A Specter of Extraterritoriality
The Legal Status of U.S. Troops in China, 1943–1947

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Abstract

The Sino-U.S. agreement of May 1943 that granted the U.S. military exclusive criminal jurisdiction over its troops in China was a continuation of extraterritorial rights that the United States supposedly abolished the previous January. In light of the earlier British-U.S. negotiations on the same issue, China was an integral part of a legal regime that during World War II shielded globally deployed U.S. troops from local laws. The Chinese Guomindang (GMD) government's renewal of the 1943 agreement in June 1946 extended the wartime legal privileges of U.S. troops into an era of precarious peace in China and set a precedent for the Status of Forces Agreements between the United States and various allies during the Cold War. The demonstrations after the Shen Chong Incident in late 1946, a largely nationalist movement that the Chinese Communist Party (CCP) co-opted, highlighted the inadequacy of public indignation and CCP manipulation in mounting a consistent legal effort to challenge the entrenched extraterritorial privileges of U.S. troops and restore Chinese jurisdiction. The GMD government also lost the opportunity to use the jurisdictional issue to demonstrate its nationalist credentials to an agitated public.

Keywords
extraterritoriality – exclusive criminal jurisdiction – Shen Chong Incident – China – United States – Britain – World War II – Cold War – Status of Forces Agreements

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Christmas Eve of 1946 was another holiday away from home for the 10,000 strong U.S. troops stationed in China. In Beiping (now Beijing), Corporal William Pierson and Private Warren Pritchard, two U.S. Marines, celebrated the holiday consuming an excessive amount of alcohol. Around 8:30 p.m., an intoxicated Pierson, with the assistance of Pritchard, allegedly raped a 19-year-old female student of the prestigious National Peking University (PKU) in a polo field not far from a downtown thoroughfare. This Shen Chong incident, taking the name of its victim, quickly galvanized massive student demonstrations in Beiping against the brutality of U.S. troops, as well as their very presence in China at the invitation of the Guomindang (GMD) government. During early 1947, the demonstrations spread to major cities around the country with participants representing all walks of life. Among the many grievances that indignant demonstrators voiced, a vocal one was the demand for a joint Sino-U.S. court to try the case, which received backing mainly from radical students in Beiping and the Chinese Communist Party (CCP), the GMD’s political and military rival, in the newspapers it published.1

In early 1947, contrary to the Chinese demand for concurrent jurisdiction, the U.S. military courts-martial in China tried both Pierson and Pritchard and found them guilty of rape. Later in the same year, however, the newly formed Department of Defense, upon further review, acquitted Pierson for lack of concrete evidence. The GMD and U.S. officials all defended the exclusive U.S. jurisdiction in the Shen case based on a May 1943 agreement between the two countries. But this justification begs a few puzzling questions. First, as the GMD government and the United States had just signed in the beginning of 1943 a much-touted treaty to end the century-old U.S. extraterritorial rights in China, why did they negotiate another agreement that essentially granted extraterritoriality again to particular Americans in China? Second, the 1943 agreement stipulated that the U.S. military maintained exclusive jurisdiction over the

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criminal offenses its members committed in China “during the present war [meaning the Second Sino-Japanese War] and for a period of six months after.” It should have expired by early March 1946 if Japan’s formal surrender to the United States and China in early September 1945 ended “the present war” that the agreement specified. Then why was the agreement still in effect as late as the Shen case, which occurred nine months later? Third, the said agreement actually permitted Chinese jurisdiction when “the service authorities of the Government of the United States may prefer not to exercise the above jurisdiction” for “special reasons.” Did the GMD and U.S. officials ever consider this option given the social disruption the Shen’s rape instigated?

As established policy, the United States justified exclusive criminal jurisdiction over its troops overseas as a practical wartime measure and consistently demanded it from allies in both world wars. The British and U.S. governments signed an agreement providing for such jurisdiction in 1942, which offered the GMD government a blueprint in concluding a similar agreement with the United States in 1943. Three months after the scheduled expiration of the 1943 agreement in March 1946, the GMD government extended the 1943 agreement for another year in Zhongyang Ribao (ZYRB), its official publicity organ. But beyond these simple answers, there were deeper political implications from the development of exclusive jurisdiction the U.S. military enjoyed in the 20th Century. By focusing on the negotiations and repercussions of the extraterritorial privileges U.S. troops had in China between 1943 and 1947, this paper adds a new dimension to the existing historiography on the Shen Chong Incident and U.S. Empire. It will articulate better the Chinese case’s global significance in redefining the legal underpinning of the U.S. global military hegemony at the critical transition from World War II to the Cold War.

