, Advocate General argued that football player transfer rules unjustifiably restricted the free movement of workers. His opinion detailed how sports contracts and national restrictions contravened EU law. The CJEU fully adopted his reasoning, establishing a historic precedent that transformed the regulation of professional football in Europe[14];

• in Promusicae, Advocate General opined that the e-Privacy Directive does not preclude Internet service providers from disclosing the identity of users who shared copyright-protected material. The court followed her opinion, establishing a balance between intellectual property protection and users' fundamental rights[15];

• in Advocaten voor de Wereld, Advocate General's opinion provided a key doctrinal reference for understanding the principle of mutual recognition in criminal matters and the scope of the European Arrest Warrant (EAW). He argued that the EAW framework decision is compatible with the principle of legality and with the fundamental rights protected in the EU legal order. He regarded dispensing with double criminality verification for certain serious offences as a legitimate legislative choice to strengthen mutual trust among member states. He further stressed that the EAW does not undermine national sovereignty but rather operates within an area of freedom, security, and justice in which the member states have accepted a high degree of judicial cooperation. This opinion, rich in doctrinal content, illustrates the Advocate General's role in aligning integration with rights protection and in consolidating mutual trust as a cornerstone of the Union's criminal justice area[16];

• in Viking Line, Advocate General crafted a careful balance between the freedom of establishment and workers' right to collective action. His opinion guided the court's nuanced approach, recognising social rights as compatible with economic freedoms and setting concrete criteria for resolving such conflicts[17];

• in Domínguez, Advocate General's opinion significantly advanced doctrine on the horizontal effect of fundamental rights in EU law. She defined the right to paid annual leave as a general principle of EU law, arguing for its possible invocation in disputes between private parties. However, she cautioned that such applicability should be subject to limits that safeguard legal certainty – namely, that the right be sufficiently clear, precise, and unconditional. Her approach, blending teleological and comparative reasoning with systemic coherence, highlights the Advocate General's role in safeguarding doctrinal consistency and driving jurisprudential evolution[18];

• The Google Spain constitutes another paradigmatic example. Advocate General endorsed implementation of the «right to be forgotten», proposing clear criteria for requiring search engines to remove personal information. The court followed his opinion, establishing a legal and technical framework that balanced freedom of information and data protection. This ruling decisively shaped internet privacy jurisprudence[19];

• in Gauweiler, Advocate General concluded that the European Central Bank's public debt purchase programme, known as Outright Monetary Transactions, was compatible with EU law, provided it observed certain limits. The CJEU adopted his opinion, validating the Outright Mondary Transactions' legality and reinforcing the European Central Bank's autonomy in monetary policy[20];

• Finally, in Czech Republic v Poland, Advocate General concluded that Poland had violated EU law by extending authorisation for lignite extraction without conducting an environmental impact assessment and without properly notifying the Czech Republic. He emphasised that environmental assessment is essential to ensure transparency and enable neighbouring states to exercise their participation and protection rights.

[12]Opinion of Advocate General Capotorti delivered on 16 January 1979 in case 120/78 Rewe-Zentral. EU:C:1979:3.

[13]Opinion of Advocate General Van Gerven delivered on 28 April 1993 in joined cases C-267/91 and C-268/91 Keck and Mithouard. EU:C:1993:160.

[14]Opinion of Advocate General Lenz delivered on 20 September 1995 in case C-415/93 Bosman. EU:C:1995:293.

[15]Opinion of Advocate General Kokott delivered on 18 July 2007 in case C-275/06 Promusicae. EU:C:2007:454.

[16]Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 September 2006 in case C-303/05 Advocaten voor de Wereld. EU:C:2006:552.

[17]Opinion of Advocate General Poiares Maduro delivered on 23 May 2007 in case C-438/05 International Transport Workers' Federation and Finnish Seamen's Union. EU:C:2007:292.

[18]Opinion of Advocate General Trstenjak delivered on 8 September 2011 in case C-282/10 Dominguez. EU:C:2011:559.

[19]Opinion of Advocate General Jääskinen 13 May 2014 in case C-131/12 Google Spain and Google. EU:C:2013:424.

[20]Opinion of Advocate General Cruz Villalón delivered on 14 January 2015 in case C-62/14 Gauweiler. EU:C:2015:7.

His opinion underlined the importance of cross-border cooperation and compliance with EU environmental standards in projects with significant transboundary effects[21].

These and many other cases demonstrate how advocates general have served as architects of European jurisprudence. Their opinions often advance arguments that the CJEU does not adopt immediately but later embraces, or that catalyse legislative reforms. Legal scholarship therefore presents the advocates general as both technical and creative actors who guide the progressive development of EU law.

Experience shows that their submissions enrich the court's reasoning and enable it to test alternative interpretations, open doctrinal debates, and orient case law towards future challenges. As scholars have noted, the office of the Advocate General strengthens the coherence, legitimacy, and innovative capacity of EU law, constituting a distinctive feature of the European judicial model.

Consequently, the Advocate General represents a pivotal institution: distinct from the collegiate body of judges yet integral to the court. The office occupies an intermediate position, providing the CJEU with an impartial analysis that simultaneously enriches academic and legal debate beyond the immediate proceedings[22]. This distinctive model has attracted interest in other supranational and regional contexts, prompting proposals for institutional transplantation.

Comparison of the Advocate General with counterparts in national judicial systems. The role of the Advocate CJEU may appear unfamiliar, particularly to those trained in certain national legal traditions. Although unique within the supranational judicial order [5, p. 2], the office can be understood by reference to analogous national and international institutions that provide independent legal submissions and promote interpretative coherence. Comparable institutions exist, though none constitutes an exact precedent for the European Advocate General's function.

In France, the *commissaire du gouvernement of the Conseil d'État* (renamed rapporteur public in 2009) provides the most direct precedent. The Code of Administrative Justice (CJA) governs this function. Article L.7 tasks the rapporteur public with presenting views publicly and independently on the legal issues raised by cases, without participating in deliberations. Article R.122-5 requires the Minister of Justice to propose candidates for appointment by decree and establishes a ten-year term of office, exceptionally extendable for one year, to guarantee impartiality and renewal. Article R.123-24 further specifies the consultative role of the rapporteur public in meetings of the *Conseil d'État* on matters within its competence, emphasising its technical rather than decision-making function. This official prepares written and public opinions that comprehensively examine the legal aspects of administrative disputes – not on behalf of the government, but to assist judicial decision-making. In order to avoid misunderstandings about alleged government representation, its name was changed in 2009 to *rapporteur public*. The office's functional independence and the public nature of its opinions directly inspired the CJEU's advocates general, as noted above[23].

In Germany, the *Vertreter des öffentlichen Interesses* plays a specific role in administrative and litigation matters. Its intervention is provided for under instruments such as para 35 of the Federal Administrative Court Procedure act (*Verwaltungsgerichtsordnung*), and sector-specific regulations that protect the public interest [16, p. 395]. The representative ensures that courts receive specialised legal analysis in matters affecting the public interest, particularly in complex or socially significant cases. *The Vertreter des öffentlichen Interesses* acts independently and provides objective submission on the correct application of the law, assessing both fact and applicable legislation. Unlike a public prosecutor, they neither pursue punitive aims nor represent the administration; instead, they assist the court to ensure interpretive consistency and legal rigour. Although their remit is more limited and sector-specific than that of the Advocate General of the CJEU, they similarly enhance clarity and predictability in judicial reasoning, especially in technically complex regulatory areas.

In Spain, prosecutors (*fiscales*) intervening before the Supreme Court and the Constitutional Court perform functions conceptually comparable to those of the CJEU Advocate General. They issue independent opinions that guide judicial decisions and contribute to legal system coherence. Before the Supreme Court, the Organic law on the judiciary and the Organic statute of the Public Prosecutor's Office regulate their action and establish

[21]Opinion of Advocate General Pikamäe delivered on 3 February 2022 in case C-121/21 Czech Republic v Poland (Mine de Turów). EU:C:2022:74.

[22]As T. Capeta explains, while the main addressees of the advocates general's opinion are the judges sitting in the chamber deciding the case, the academy has always been its second largest audience [8, p. 5].

[23]As D. Ruiz-Jarabo Colomer stresses, despite functional similarities, there are significant differences between the two categories [11, p. 359]. Thus, while the *commissaires du gouvernement* participate in the deliberations of the *Conseil d'État* – albeit without the right to vote – the advocates general of the CJEU do not intervene in judicial deliberation, which reinforces the autonomy of their analysis. Another relevant difference lies at the time of the proceedings: the *commissaire du gouvernement* is aware of the draft judgment drawn up by the Judge-Rapporteur before issuing his opinion, while at the CJEU the opinion of the Advocate General is presented publicly before deliberation commences, while preserving its independent character. Similarly, in the *Conseil d'État*, the opinion of the *commissaire du gouvernement* is generally the only procedural step of the hearing, whereas the Advocate General delivers his opinion after hearing the observations of the parties at the hearing, provided that the hearing has been opened. Finally, the advocates general's opinions are published in the official reports of the CJEU – preceding the judgment – while those of the *Commissaire du Gouvernement* are not officially published.

their duty to promote legality, protect the general interest – in accordance with Art. 124 of the Spanish Constitution – and ensure correct interpretation of rules. They intervene in appeals on a point of law, criminal proceedings of constitutional relevance and jurisdictional conflicts. Before the Constitutional Court, they submit opinions on constitutional complaints, jurisdictional conflicts and questions of particular constitutional relevance. Although non-binding, these opinions provide decisive guidance to the court and aid in harmonising national and European case law. Fiscales also advise on procedural matters – such as appeal admissibility, competent panel determination, and public hearing necessity – strengthening procedural consistency. In short, Spanish prosecutors perform an independent legal advisory function, combining technical analysis with the defence of the public interest. Conceptually, this approximates the role of an Advocate General at the CJEU, albeit within a national framework and subject to the institutional hierarchy of the Public Prosecutor's Office, unlike the CJEU Advocate General's full functional autonomy.