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4 Academic and popular commentaries on the Shen Chong case, without highlighting its legal implications, focus more on its impact on domestic Chinese politics or Sino-U.S. relations.
Such jurisdiction overseas the United States consistently demanded in both world wars was in essence an extraterritorial legal immunity that temporarily infringed upon the judicial sovereignty of U.S. allies hosting American troops. Although U.S. military and civilian officials repeatedly characterized such jurisdiction as a simple practical matter during wartime with no political implications, the protracted British-U.S. negotiations from World War I to World War II clearly indicated that what ultimately backed the U.S. demand was the necessity to secure the superior military power that U.S. allies sorely needed.5

The fairly speedy negotiations gaining the same jurisdiction in China in 1943 revealed, in addition to the unequal power balance between the United States and its allies, the longstanding impact of U.S. extraterritoriality in that country from 1844 to 1943. The searing resentment in nationalist memory of such privileges contributed to officials of both countries engaging in a more conscientious sugarcoating of an extraterritorial demand as a routine technicality with


no infringements whatsoever on China’s recently restored judicial sovereignty. Therefore, GMD and U.S. officials simplified the British-U.S. agreement as the reflection of a routine measure between equal allies to which China could safely consent. Yet the GMD government’s seemingly innocuous extension of the 1943 agreement in 1946 changed the formal rationale for the legal immunity of U.S. troops from the expediency for temporary wartime combat missions to a potential prerequisite for long term military presence. This subtle yet fundamental shift in the legal foundation of U.S. troops’ extraterritorial privileges took place during a limbo period between fragile peace and a looming civil war in China, which could have meant the prolonged stationing of U.S. troops along with their legal privileges. While the CCP victory on the Chinese mainland in 1949 shattered this possibility, the ensuing Cold War, an ambiguous and extended period of war and peace, helped establish and even perpetuate this reconfigured legal immunity for globally deployed U.S. troops in the form of the Status of Forces Agreement (SOFA).

The aftermath of Shen Chong’s rape, despite the tremendous public outrage against the extraterritorial rights U.S. troops enjoyed in China and vocal demands for concurrent Chinese jurisdiction, demonstrated the difficulties in challenging such privileges once they became entrenched on a non-combat basis. The CCP co-opted this popular indignation to consolidate its appeal among Chinese urbanites. By contrast, the GMD and U.S. governments, by virtue of their insistence that exclusive U.S. jurisdiction was a neutral solution, dismissed the raging public anger at the cost of damaging their reputations at a key moment when building public favor was badly needed in the context of a looming civil war in China. Both the savvy Communist manipulation and the hasty GMD dismissal of the emotional responses to the extraterritorial privileges of U.S. troops, however, precluded a targeted legal challenge to the 1943 agreement’s continuing effect at the time of the rape and a potential restoration of Chinese jurisdiction sanctioned in the agreement.

This reexamination of the status and impact of U.S. extraterritorial rights in China from 1943 during the war with Japan to 1947 with a looming civil war begins with a brief review of jurisprudence on the legal status of visiting forces.

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6 One also can apply Mary L. Dudziak’s convincing exposition of the legal implications of the blurring boundaries between peace and war in rethinking the historical origins of the SOFA. Mary L. Dudziak, War Time: An Idea, Its History, Its Consequences (New York: Oxford University Press, 2012).

7 For the significance of public emotions in modern Chinese law and politics, see Eugenia Lean, Public Passions: The Trial of Shi Jianqiao and the Rise of Popular Sympathy in Republican China (Berkeley and Los Angeles: University of California Press, 2007).
It argues that exclusive military jurisdiction that the Americans demanded was not so much an unequivocal international legal principle, as a legal coating of power politics. This essay then recounts the bumpy British-U.S. negotiations in both world wars, which laid bare the unequal power relations underlying the U.S. military’s exclusive criminal jurisdiction overseas and its inherent political nature. It then discusses the Sino-U.S. negotiations, paying close attention to how officials from both countries downplayed the difficulties in the earlier British-U.S. negotiations and the extraterritorial nature of such jurisdiction to conclude the agreement without controversy. It subsequently turns to the oblique documentary traces of the GMD government’s extension of the 1943 agreement in 1946 and highlights the subtle yet significant shift in justifying the exclusive U.S. military jurisdiction in China. Finally, this article returns to the Shen case to demonstrate how the co-optation and dismissal of Chinese public indignity obscured the key jurisdictional issue at stake and prevented a potentially feasible challenge to the exclusive U.S. jurisdiction. The conclusion reiterates the centrality of what transpired in China between 1943 and 1947 in understanding the evolving legal foundations of U.S. global dominance from World War II onwards.

Before discussing the specific impact of the extraterritorial privileges of U.S. troops in China from World War II until the early Cold War, looking first at the legal standing of such rights in existing international jurisprudence enhances understanding of the issue. Legal reviews from the 1940s with opposing agendas can provide a shortcut to a lengthy and comprehensive overview of this matter, which itself is outside the scope of this essay. Archibald King was a colonel working for the U.S. Army Judge Advocate General’s office and published two articles in the *American Journal of International Law* in 1942 and 1946 respectively to defend the U.S. demand for exclusive military jurisdiction over. Zhou Ziya, a law professor in China at Xiamen University, expressed his concern over the GMD government’s extension of the 1943 agreement in a 1947 article published in *Guancha*, a famous liberal journal, after Shen Chong’s rape.8

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Despite King’s and Zhou’s selective reviews, their writings, taken together, demonstrate that while there existed a vague consensus on temporary extraterritorial privileges for visiting forces during wartime, jurists and states varied significantly in the scope according to which nations should implement them. Anchoring his 1942 article on the Supreme Court case *The Schooner Exchange v. McFaddon* (1812), King took a very liberal interpretation of this case, which amounted to no U.S. jurisdiction over a merchant ship entering Philadelphia that an American allegedly claimed as private property and France later seized as a war vessel. He basically equated a passing foreign ship to resident foreign troops, asserting that this case stood for the American acceptance of complete extraterritorial privileges of friendly forces. This was a principle that several noted jurists, for example William Edward Hall, T. J. Lawrence, and L. F. L. Oppenheim, also supported. Such confidence notwithstanding, King, not unaware of the British reluctance, did concede that jurists had quite different opinions as to the scope of a general principle. In the end, King backed away from the expected legal justification of the U.S. demand. “The real reason for the immunity,” he admitted, “is that it is necessary for military efficiency.”

Zhou, on the other hand, flagged the inconclusiveness in existing legal opinions and practices that King hesitantly conceded. Accordingly, he questioned the GMD government’s wisdom in extending a politically fraught agreement. Zhou also cited Hall, Lawrence, and Oppenheim, the same jurists King referenced in his articles, but highlighted their reservations about extraterritorial privileges for visiting forces and their proposed restrictions on these rights related to the official capacity—or lack thereof—of the defendant at the time of the alleged offense and its particular location. He found more evidence to support the sovereign implications of such privileges in actual restrictions nations such as Britain and even the United States imposed. Without discussing the *Exchange* case and its significance, Zhou underestimated the ideological, if not juridical, importance of the American belief in exclusive military jurisdiction.10

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10 Zhou, “Cong guojifa lichang lun Meijun baoxing zhi xingzhi ji waiguo jundui zhi xingshi guanxia wenti,” p. 5. With regard to the United States, see An Act to Implement the Jurisdiction of Service Courts of Friendly Foreign Forces within the United States, and for
Zhou and King will receive further discussion later, but suffice it to comment for now that the exclusive military jurisdiction Americans demanded, as both authors would concur, had no unequivocal underpinning in existing jurisprudence as they understood it. How a country applied it depended a great deal on the nations involved and the power relations between them. King thus resorted to military expediency as the ultimate justification for the U.S. demand, whereas Zhou advocated for narrowing such jurisdiction by China.\footnote{Other Purposes, June 30, 1944, 58 Stat. 643. The last article of this act gives the president the authority to revoke such legal privileges "at any time."}

While Fleck stops short of admitting the political nature of such jurisdiction, he concedes that "(t)he different political and military situations in which armed forces visit another country will often require different agreements." See Fleck, "Introduction," p. 5.

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France reached an agreement with Belgium in 1914 and Britain in 1915. The United States signed similar agreements with France and Belgium in 1918. See Foreign Relations of the
territorial jurisdiction over foreign troops in 1918 constituted a stalemate. The United States, the State Department argued, maintained absolute jurisdiction over its troops regardless of their location and the British demand amounted to “a partial surrender by the American forces to the British Government.” The armistice in November of that year rendered the ongoing British-U.S. negotiations moot, but the British government upon review one year later still declared that it did not have the constitutional power to conclude agreements on the legal immunity of foreign troops which “would have the effect of ousting the jurisdiction of the British Civil Courts.”