In Belgium, the *parquet général* supports the *Cour de cassation*. Composed of the *procureur général*, the *premier avocat général*, and several *avocats généraux*, their powers are detailed in Art. 142–151 of the Code of Justice (*Code judiciaire*). These judges belong to the Prosecutor General's Office but enjoy functional independence. They ensure correct legal interpretation, protect public order and preserve the unity of case-law. In appeal proceedings, they submit written and oral opinions analysing the legal issues raised and proposing a solution to the court. While not binding, these opinions carry significant persuasive authority through their comprehensive and objective analysis. Moreover, their publication enhances procedural transparency and enables the legal community to understand the reasoning behind the High Court's decisions. This role largely resembles that of the CJEU advocates general or the French *Commissaires du Gouvernement*, as all ensure consistent jurisprudence and uniform territorial application of the law. Consequently, Belgian *avocats généraux* consolidate legal certainty and reinforce the *Cour de cassation's* legitimacy as Belgium's supreme guardian of lawful application.

In the Netherlands, the *Advocaat-Generaal* of the *Raad van State* performs comparable functions. They deliver independent legal opinions (*conclusies*) in complex administrative cases requiring jurisprudential development or systemic interpretation. Though non-binding, these Opinions provide essential doctrinal and technical perspectives, enhancing final decisions' quality and consistency. Dutch law (*Wet op de Raad van State*) and institutional practice define their competence, emphasising that they must act independently and objectively, assessing the facts and applicable law before the court decides. Opinions frequently include comparative references to other European jurisdictions, enriching interpretation and promoting harmonisation in academic commentary.

In Italy, the *Avvocato Generale* at the *Corte di Cassazione* (Court of Cassation) operates within the *Procura Generale* exclusively in the interest of the law. They provide independent legal submissions in high-stakes civil and criminal cases involving complexity or significant interpretative questions. In civil matters, submissions typically take the form of written opinions (*pareri*). In criminal matters, they are presented as oral argument in court. Although non-binding on the court, these opinions and submissions promote the uniform interpretation of the law and enhance the doctrinal coherence of judicial decisions, particularly in proceedings before the *Sezioni Unite*. Unlike in other systems, *Avvocati Generali* do not participate in administrative courts such as the *Tribunali Amministrativi Regionali* or the *Consiglio di Stato*, which have their own independent structures. Although no specific organic law governs the *Corte di Cassazione*, Art. 363 of the Italian Code of Civil Procedure recognises the role of the *Avvocato Generale* by providing that the Attorney General may intervene «in the interest of the law» – not to protect individual rights, but to ensure the correct interpretation of the legal order. This public, reasoned, and independent legal analysis strengthens the court's institutional legitimacy and enriches doctrinal debate within the Italian judicial system.

In the United States, the closest analogue to the CJEU Advocate General is the Solicitor General, whose office is governed principally by sections 505, 511—518 of title 28 of the United States Code. Appointed by the President and confirmed by the US Senate, the Solicitor General represents the federal government before the Supreme Court and, at times, the federal courts of appeals. Beyond litigation, it advises the executive on the admissibility of appeals and determines which cases the government should defend, filing public, reasoned briefs and presenting oral argument [17, p. 1326; 18, p. 1105]. Although part of the executive, the office's role transcends mere government defence by providing authoritative guidance to legal interpretation. This function resembles that of the CJEU Advocate General – through independent analysis that promotes coherence in the legal order.

These comparisons show that, although each office operates within a distinct institutional context, they converge on two essential aspects: first, they provide independent legal analysis to guide judges; second, they contribute to the coherence, legitimacy, and quality of the legal system. The CJEU Advocate General thus represents a supranational synthesis of these traditions, adapted to serve a judicial system that seeks unity of interpretation without abandoning the plurality of approaches [6, p. 1145].

The Advocate General's contributions to the Court of Justice of the European Union

Advocates General do not merely observe proceedings but have made decisive contributions to strengthening and consolidating the EU judicial system. They contribute at multiple levels – jurisprudential, institutional, and procedural – and both academic scholarship and judicial practice recognise their significance.

Interpretative and systematising function. The Advocate General's first role may be characterised as interpretative and systematising. Their opinions provide the court with a coherent interpretative framework to avoid partial or isolated interpretations of EU law. To that end, the Advocate General integrates grammatical, systematic, and teleological methods, draws on general principles, legislative history, settled case-law, and, where relevant, comparative and international law[24]. This exercise extends beyond the instant case: it shapes legal categories, criteria for application, and interpretative schemes that guide both European Union courts and national courts, administrations, and practitioners. It reduces uncertainty, enhances the predictability of decisions, and consolidates the doctrinal coherence of EU law. However, this function has clear limits: it cannot replace judicial deliberation or lapse into theorising detached from the legislative text and the structural principles of the EU legal order.

Unity and coherence function. A second dimension is to promote unity and coherence. The Advocate General safeguards coherence both vertically (adherence to EU founding principles and precedent) and horizontally (harmonising jurisprudence across EU legal domains). They identify common criteria, map tensions among decisions and propose practicable solutions that preserve systemic coherence. Consequently, divergent national interpretations diminish and legal certainty for individuals and authorities increases. Yet the pursuit of unity must not ossify the law, judicial innovation and adaptation to new contexts must remain possible.

Transparency and legitimacy function. The third role concerns transparency and legitimacy. The Advocate General's opinions are public, reasoned and accessible; they make visible the reasoning that leads to a given interpretation. This strengthens accountability and encourages acceptance of judicial decisions by litigants, national judges and public opinion[25]. This function has a pedagogical dimension, rendering EU law's technical complexity into structured, intelligible analysis without sacrificing rigour. By revealing the discarded options and justifying each interpretative choice, the opinions enhance the traceability and external scrutiny of judicial reasoning. This transparency strengthens the CJEU's legitimacy, though it does not render the opinions binding or independently challengeable. Internally, the combination of a doctrinal, case-law and comparative analysis, together with the clarity and precision of the opinion, is a decisive factor which enables the CJEU's judges to adopt the Advocate General's legal reasoning with confidence, thereby reinforcing the legitimacy of their judgments.

When the CJEU substantially adopts an opinion's outcome while omitting certain arguments, motivations may include confining the *ratio decidendi* to the essentials of case resolution, avoiding *obiter dicta* on peripheral matters, or exercising institutional prudence in politically sensitive areas. In those circumstances, the opinion gains added value: it offers a broader and more systematic treatment of the legal issues, enabling scholars and practitioners to reconstruct the full interpretative context of the judgment[26].

Procedural efficiency function. The fourth function is procedural efficiency. The Advocate General intervenes in complex or legally important cases and focuses deliberation on the decisive issues. Their opinions enable the court to discard ancillary arguments, clarify the points in dispute, and order the questions in preliminary rulings or annulment actions. This optimises judicial remedies, reduces deliberation times and improves the quality of the CJEU's final reasoning. Even partial adoption of an opinion's analysis increases decision-making efficiency by thoroughly mapping argumentative pathways. Efficiency, however, must not compromise the adversarial principle or the rights of the defence. Case-law therefore permits reopening oral procedures when opinions address undebated issues.

As stated above, the Advocate General is called upon to rule on procedural issues of particular relevance, which reinforces his role as guarantor of the proper administration of justice. Its powers include giving an opinion on whether to employ simplified procedures, such as disposing of a case by order, where the question of law raised has already been clearly and consistently settled by the CJEU. This scenario reflects the *acte clair* doctrine articulated in CILFIT case[27], which established the criteria under which a national court may refrain from making a preliminary reference. National courts

[24]As L. Faircloth Peoples points out, the comparative law analysis may include regulations of non-EU member states, such as those of the United States, especially in the field of competition law [19, p. 225].

[25]As L. Clément-Wilz explains, by contributing to the foundation, consolidation, readjustments and consistency of case-law, and by giving substance to the transparency brought about by the public nature of their conclusions, the advocates general have fuelled the process of justification, which is crucial for public acceptance of the role of the Supreme Court to be assumed by the CJEU [9, p. 972]. They have thus participated in the standing of both the case-law and the CJEU itself.

[26]As V. Trstenjak points out, CJEU judgments may appear succinct or vague for a lawyer from the German legal family, especially as regards their reasoning. The author therefore recommends always reading the Advocate General's opinion in order to better understand the judgments, as they contribute to a better understanding of the arguments put forward by the CJEU [20, p. 398].

[27]CJEU judgment of 6 October 1982, in case 283/81 CILFIT and others. EU:C:1982:335.

have accepted this doctrine, with certain adaptations, highlighting the methodological convergence between judicial systems. In addition, the Advocate General assesses the exceptional admissibility of appeals in areas subject to a double review of legality (by European agencies' boards of appeal and the General Court), proposing revision only where essential to ensure the unity and coherence of the EU legal order. Thus, the Advocate General is the true guardian of the legality and integrity of the European legal system.

Innovative role. Finally, the innovative role of the Advocate General may be noted. Since the opinions are not binding, they constitute a space for methodological freedom and explanatory experimentation. This enables the Advocate General to anticipate evolving lines of case-law, explore new legal categories, or integrate elements from different branches of EU law comprehensively. Their innovation does not create law *ex nihilo*, but proposes interpretative solutions. While the CJEU may accept, qualify or reject these solutions, they invariably broaden the available interpretative repertoire. In this capacity, the Advocate General functions as a doctrinal laboratory, enhancing EU law's adaptability to evolving social, economic and technological contexts, and contributing to the legitimacy and resilience of the supranational legal system.

When called upon to rule on novel legal issues, the Advocate General occupies a central position in developing the supranational legal order, facing significant intellectual challenges. To meet these, the Advocate General may deploy the comparative method, drawing on their knowledge of national legal systems to propose solutions to problems that, although novel at EU level, have already been addressed under member state law. By bringing these experiences to EU law, the Advocate General mediates between national legal traditions and the construction of a coherent common legal order. This role enriches interpretation and strengthens regulatory uniformity[28].

The Court of Justice of the Andean Community and the Advocate General

Normative provision in the Cartagena agreement and the Statute of the tribunal. The Cartagena agreement of 1969, as a constituent instrument of the Andean integration process, contains general provisions for the institutional organisation of the CAN and the principles governing its bodies. This includes a judicial system to ensure correct application of Andean law and uniform interpretation. Fulfilling this mandate, member states adopted in 1979 the Treaty establishing the TJCA, which entered into force in 1984. This treaty regulates the composition, powers and functioning of the supranational jurisdiction. Article 7, in fine, of that instrument authorised the TJCA to establish the office of Advocate General, with the Statute to determine its number and powers. However, when adopting the TJCA Statute, member states omitted all reference to this office.

The current codified version of the Treaty establishing the TJCA (Decision 472 of the CAN Commission[29]) contains this enabling provision in Art. 6 in fine. Article 142 of the TJCA Statute (now contained in Decision 500 of the Andean Council of Ministers of Foreign Affairs (CAMRE)[30], titled Advocate General, develops this further. It states that «the office shall be held by the TJCA when the functional and operational needs of the body so require». It further provides that «this function shall be filled in the number of officials required by the institutional activities and the powers and numbers of such officials shall be determined in accordance with Article 6 of the Treaty establishing the TJCA». However, to date, no concrete measures have implemented these provisions.

By contrast with the TFEU framework for the CJEU, where advocates general are institutionalised as an essential part of the European judicial model, the Andean design ultimately adopted a unitary collegiate structure in which judges alone deliberate and draft decisions. Consequently, the provision in CAN primary law constitutes a latent legislative clause or, in academic terms, a «dormant rule»: formally valid but never effectively implemented in secondary legislation. This reflects a political and institutional choice for organic simplification of the TJCA in its early stages, at the cost of dispensing with an office which, from a comparative perspective, could have strengthened the interpretative coherence and legitimacy of the Andean judicial system.

Historical and political reasons for its non-implementation at the Court of Justice of the Andean Community. The absence of the Advocate General in the TJCA may initially appear surprising, given that the CAN's judicial design drew direct inspiration from the supranational European model. As scholars have observed, both the institutional structure and functioning of the Andean Community legal order – particularly the preliminary ruling mechanism – reference the European integration experience, albeit adapted to regional specificities [21, p. 1]. In this regard, the CJEU has established itself as a reference model for constructing supranational justice. Since the Andean legal system

[28]As V. Trstenjak points out, the Advocate General's opinion may refer to instruments for the harmonisation of civil law, such as the Draft common frame of reference, to legal doctrine and may even include a comparative study of various legal systems, in addition to a comparative linguistic analysis [20, p. 398].

[29]Decision 472 // Official Gazette of Cartagena Agreement : website. URL: https://www.comunidadandina.org/DocOficialesFiles/Gacetas/gace483.pdf (date of access: 08.09.2025).

[30]Decision 500 // Ibid. URL: https://www.comunidadandina.org/DocOficialesFiles/Gacetas/GACE680.PDF (date of access: 08.09.2025).

contained legal bases permitting incorporation of the Advocate General, one might have expected replication at Andean level. However, as discussed below, this absence does not reflect a regulatory omission, but a deliberate institutional design choice, conditioned by the historical and political circumstances surrounding the CAN judicial system.

Firstly, the defence of national sovereignty was a pervasive concern that decisively influenced the TJCA's configuration[31]. During the 1970s and 1980s, CAN member states were undergoing internal processes of democratic consolidation and state institutional redefinition. This context fostered marked reluctance towards establishing supranational bodies that might constrain states' legislative or judicial autonomy. Establishing an Advocate General, empowered to issue independent public opinions capable of shaping the interpretation of Andean law, would likely have been viewed as excessive supranationality, incompatible with governments' political will to maintain close control over the integration process.

Secondly, the economic and commercial focus of the Andean project also explains the non-implementation of this office[32]. The Cartagena agreement, signed in 1969, prioritised the establishment of a common market, coordination of tariff policies and promotion of productive integration. The judicial function served instrumental purposes: a technical mechanism for resolving disputes arising from economic and trade rules. Member states deemed it unnecessary to introduce an additional advisory body to strengthen Andean law's interpretative or doctrinal dimension. Unlike the European experience – where integration had a strong political and legal component from the outset – a pragmatic and limited view of the TJCA's role prevailed in the Andean region.

Thirdly, budgetary and administrative constraints proved decisive[33] [24, p. 23]. Establishing an office equivalent to the Advocate General would have required not only additional financial resources for remuneration and support staff, but also new structures for preparing legal opinions. Where the TJCA itself faced logistical constraints and depended largely on member state inputs, states ruled out adding new institutions as financially unfeasible.

Fourthly, Latin American procedural tradition shaped this exclusion. Unlike French law or Anglo-Saxon systems, where figures such as the *commissaire du gouvernement* or the *Solicitor General* operate, most Andean countries lacked any practice of incorporating independent official opinions in judicial proceedings. Judges have traditionally monopolised the judicial function, whilst the public prosecutor's office performs a distinct role: defending the general interest in criminal or constitutional matters rather than formulating advisory opinions in administrative or economic disputes. This legal heritage reinforced perceptions that the Advocate General remained alien and difficult to reconcile with the region's procedural culture.

Finally, the political dynamics within the CAN in the 1990s were also relevant, when member states discussed reforming its institutional framework following the creation of the World Trade Organisation and Mercosur's institutional configuration [25, p. 27; 26, p. 9]. During this period, member states prioritised liberalising and adapting integration rules to promote economic openness; initiatives to strengthen the judicial dimension were secondary. Although the academic literature has long debated the desirability of introducing an Advocate General, governments failed to reach a political consensus. They continued to view the TJCA as a purely technical body rather than an institution with a doctrinal or interpretative role.

In sum, these factors – resistance to transferring sovereignty, prioritisation of the economic over the legal dimension, budgetary constraints, regional procedural traditions, and limited political will for institutional reform – explain why the office of Advocate General was not established in the Andean judicial system. Since the 1950s this persisted despite the European model providing a well-established benchmark[34].

Institutional and political implementation challenges. The incorporation of the Advocate General into the TJCA represents a major structural and functional reform, extending beyond a mere legislative amendment. The office would strengthen the coherence and quality of Andean law by furnishing an independent legal advisory mechanism to complement judicial collegial deliberation. CJEU experience indicates that advocates general can decisively systematise interpretative criteria, enhance the transparency of legal reasoning, and consolidate regulatory uniformity.

However, establishing the office presents significant political and institutional challenges. First, member states must reach consensus on appointment criteria, the number of posts, and mandate duration. Member states may hold divergent views on the desirability of the institution, and political negotiations will be

[31]As Y. Mendoza Neyra points out, at that time member countries were extremely cautious about their sovereignty [22, p. 207].

[32]The evolution of the Andean Group's economic policies was explained by G. Salgado Peñaherrera [23, p. 30].

[33]Propuestas para el fortalecimiento del sistema andino de resolución de controversias [Electronic resource] // Court of Justice of the Andean Community : website. URL: https://www.tribunalandino.org.ec/wp-content/uploads/2021/01/Resumen_Ejecutivo.pdf (date of access: 08.09.2025).

[34]As A. Toledano Laredo points out, at the time when the TJCA was set up on 5 January 1984 in Quito, the Advocate General did not yet exist [27, p. 810]. According to the author, this idea could have arisen during the negotiation of the Treaty establishing the TJCA, as otherwise there would not have been a procedure similar to that of changing the number of magistrates for the creation of the office. However, a pragmatic approach could have led to the opening of the TJCA with a limited number of judges, leaving to the Andean institutions the power to adjust the composition of this supranational court to future needs, without resorting to a new treaty or its parliamentary ratification, thus avoiding the lengthy deadlines that those procedures entail.

crucial to securing formal acceptance and the perceived independence of future advocates general.

Implementation further demands substantial budgetary and administrative resources. The member states must allocate funding for remuneration, auxiliary staff recruitment, administrative infrastructure, training programmes, and systems for disseminating opinions. They must ensure financial sustainability without compromising the TJCA's functioning or that of other CAN institutional bodies.

Procedural and organisational adaptation constitutes another critical challenge. Incorporation would require amending the TJCA's internal protocols, including case allocation, deliberation stages, judge interaction mechanisms, and opinion structure. The institution must enhance rather than impede proceedings, functioning as a specialised technical complement that enriches judicial work without creating jurisdictional conflicts.

Institutional and cultural acceptance of this office is also essential. Judges, lawyers, parties and legal operators must understand that the Advocate General does not replace judicial deliberation, but provides a prior independent analysis that strengthens legal coherence and predictability. This requires institutional training and awareness-raising, as well as dissemination mechanisms to ensure that the Andean legal community recognises and values the Advocate General's findings.

The Andean reengineering process – a programme of CAN institutional modernisation designed to rationalise the legal system, optimise institutional functioning, and strengthen integration effectiveness – offers a suitable avenue for establishing an Andean Advocate General.

Legislative implementation pathway. Article 6 of the Treaty of establishing the TJCA explicitly provides the normative procedure for incorporating an Advocate General. This provision empowers the CAMRE, following consultation with the TJCA, to modify the number of judges and create the position of Advocate General. CAMRE determines the number of posts and defines the Advocate General's powers within the TJCA Statute. The provision thus supplies a formal, consensual mechanism for introducing the office, ensuring both the TJCA's participation and the member states' political approval.

Significantly, the procedure for creating the office has undergone substantial modification[35]. The original version (former Art. 7 in fine) provided that the TJCA would submit a «request» – that is, exercise its own initiative – which required ratification by the Commission of the Cartagena agreement through a «unanimous decision». Under the current version (Art. 6 in fine), however, it is the CAMRE that adopts the decision, following «consultation» with the TJCA. Although the current wording allows for various interpretations, it appears that the TJCA has been deprived of the power of initiative initially granted to it at the time of its creation. If this interpretation were correct, the TJCA would have been relegated to a passive role, depending on the will of the CAMRE for the office of the Advocate General to materialise.

Nevertheless, an interpretation wholly excluding TJCA initiative conflicts with Andean integration interests. Article 142 of the current TJCA Statute provides that the court shall fill the office of Advocate General «at the time when the functional and operational needs of the body so require». This implies judicial initiative continues to play a vital role in activating the mechanism. Reasonably, no other CAN organ occupies a better position than the TJCA itself to determine precisely when such needs justify creating the office of Advocate General[36].

Pursuant to this mandate, the first avenue for implementation is to amend the TJCA Statute, currently set out in CAMRE Decision 500. This normative reform must specify essential aspects such as the number of Advocates General, their appointment criteria, the requisite legal qualifications and experience, term duration, and renewal mechanisms. Furthermore, the statute must clearly define the Advocate General's functions and competencies, ensuring functional independence and a complementary procedural role without interfering in judicial deliberation.

In parallel, internal regulations or specific procedural rules will be required to govern the practical operation of the advocates general. These should address case allocation – prioritising matters of particular complexity or legal significance – the preparation of written, public and reasoned opinions, interaction with judges during the deliberation phase, and the systematic publication of opinions to ensure transparency and provide interpretative guidance for legal practitioners and scholars.

To facilitate institutional acceptance, implementation could proceed gradually or through a pilot programme, initially appointing one or two advocates general for selected cases. This phase would allow assessment of the office's impact on jurisprudential coherence and quality, adjustment of internal procedures, and the development of precedents governing relations between judges and advocates general before full implementation.

Finally, incorporating this office requires consensus and coordination amongst member states, who must

[35] As A. R. Mejía Salazar explains, the Treaty establishing the TJCA was reformed by the Amending protocol to the Treaty establishing the TJCA to the Cartagena agreement, signed in the city of Cochabamba (Bolivia) on 28 May 1996. To date, this is the version of the key letter of the TJCA that remains in force [28, p. 231].

[36] As A. Toledano Laredo points out, it is for the institutions of the Cartagena agreement to determine the time needed to move from theory to practice and to establish the post of Advocate General, in the number and with the powers laid down in the statute [27, p. 815]. The author considers it likely that this time will not be distant, as the number of contentious and non-contentious cases brought before the TJCA increases, the need to establish the Advocate General will become more and more pressing.

agree on criteria for selection, rotation, and equitable representation. A member state rotation system would ensure all countries participate in appointments, strengthening the position's legitimacy and guaranteeing plural legal perspectives in interpreting Andean law. Establishing training and dissemination programmes is also advisable to ensure judges, lawyers, and scholars fully understand the Advocate General's role and benefit from their opinions. Publishing these opinions will enhance transparency, interpretive uniformity, and the technical quality of the TJCA's jurisprudence.

Criteria for appointment, duties and term of office of the future Andean Advocate General. From an institutional perspective, the appointment mechanism for the future Andean Advocate General must secure both democratic legitimacy and the functional independence of the office. CAMRE, representing the member states, should therefore appoint the Advocate General unanimously. Nominations could originate from member state governments or the TJCA itself. This procedure balances political oversight with judicial autonomy while permitting transparency standards, such as publishing nominations and allowing non-binding academic commentary.

Concerning functions, the Advocate General would issue reasoned opinions in all preliminary rulings, annulment actions, and infringement proceedings. This provides the TJCA with impartial, comprehensive legal analysis. The role would not be confined to procedural assistance: the Advocate General could also recommend revising case-law in the event of contradictions, propose public hearings in matters of particular importance, and catalyse doctrinal dialogue between Andean law and other integration systems. This strengthens their position as guarantors of jurisprudential consistency and systematic evolution.

As to duration of tenure, a six-year term, renewable once, offers the most appropriate balance between institutional continuity and academic renewal. This aligns with the term provided for TJCA judges under Art. 8 of the founding treaty. Excessively short mandates would limit the Advocate General's ability to influence the consolidation of jurisprudential lines, whilst unlimited renewals would risk «institutional capture». Restricting re-appointment to a single renewal ensures that the position retains independence and dynamism whilst avoiding excessive personalisation. Removal should only occur for manifest incapacity or serious misconduct, following Art. 11 and 12 of the TJCA Statute. This safeguards functional autonomy against political pressure.

Potential contributions of the Advocate General to the Court of Justice of the Andean Community. Given the current state of CAN law, particularly the solid body of settled case-law and extensive preliminary ruling jurisprudence, incorporating an Advocate General could generate significant legal, institutional and academic benefits. First, from an interpretative and systematising perspective, the Advocate General would provide detailed, reasoned opinions incorporating general principles of Andean law, relevant precedents and, where appropriate, references to comparative law. This approach would reduce interpretative fragmentation and provide judges and legal practitioners with a coherent framework for resolving complex cases. Consequently, it would enhance predictability and legal certainty within the community system.

Furthermore, regarding legal order unity and coherence, the Advocate General could guarantee criteria harmonisation. This would foster uniform interpretation of Andean law across member states. This function proves particularly significant as the TJCA currently lacks an independent internal analysis mechanism comparable to Advocates General in the CJEU – a limitation hindering case-law systematisation and consolidation.

From a transparency and institutional legitimacy perspective, publishing public opinions would make the TJCA's legal reasoning accessible to national academics, practitioners, and authorities. This accessibility strengthens system trust and confidence in decisions. Simultaneously, procedural efficiency could improve significantly. The Advocate General's intervention would provide thorough preliminary legal analysis, facilitating judicial deliberation and contributing to expedited case resolution.

Moreover, the Advocate General's innovative role holds particular value in the Andean context. In addressing novel or emerging legal issues, the Advocate General could propose technically sound, scholarly solutions that anticipate future challenges, incorporating comparative-law perspectives tailored to the legal reality of the CAN. This role would contribute to Andean Community law's progressive development, enhancing its autonomy and adaptability.

In sum, introducing the Advocate General to the TJCA would enhance the consistency and technical quality of judicial decisions, reinforce institutional legitimacy, and establish an independent legal analysis mechanism currently absent from the system, thereby aligning Andean judicial practice with the standards of leading supranational courts.

Possible impact on regional integration processes worldwide

Although there is currently no legal basis for formal cooperation, the Andean Advocate General could become a natural partner of the European advocates general within a doctrinal dialogue framework, participating in their meetings as an observer or invited guest. Such rapprochement would open the door to more intensive academic and technical exchange through the joint publication of opinions and participation in specialised forums on integration. This institutional relationship would foster methodological convergence if the advocates general harmonised the drafting of their opinions to serve as cross-references for both courts. This would not amount to a formal association – since both legal orders are autonomous – but to an academic and doctrinal partnership.

Such cooperation would strengthen North – South judicial dialogue and enhance the visibility of Andean case-law. Several precedents support this possibility. The TJCA and the CJEU already maintain a relatively close institutional relationship, demonstrated through regular academic and judicial seminars and meetings on regional integration[37]. Their case-law also displays notable parallelism, particularly in intellectual property and competition. Significantly, the TJCA has on occasion drawn inspiration from CJEU jurisprudence, despite not being legally bound by it. Advocates general could thus serve as an additional bridge between these two supranational courts.

Advocates general of the CJEU have played a decisive role in judicial dialogue with the Court of the European Free Trade Association (EFTA). Through independent, reasoned legal analysis, they have articulated consistent interpretative criteria applicable to both EU and European Economic Area (EEA) law. Although the EFTA Court has no Advocate General, CJEU advocates general's opinions facilitate consideration of EFTA Court jurisprudence within the EU law interpretative framework. This process ensures methodological convergence and reinforces the principle of homogeneity within the EEA. The functional independence and public nature of their opinions enable CJEU judges to incorporate EFTA Court solutions in a balanced manner, enhancing the coherence and legitimacy of the European legal order. Citations of these opinions in EFTA Court judgments[38] demonstrate their function extends beyond internal analysis. They actively promote judicial dialogue, uniformity, legal certainty, and consistent application of law across both systems [29, p. 122]. Accordingly, establishing the office of Advocate General within the TJCA could foster a comparable academic dialogue, prompting mutual cross-references between CJEU case-law and the opinions of its advocates general, who could in turn cite their Andean counterpart.

Furthermore, a potential decision by the TJCA to introduce the Advocate General would represent a milestone in the institutional and procedural development of global integration systems. At present, only the CJEU – and, at least in its founding legal framework, the TJCA – have contemplated such an office; to the author's knowledge, no other regional integration scheme has undertaken this project. Other regional courts have proposed increasing the number of judges or strengthening institutional structures, but none has specifically envisaged creating an Advocate General. Nevertheless, the jurisprudence of some regional courts occasionally reveals a tendency to address questions of law beyond the immediate subject matter of the dispute, employing techniques such as *obiter dicta*. The EFTA Court[39] exemplifies this approach, having demonstrated considerable interest in developing academic reflections on the implementation of the EEA Agreement[40].

Experience demonstrates, however, that judges are not ideally suited to developing extensive academic reflections, as their essential role remains dispute resolution[41]. Their decisions must therefore remain clear and authoritative to ensure their effectiveness and enforceability. More than 70 years after the CJEU's creation, the choice by the national delegations to establish two distinct offices with separate functions has proved sound: the Advocate General proposes a solution after weighing competing approaches, while the judges issue the final decision. Establishing an Andean Advocate General could set a precedent for other supranational courts[42]. Its incorporation would not only enrich the

[37]Within the framework of interinstitutional cooperation, academic training workshops between the CJEU and the TJCA have been organised on several occasions, with the participation of magistrates, lawyers and technical staff from both institutions. These meetings constitute areas for dialogue and exchange of experience on issues of common interest, such as preliminary ruling interpretation, uniform application of integration law and procedural guarantees. In addition to strengthening the technical capacities of participants, these workshops contribute to building a shared legal culture, fostering methodological convergence between the two jurisdictions and strengthening the principle of consistency in the interpretation of supranational rules.

[38]See: EFTA Court judgment of 28 January 2013 in case E-16/11EFTA Surveillance Authority v Iceland («Icesave»), paras 125, 134 ; EFTA judgment of 22 December 2016 in case E-3/16 Ski Taxi SA and others v Norwegian Government, paras 34, 58 ; EFTA judgment of 5 September 2025 in case E-7/24 Fjordkraft AS v Norwegian Government, paras 67, 110.

[39]However, it is particularly significant that the EFTA Court was established without providing for the form of the Advocate General. N. Burrows and R. Greaves, point out that that absence is due to the fact that, in none of the member states of the European Free Trade Association, there was knowledge or practice of such a figure [30, p. 19]. It was simply not part of the national legal tradition, which is why it was not considered indispensable for the proper functioning of that court.

[40]See: EFTA Court judgment of 13 June 2013 in case E-11/12 Beatrix Koch, Dipl. KFM. Lothar Hummel and Stefan Müller v Swiss Life (Liechtenstein) AG, points 119 et seq., concerning the provisional application of decisions of the EEA Joint Committee pursuant to Art. 103 of the EEA Agreement.

[41]As M. Bobek highlights, the functional differentiation between judges and advocates general, drawing an analogy with the figures of the executioner and the jester at the court of a monarch [13, p. 535]. According to its analysis, while the executioner symbolises the guarantee of government effectiveness, the jester embodies the safeguarding of prudence in the exercise of power, by offering critical reflections and uncomfortable truths that the sovereign must carefully take into account if it wants to govern wisely.

[42]In his capacity as former President of the EFTA Court C. Baudenbacher supported a reform providing for the intervention of the Advocate General in relevant cases, since that court does not have its own legal investigation department [31, p. 24]. It also considered that this reform would contribute to increasing the legitimacy of the EFTA Court.

TJCA's case-law but also signal the institutional maturity of the Andean integration process, reaffirming the supranational vocation of its legal system.

Establishing the office of Advocate General within the TJCA could also have effects beyond the subregional level, notably in relation to initiatives such as the proposed Mercosur Court of Justice[43]. This institutional innovation would strengthen the legitimacy and coherence of Andean case-law, providing a concrete model for reinforcing the judicial dimension of integration processes. Comparative practice shows that successful mechanisms tend to spread across regional systems, and the Advocate General could likewise be emulated in Mercosur. In doing so, the CAN would not only deepen its own legal system, but would also contribute to South – South inter-institutional dialogue and reinforce supranational adjudication in Latin America, projecting doctrinal and methodological influence of global reach.

Conclusions

This analysis yields several conclusions of academic and institutional relevance.

Firstly, although Andean law expressly provides for the office of Advocate General in the Treaty establishing the TJCA, this provision remains unimplemented. This contrasts with European experience, where the Advocates General have proved essential in making the CJEU's case-law more robust, coherent and legitimate.

Secondly, the limited caseload before the TJCA does not justify inaction. The Advocate General's added value does not depend on caseload, but on the capacity to enrich legal reasoning, uphold the supranational interest, and consolidate more predictable and systematic case-law.

Thirdly, establishing this office would strengthen Andean institutions and could provide a reference point for other supranational courts. It would not only consolidate the TJCA internally, but also position the CAN as an innovator in the comparative law of economic integration.

Fourthly, creating an Advocate General at the TJCA would enable academic and doctrinal dialogue with CJEU advocates general. Although not legally formalised, such a rapprochement would enhance methodological exchange between supranational courts, intensify North – South judicial dialogue, and increase the international visibility of Andean case-law.

In sum, activating the office of the Advocate General in the Andean system would not only lead to compliance with a pending regulatory provision, but also seize a strategic opportunity to strengthen supranational justice and consolidate the regional integration process. Although political will, expressed through a CAMRE decision, is necessary for implementation, the TJCA holds the key to its realisation through its power of initiative.

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[43] As W. M. Kühn points out, the draft Protocol for the creation of a Mercosur Court of Justice expressly refers to the establishment of the Advocate General for that court [32, p. 420].

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Received by editorial board 08.10.2025.

UDC 341(510)

CHINA AS AN EMERGING RULE-MAKER IN MULTILATERAL INTELLECTUAL PROPERTY COOPERATION

HUANG ZEYAN[a]

[a]*Belarusian State University, 4 Niezaliezhnasci Avenue, Minsk 220030, Belarus*

Abstract. This article explores China's evolving role in multilateral cooperation on international intellectual property. It traces China's transformation from a rule-taker to a rule-maker, examining the historical developments, driving forces, practical actions, challenges, and future outlook. The international intellectual property system, a central element of global economic governance, is undergoing significant change. At the same time, China, now the world's second-largest economy, is redefining its position in ways that reflect its domestic development, advances in the rule of law, and broader shifts in international power structures towards multipolarity. Through historical analysis and case studies, the article assesses the impact of this evolution on global intellectual property governance and offers recommendations for future development.

Keywords: intellectual property cooperation; international intellectual property; multilateral cooperation; rule-making; global governance.

КИТАЙ КАК ФОРМИРУЮЩИЙСЯ СУБЪЕКТ НОРМОТВОРЧЕСТВА В МНОГОСТОРОННЕМ СОТРУДНИЧЕСТВЕ В СФЕРЕ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

ХУАН ЦЗЭЯН[1)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*

Аннотация. Рассматривается эволюция роли Китая в многостороннем сотрудничестве в области международной интеллектуальной собственности. Прослеживается трансформация позиции страны от пассивного восприятия международных норм к активному участию в их формировании. Анализируются исторические предпосылки, движущие силы, практические меры, существующие проблемы и перспективы развития в изучаемом вопросе. Международная система интеллектуальной собственности, как ключевой элемент глобального экономического регулирования, претерпевает существенные изменения. Китай, занимающий второе место в мире по объему экономики, переосмысливает свое положение с учетом внутреннего развития страны, совершенствования правовой системы и общих тенденций перехода международных отношений к многополярности. На основе историко-правового анализа и изучения конкретных примеров дается оценка влиянию указанных процессов на глобальное регулирование интеллектуальной собственности и формулируются рекомендации по его дальнейшему развитию.

Ключевые слова: сотрудничество в сфере интеллектуальной собственности; международная интеллектуальная собственность; многостороннее сотрудничество; нормотворчество; глобальное управление.

Образец цитирования:
Huang Zeyan. China as an emerging rule-maker in multilateral intellectual property cooperation. *Журнал Белорусского государственного университета. Международные отношения*. 2025;2:42–49 (на англ.).
EDN: EZWIKQ

For citation:
Хуан Цзэян. Китай как формирующийся субъект нормотворчества в многостороннем сотрудничестве в сфере интеллектуальной собственности. *Journal of the Belarusian State University. International Relations*. 2025;2:42–49.
EDN: EZWIKQ

Автор:
Хуан Цзэян – аспирант кафедры международного права факультета международных отношений. Научный руководитель – кандидат юридических наук, доцент Е. Б. Леанович.

Author:
Huang Zeyan, postgraduate student at the department of international law, faculty of international relations.
1034016074@qq.com

Introduction

As the world's second-largest economy[1], China is undergoing a historic transformation within the international intellectual property (IP) system – from passive acceptance to active participation, from rule-follower to rule-shaper. This shift presents complex legal, political, and economic challenges, warranting comprehensive analysis from an international law perspective. This article uses case studies to analyse China's evolving participation in multilateral IP cooperation and to assess its influence on global IP governance.

The article aims to clarify China's long-term role in international IP cooperation. To achieve this, the article sets out the following objectives:

1) to outline the historical process through which China has moved from rule-taker to rule-maker in multilateral IP cooperation;

2) to identify the factors driving this transformation;

3) to examine China's specific contributions as a rule-maker within international organisations;

4) to assess the challenges and future prospects China faces as an emerging rule-maker.

Current scholarship has not fully addressed these issues. Earlier studies have largely concentrated on the development of China's intellectual property system and the structure of international IP law systems.

Among Chinese researchers, notable contributions include those by Feng Xiaoqing [1–3], Ma Fazhong [4], Gu Zuxue [5], Wu Fei [6], He Qisheng [7], Gao Xuefeng and Liu Yajun [8]. Their works typically integrates the global IP landscape with analyses of its implications for China's IP development, assessing future trends and the interaction between domestic and global systems.

Foreign researchers including K. Yu. Peter [9], J. A. Brander, V. Cui and I. Vertinsky [10], K. Muehlfeld and M. Wang [11], W. Cheng [12; 13], C. Devonshire-Ellis, A. Scott and S. Woolard [14] focus on China's IP progress, highlighting its direct effects on the international IP architecture.

Chinese authors such as Feng Xiaoqing generally affirm China's positive transformation from an endogenous perspective. In contrast, some Western scholars, notably K. Yu. Peter, adopt a more cautious view, drawing attention to discrepancies between commitments and compliance – particularly regarding enforcement consistency. Building on this discourse, the present study introduces the concept of a rule-shaper to offer a more nuanced evaluation of China's shifting role across various domains. Russian scholarship has mainly addressed bilateral IP cooperation between China and Russia [15; 16], with limited analysis of China's broader IP role.

This study also draws on reports and documents from the World Intellectual Property Organisation, the China National Intellectual Property Administration, and the Central Party History and Literature Research Institute of the Communist Party of China, as well as official speeches and government publications.

Crucially, no scholarly consensus exists on defining a term «rule-maker». This article proposes a practical analytical framework to support a clear and rigorous examination. It identifies four dimensions: agenda-setting capability, institutional creation capacity, norm diffusion capacity, and discourse-building capacity. Subsequent sections apply this framework to evaluate China's historical transformation in multilateral intellectual property cooperation through specific case studies.

China's role transformation from rule-taker to rule-maker: institutional foundations

Since the founding of the People's Republic of China in 1949, the country has developed an intellectual property framework through successive legislative efforts[2]. In 1950, the Government Administration Council issued the Provisional regulations on the protection of invention rights and patent rights and the provisional regulations on trademark registration (with 23 articles and a commodity classification table)[3]. These instruments provided explicit protection for inventions, patents, and exclusive trademark rights. In 1963, the State Council of the People's Republic of China replaced the earlier trademark rules with the Trademark management regulations[4]. However, under the planned economy, the reach and effectiveness of these measures remained limited. The provisional regulations on inventions and patents[5] were repealed in 1963, and although the Trademark

[1]Growth on divergent paths amid elevated policy uncertainty // International Monetary Fund : website. URL: https://www.imf.org/en/Publications/WEO/Issues/2025/01/17/world-economic-outlook-update-january-2025 (date of access: 24.02.2025).

[2]Chronicle of the People's Republic of China (October 1949–September 2019) // The State Council of the People's Republic of China : website. URL: https://www.gov.cn/xinwen/2019-09/27/content_5434223.htm (date of access: 23.02.2025) (in Chin.).

[3]State Council's interpretation on several issues concerning the implementation of the Interim regulations on rewards for inventions, technical improvements and rationalisation proposals in production [Electronic resource] // Peking University law database. URL: https://www.pkulaw.com/chl/e13579600c4d8874bdfb.html (date of access: 23.02.2025) (in Chin.).

[4]Trademark management regulations [Electronic resource] // Ibid. URL: https://www.pkulaw.com/chl/2908b29fa7eeb731bdfb.html (date of access: 23.02.2025) (in Chin.).

[5]Civil Code: a guarantee of civil rights and a encyclopedia of social life // China national history network : website. URL: http://hprc.org.cn/gsyj/zzs/shzyfz/202009/t20200904_5178966.html (date of access: 15.02.2025) (in Chin.).

management regulations continued into the early reform and opening-up period, their practical impact proved limited.

As China expanded its economic cooperation and foreign trade, and as IP protection gained increasing significance, China began enacting specialised intellectual property legislation. The Trademark law, promulgated in 1982, became the first such statute since reform and opening-up, with subsequent amendments[6] in 1993, 2001, 2013 and 2019 progressively strengthening the regime. The Patent law followed in 1984, and the Copyright law followed in 1990.

Together, these three statutes established the foundational framework for intellectual property law in China. Their enactment marked a significant milestone.

When the Trademark law entered into force in 1982, China still operated as a rule-taker in the international IP system, largely following standards shaped by developed economies, including Europe and the United States. China's accession to the Paris convention and the Berne convention reflected its need to align with global economic practice, enhance cooperation, and support domestic legal and economic reform [9, p. 428].

However, after joining the WTO in 2001 and strengthening its overall national capacity, China began to shift from passive acceptance of international rules to active involvement in multilateral IP governance and shaping cooperation agendas. The country began integrating into international IP cooperation, learning to employ multilateral mechanisms – such as those under the trade-related aspects of intellectual property rights (TRIPS) agreement – to defend its interests amid infringement disputes initiated by developed economies.

Within the WTO framework, China has grown increasingly assertive in implementing intellectual property rules and resolving disputes. Rapid advances in science, technology, and culture have accompanied continuous revisions to domestic legislation, including the Copyright law, Patent law, and Trademark law.

For example, the 2020 fourth amendment to China's Patent law drew on aspects of the US Hatch – Waxman act to establish a pharmaceutical patent linkage system and a patent term compensation scheme[7]. Under the new Art. 42, the maximum term compensation is five years, and the total effective patent term after marketing approval must not exceed 14 years[8]. These changes recalibrate the balance between incentivising pioneering drug innovation and accelerating the availability of generics – an adaptation suited to China's dual role as both a major pharmaceutical market and a growing innovator. China did not simply replicate foreign models; it adapted them to domestic needs. This shift at the legislative level marks a move from rule transplantation to independent institutional innovation.

China's transformation from rule-taker to rule-maker in intellectual property reflects a broader trajectory: from economic-driven development, through institutional building, to strategic engagement. This historic shift aligns with global trends in governance and innovation.

Analysis of the internal and external drivers of China's role transformation

As China upgraded its industrial structure and improved its capacity for technological innovation, applications for patents, trademarks, and copyright increased rapidly. China has become a major producer of intellectual property, not merely a user. This shift has strengthened its position in global governance. Two principal forces have driven China's role transformation: domestic and international.

Domestically, policy has steadily shifted towards strengthening legal guarantees for technology transfer, indigenous innovation, and enterprise competitiveness, while cultivating greater awareness of intellectual property rights. Since initiating its IP framework, China has introduced several key strategic initiatives, including the Action plan for deepening the implementation of the National intellectual property strategy (2014–2020), the State Council's opinions on accelerating the construction of an intellectual property powerhouse, the 13th five-year plan for national intellectual property protection and utilisation, and the Outline for building an intellectual property powerhouse (2021–2035). Institutional reforms accompanied these policies. The State Administration for Market Regulation was created, the State intellectual property office was restructured, and specialised IP courts were established in Beijing, Shanghai, and Guangzhou. The Supreme People's Court also set up an IP tribunal with nationwide jurisdiction over appeals in technical cases, creating a more coherent and professional adjudication system.

Judicial institutions actively aligned with national strategy. Tao Kaiyuan, Vice-President of the Supreme People's Court, stated that strengthening IP protection constitutes «an inherent requirement and important guarantee for the development of new quality productive forces», and that courts should uphold strict protection to better serve innovation-led growth[9]. This

[6]Laws and regulations: trademarks // National Intellectual Property Administration : website. URL: https://www.cnipa.gov.cn/col/col95/index.html (date of access: 05.02.2025) (in Chin.).

[7]Patent law of the People's Republic of China (2020 amendment) // Ibid. URL: https://www.cnipa.gov.cn/art/2020/11/23/art_97_155167.html (date of access: 22.11.2025) (in Chin.).

[8]Ibid.

[9]Providing strong intellectual property judicial protection for the development of new productive forces // Central Party History and Literature Research Institute : website. URL: https://www.dswxyjy.org.cn/n1/2024/0327/c422511-40204317.html (date of access: 05.01.2025) (in Chin.)

statement reflects the strong connection between judicial initiatives and economic strategy. During this period, the government introduced numerous policies supporting the innovation economy and strengthening the creation, application, and protection of intellectual property. Such measures mark China's transformation from passive recipient to strategic advocate in international intellectual property protection.

Since the TRIPS agreement entered into force in 1995, global IP governance has gradually moved away from developed-country dominance towards a more multipolar system. By acceding to the TRIPS framework and engaging actively in bodies such as the WIPO, China has familiarised itself with established rules, accumulated governance experience, and identified opportunities for institutional development, leading to growing demands for rule adaptation [12, p. 152].

The technological competition between China and the United States, coupled with growing divisions over IP interests within European and American systems, has created opportunities for China to move beyond earlier constraints. In an era of globalisation, conflicting national interests often call for a strong developing country to coordinate. Thus, geopolitical rivalry has further encouraged China to transition towards a rule-maker role.

At the 3rd Belt and road high-level intellectual property conference, Vice-Premier Ding Xuexiang called for «[injecting] greater intellectual property strength into the high-quality construction of the Belt and road initiative»[10]. His remarks signal China's intention to deploy intellectual property cooperation as a major policy instrument – leveraging institutional frameworks and exporting governance experience to strengthen economic and technological ties within the Belt and road initiative.

By combining domestic policy with international rule adaptation, China has cultivated a dual identity: a developing state and a global coordinator of rules. This positioning underscores its active role in promoting multipolarity and inclusive reform within global governance.

China's initial emergence as a rule-maker

As the pre-eminent international organisation for intellectual property cooperation, WIPO provides a crucial platform for China's entry into core governance mechanisms. In this rule-maker phase, China's presence within WIPO has become increasingly prominent, demonstrated by its deep involvement in senior governance and leadership in concluding key international treaties.

China actively cultivates specialised talent proficient in international rule operation and negotiation skills. This foundation strengthens its capacity to compete for normative influence globally. In 2008 and 2014, Wang Binying was elected deputy director-general of WIPO, and in 2020 she ran for the post of director-general[11]. This marked the first time China held a senior managerial position within WIPO's leadership. Hosting the 2012 Diplomatic conference proved particularly significant. China resolved WIPO's 20-year deadlock on audiovisual performers' rights, achieving consensus among diverse stakeholders. The Beijing treaty on audiovisual performances[12] was adopted on 24 June 2012 and entered into force on 28 April 2020. That the treaty bears the name of China's capital demonstrates the country's role not only in participating but also in shaping substantive international law.

Even before this treaty entered into force, Chinese domestic legislation had established a robust protective framework. Article 38 of the Copyright law (2010 revision) afforded performers of both sound recordings and audiovisual works unified protection covering moral rights, economic rights, and remuneration entitlements comparable to the treaty's standards. To align fully with the Beijing treaty, the 2020 revision introduced a right for performers to receive remuneration from subsequent uses of audiovisual works (Art. 41–42)[13]. This amendment significantly strengthened performer protection by guaranteeing them a share of economic benefits derived from their performances.

Moreover, China advances developing nations' IP development through South – South cooperation and Belt and road initiatives [8, p. 130]. In response to developing countries' needs, China supported expanding access to IP materials for persons with disabilities via the Marrakesh treaty[14]. Such engagement has helped low- and

[10] Ding Xuexiang attends and delivers remarks at the 3rd Belt and road high-level intellectual property conference // Central Party History and Literature Research Institute : website. URL: https://www.dswxyjy.org.cn/n1/2024/0912/c423712-40318396.html (date of access: 21.11.2025) (in Chin.).

[11] Appointment of deputy directors general and assistant directors general // World Intellectual Property Organization Coordination Committee : website. URL: https://www.wipo.int/edocs/mdocs/govbody/en/wo_cc_79/wo_cc_79_2.pdf (date of access: 11.02.2025).

[12] The Beijing treaty // Ibid. URL: https://www.wipo.int/en/web/beijing-treaty/index (date of access: 15.11.2025).

[13] Copyright law of the People's Republic of China // Central People's Government of the People's Republic of China : website. URL: https://www.gov.cn/guoqing/2021-10/29/content_5647633.htm (date of access: 25.11.2025) (in Chin.).

[14] Marrakesh treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled // Ibid. URL: https://www.World Intellectual Property Organization (WIPO).int/edocs/mdocs/govbody/en/mvt_a_5/mvt_a_5_2.pdf (date of access: 15.02.2025).

middle-income countries address practical regulatory demands while reinforcing China's normative and institutional standing within WIPO.

To meet its obligations under the Marrakesh treaty, the amended Copyright law introduced a fair-use exception allowing works to be provided to persons with print disabilities (Art. 24(1) and Art. 54)[15]. This reform demonstrates how international commitments can strengthen domestic legal frameworks.

Under the Belt and road initiative, China promotes regional cooperation to strengthen intellectual property capabilities among participating states. It launched the South – South intellectual property cooperation and technology transfer mechanism, creating a platform for development and exchange among these nations[16].

Through bilateral cooperation agreements, China has also shared its governance model more systematically. For example, the Memorandum of understanding between China's National Intellectual Property Administration and Cambodia's Ministry of Industry and Handicraft commits China's National Intellectual Property Administration to provide services such as patent search and evaluation for Cambodian applications[17].

China has further gained experience as a rule-maker by engaging in WTO IP discussions and influencing how the TRIPS agreement is implemented worldwide. In the field of green technology transfer, it has argued – within the framework of the Paris agreement – for stronger incentives for cross-border transfer of environmentally sound technologies, and has worked with other developing states to advocate for a more flexible sharing mechanism [4, p. 22].

China's evolving role in international IP governance shows its deeper integration into the multilateral system. At the same time, its rising influence in areas such as green technology transfer and artificial intelligence reflects growing national interests that may test the balance and diversity of the current international IP framework.

Challenges and prospects for China as a rule-maker

In recent years, China's intellectual property protection system has improved substantially. Nevertheless, significant challenges persist despite its growing influence in multilateral IP cooperation.

The international community, particularly developed nations, questions China's commitment to IP enforcement. The US Special 301 report illustrates this tension. The 2022 edition again placed China on the priority watch list, citing weak enforcement[18]. Although the report identifies some real issues, it is also widely viewed as a tool of US trade policy. Its assessments therefore need to be read critically, with attention to underlying political and economic motivations.

China has strengthened judicial expertise through specialised IP courts and the IP Tribunal of the Supreme People's Court[19]. Nonetheless, structural weaknesses persist. Geographic size, regional economic disparities, local protectionism, and uneven enforcement resources cause inconsistent IP enforcement and standards across provinces. This inconsistency creates uncertainty for rights holders and undermines China's credibility as an emerging rule-maker [17, p. 74–75].

Moreover, the core frameworks of the TRIPS agreement and key WIPO treaties have long reflected the interests of developed countries. This distribution of benefits continues to disadvantage many developing states. At the same time, the growing politicisation of IP places China under considerable pressure as it seeks to shape global rules. Within the traditional system, dislodging entrenched influence from Europe and the United States remains difficult.

Confronting these obstacles, China must emphasise the global inclusiveness of the rules it advocates and promote deeper cooperation to achieve mutual benefit. Deepening cooperation with other states will be essential. Beyond Belt and road partners, China can expand regional coordination with groups such as the BRICS and the African Union within the WIPO framework. Such coalition-building would broaden the support base for its proposed norms.

[15]Copyright law of the People's Republic of China // Central People's Government of the People's Republic of China : website. URL: https://www.gov.cn/guoqing/2021-10/29/content_5647633.htm (date of access: 25.11.2025) (in Chin.).

[16]Belt and road technology transfer workshop and South – South cooperation seminar held in Beijing // Ministry of Science and Technology of the People's Republic of China : website. URL: https://www.most.gov.cn/kjbgz/202009/t20200918_158826.html (date of access: 11.02.2025) (in Chin.).

[17]Announcement on the entry into force of Chinese patents registered in Cambodia (No. 265) // China National Intellectual Property Administration : website. URL: https://www.cnipa.gov.cn/art/2018/5/10/art_74_28083.html (date of access: 16.11.2025) (in Chin.).

[18]2022 Special 301 report // Office of the United States Trade Representative : website. URL: https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf (date of access: 05.02.2025).

[19]Intellectual property protection by Chinese courts in 2024 // People's Court Press : website. URL: https://www.chinaiplawupdate.com/wp-content/uploads/2025/04/%E4%B8%AD%E5%9B%BD%E6%B3%95%E9%99%A2%E7%9F%A5%E8%AF%86%E4%BA%A7%E6%9D%83%E5%8F%B8%E6%B3%95%E4%BF%9D%E6%8A%A4%E7%8A%B6%E5%86%B5%EF%BC%882024%EF%BC%89.pdf (date of access: 20.11.2025) (in Chin.).

Emerging technologies, particularly in artificial intelligence, blockchain, and cloud computing, challenge traditional intellectual property frameworks and drive the need to innovate governance rules. By drawing on its strengths in several of these sectors, China has shown an ability to influence emerging norms, especially in strategic patenting and standard-setting. WIPO data indicate that between 2014 and 2023, China produced more than 38 000 GenAI inventions, six times the volume of the United States, which ranked second[20].

China has strategically deployed legal instruments permissible under international frameworks, with compulsory patent licensing serving as a key example. Articles 51–57 of the Patent law (2020 amendment) specify the conditions for such licensing. Of particular importance is Art. 55, which permits a compulsory licence not only for public interest purposes but also when a later patent shows significant economic and major technical progress yet relies on an earlier patent[21]. In sectors where China faces technological blockades, such as semiconductors, this mechanism provides a robust legal tool and enhances its bargaining position. It reflects a deliberate effort to convert international flexibilities into instruments that support national technological objectives.

China has also taken an active legislative role in regional frameworks. It helped steer the intellectual property chapter of the Regional Comprehensive Economic Partnership, advancing harmonised protection across the region. The Regional Comprehensive Economic Partnership's IP provisions extend beyond patents, trademarks, and copyrights to address emerging issues in e-commerce and the digital economy[22]. Domestically, the Outline for building a strong intellectual property nation (2021–2035) calls for faster legislative development in new technological domains, including big data, artificial intelligence, and gene technology[23].

China advances legal frameworks in areas lacking clear international rules through proactive domestic legislation. This approach gives it a first-mover advantage in future global norm-setting and positions its domestic standards as potential models for international adoption. Professor Yang Xiongwen argues that Chinese lawmakers must thoroughly study foreign legal systems alongside domestic realities to develop a coherent, detailed legal framework that aligns with the expressive conventions of the Chinese language [17, p. 78].

He further notes that clearer enforcement standards and greater judicial transparency are essential for building a more systematic IP framework. In the landmark «Kabo» case (Zui Gao Fa Zhi Min Zhong No. 732 of 2019), the Supreme People's Court, citing the defendant's evident malicious intent, applied the statutory maximum of quintuple punitive damages for the first time. This decision illustrates China's determination to construct a high-level protection system and strengthen the domestic rule-of-law foundation needed for meaningful participation in international rule-making[24].

In emerging technology fields, China should remain at the technological frontier, advocate standardisation, and develop new cooperation mechanisms to enhance its rule-shaping capacity. At the same time, it should support more cost-effective and shared models of IP use. One example is China's proposal – and partial implementation – of a global green technology patent pool designed to facilitate open transfer of new-energy and low-carbon technologies. China has already contributed over 9000 green technology patents to the global database[25].

The patent pool operates through a hybrid model that combines state leadership with market-oriented practices. A management committee jointly established by the National Intellectual Property Administration and the Ministry of Science and Technology of the People's Republic of China oversees the initiative. Under the Special action plan for patent transformation and application, the committee has created a tiered licensing system, including free licences for least developed countries[26]. Unlike the WIPO GREEN platform, which focuses solely on information-matching, the strength

[20] China-based inventors filing most GenAI patents, World Intellectual Property Organization data shows // World Intellectual Property Organization : website. URL: https://www. wipo.int/pressroom/en/articles/2024/article_0009.html (date of access: 05.02.2025).

[21] Patent law of the People's Republic of China (2020 amendment) // China National Intellectual Property Administration : website. URL: https://www.cnipa.gov.cn/art/2020/11/23/art_97_155167.html (date of access: 22.11.2025) (in Chin.).

[22] Chapter 11 of the Regional comprehensive economic partnership agreement: intellectual property // China Intellectual Property Protection Network : website. URL: http://ipr.mofcom.gov.cn/zhuanti/fta/RCEP/RCEP.html (date of access: 23.02.2025) (in Chin.).

[23] Outline for building a strong intellectual property nation (2021–2035) // Central Party History and Literature Research Institute : website. URL: https://www.dswxyjy.org.cn/n1/2021/0923/c423712-32233865.html (date of access: 24.02.2025) (in Chin.).

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of the Chinese model lies in the technological assurance backed by government endorsement.

As China moves from receiving intellectual property rules to shaping them, it faces several pressures, including politicisation, constraints within traditional governance structures, and the need to reconcile the interests of developing and least-developed states. Yet its performance in emerging technologies shows considerable rule-shaping potential, supported by technological strength and policy innovations.

China's shift from a passive rule-taker to an active rule-maker has progressed through three stages. From the 1980s to 2000, it largely adapted to an international IP system dominated by the United States and Europe. Between 2000 and the late 2010s, it entered multilateral processes, joined the WTO and the TRIPS agreement, and began to participate more assertively in global IP governance. Since the 2010s, China has used its economic weight and innovation capacity to assume a more influential position. This evolution reflects the weakening of the post-Cold War unipolar order and the rise of contested multilateralism. China's dual status as both a developing state advocating reform and a technology leader promoting its own regulatory models has further blurred the traditional North – South divide.

Although China has often been subject to unilateral actions, including US Section 301 investigations, it has also used the WTO dispute settlement system to defend its interests as a complainant[27]. In case DS543, for example, China challenged US tariff measures and obtained a favourable panel ruling that found the tariffs incompatible with US WTO obligations[28].

Several factors have driven this transformation: strengthened domestic policy support, industrial upgrading, enhanced innovation capacity, the trend towards multipolarity, and developing countries' demand for more inclusive rules. The transition also brings significant challenges, among them persistent doubts about the strength of China's IP protection, the entrenched power of developed states in traditional IP domains, and intensifying competition over standards for new technologies.

China's future international intellectual property policy should concentrate on four areas. First, it should prioritise multilateral coordination and innovation, broaden the scope of inclusive cooperation, and deepen engagement with other developing economies through mechanisms such as the Belt and road initiative, BRICS, and the RCEP agreement. Second, it should make full use of opportunities created by emerging technologies. When advancing global standards in these fields, China needs to balance national interests with wider responsibilities and support greater openness and technology sharing. Third, it should strengthen its soft power and build recognition of its regulatory authority through South – South cooperation, multilateral initiatives, and institutional innovation. Fourth, it should continue to refine its IP legislation, improve consistency with leading international rules, and ensure stronger protection in technology-intensive sectors.

China's evolving role on the international intellectual property agenda reflects the systematic character of these measures to strengthen the normative and organisational framework of international public law. The implementation of global standards within Chinese legislation confirms the comprehensiveness of this trend. This trajectory highlights shifts in China's political economy and international position, while also exposing the complex distribution of interests and power within global IP governance. China is progressing towards becoming a significant rule-maker in this domain. Its success will influence both its own engagement in global cooperation and the prospects for its model of inclusive innovation to move beyond zero-sum thinking and support stable and broadly accepted rules for the digital age.

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Received by editorial board 08.05.2025.

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МЕЖДУНАРОДНОЕ ПРАВО

Журнал включен Высшей аттестационной комиссией Республики Беларусь в Перечень научных изданий для опубликования результатов диссертационных исследований по историческим, политическим и юридическим наукам.

Журнал включен в библиографическую базу данных научных публикаций «Российский индекс научного цитирования» (РИНЦ).

Журнал Белорусского государственного университета. Международные отношения. № 2. 2025

Учредитель:
Белорусский государственный университет

Юридический адрес: пр. Независимости, 4, 220030, г. Минск, Республика Беларусь.
Почтовый адрес: пр. Независимости, 4, 220030, г. Минск, Республика Беларусь.
Тел. (017) 259-70-74, 259-70-75.
E-mail: jpedagogics@bsu.by
URL: https://journals.bsu.by/index.php/internationalRelations

«Журнал Белорусского государственного университета. Международные отношения» издается с января 1969 г.

Редактор английского текста *А. Ф. Пискунов*
Редактор *А. С. Люкевич*
Технический редактор *М. А. Панкратова*
Корректор *А. С. Люкевич*

Подписано в печать 30.12.2025.
Тираж 25 экз. Заказ 0000.

Республиканское унитарное предприятие «СтройМедиаПроект».
ЛП № 02330/71 от 23.01.2014.
Ул. В. Хоружей, 13/61, 220123, г. Минск, Республика Беларусь.

Journal of the Belarusian State University. International Relations. No. 2. 2025

Founder:
Belarusian State University

Registered address: 4 Niezaliezhnasci Ave., Minsk 220030, Republic of Belarus.
Correspondence address: 4 Niezaliezhnasci Ave., Minsk 220030, Republic of Belarus.
Tel. (017) 259-70-74, 259-70-75.
E-mail: jpedagogics@bsu.by
URL: https://journals.bsu.by/index.php/internationalRelations

«Journal of the Belarusian State University. International Relations» published since January, 1969.

English text editor *A. F. Piskunov*
Editor *A. S. Lyukevich*
Technical editor *M. A. Pankratova*
Proofreader *A. S. Lyukevich*

Signed print 30.12.2025.
Edition 25 copies. Order number 0000.

Republic Unitary Enterprise «StroiMediaProekt».
License for publishing No. 02330/71, 23 January, 2014.
13/61 V. Haruzhaj Str., Minsk 220123, Republic of Belarus.