After the outbreak of World War II in Europe, Britain continued to impose extensive jurisdiction over the exile troops from various European countries under German occupation for whom it provided refuge. However, this approach did not work with the Americans, who were in no mood to accommodate the legal tradition of a militarily dependent ally. The Allied Forces Act that the British Parliament passed in 1940 stipulated that the command of exile troops only held exclusive jurisdiction over “matters concerning discipline and internal administration,” but that the British civil courts enjoyed broad concurrent jurisdiction over other offenses the allied forces committed, and even exclusive jurisdiction over cases of “treason, murder, rape and manslaughter.” The small contingents of U.S. troops relocated to British military bases in the Americas after the “Destroyers for Bases Deal” later that year also were subject to a similar British jurisdiction. But when it came to the legal status of massive U.S. troops deployed to the British metropole after Japan’s attack on Pearl Harbor,

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13 Secretary of State to Ambassador in Great Britain, 10 May 1918, Secretary of State to the French Ambassador, 7 June 1918, Acting Secretary of State to Charge in Great Britain, 17 July 1918, Belgian Minister to Secretary of State, 6 September 1918, and Charge in Great Britain to Secretary of State, 9 December 1918, FRUS, 1918, Supplement 2: The World War, pp. 745, 748, 751; British Foreign Office to Coe, 11 December 1941, enclosure 5, p. 1, Shantz to Secretary of State, 24 December 1941. The British did not seem to really enforce their proclaimed jurisdiction over U.S. troops during World War I. See King, “Jurisdiction over Friendly Foreign Armed Forces,” p. 553; “U.S. Forces Here and the Law,” Manchester Guardian, 5 August 1942.
the top U.S. military officials considered the 1940 act “unsound and objection-
able.” They firmly asserted that the United States enjoyed exclusive jurisdiction
over its troops “wherever [they] may go on the face of the earth.”

This British-American disagreement in the early 1940s was similar to the one during World War I, but accompanying it were two new twists. First, the persistent British concerns over losing territorial jurisdiction over foreign troops helped the Americans settle on a more articulate justification of their demand based ultimately on wartime practicality. In an internal memorandum, U.S. War Department Judge Advocate General Myron C. Cramer argued, after a review of pertinent legal literature, that “an accepted principle of international law” sanctioned the total exemption of U.S. troops from the civil and criminal jurisdiction of British courts. The writings of Archibald King mentioned above were generally in the same vein, although they were relatively more forthcoming about the inadequacy of international law in justifying the U.S. demand. But given the longstanding British reticence on ceding exclusive military jurisdiction, even King’s alternative justification based on military expediency was not quite persuasive.

Second, it was the utter British dependency on U.S. military assistance, rather than the convincing justification that the Americans offered, that broke the stalemate during World War II. The British government and media concurred that “good relations with the American forces and Government” amid a debilitating war left them little choice but to cave in to the U.S. “vigour and earnestness” in securing extraterritorial privileges for their troops. After Britain and the United States signed a formal agreement on 27 July 1942, the House of Lords and House of Commons, in spite of scattered concerns over parliamentary procedures, rushed through a special bill just for the U.S. troops on 29 July and 6 August respectively. The 1942 United States of America (Visiting Forces) Act essentially exempted U.S. troops from the 1940 Allied Forces Act and gave


the U.S. military exclusive criminal jurisdiction over its troops in metropolitan Britain other—meaning weaker—British allies did not enjoy.\footnote{Parliamentary Debates, Commons, 4 August 1942, 877; “American Courts in Britain,” Times (London), 5 August 1942; Agreement between the United States of America and the United Kingdom of Great Britain and Northern Ireland Respecting Jurisdiction over Criminal Offenses Committed by Armed Forces, July 27, 1942, 57 Stat. 1193. Britain retained concurrent jurisdiction over U.S. troops deployed to its outlying military bases as stipulated in 55 Stat. 1160.}

As a key U.S. ally in East Asia, China also began to receive large contingents of U.S. troops after Japan’s attack on Pearl Harbor brought the United States into World War II. It thus confronted the question about the legal status of these visiting troops that Britain had wrestled with ever since World War I. Though similarly dependent upon U.S. military assistance, China differed from Britain in that it had been subject to foreign extraterritoriality for a century, ever since the country’s humiliating defeat in the First Opium War. At the height of its imperial power, Britain secured extraterritorial rights for its subjects in China based on the perceived barbarity of traditional Chinese law in 1843. The United States obtained similar privileges for its citizens in 1844, as did various other powers thereafter, based on the principle of most favored nation. The rise of Chinese nationalism in the late 19th Century made this legal regime a humiliating symbol of China’s inferior status in the family of nations and an emotional rallying cry for Chinese legal reform and “treaty-revision” diplomacy. Offering a gesture of friendship to its beleaguered World War II ally, the United States, together with Britain, decided to abrogate extraterritoriality in China in January 1943, despite lingering concerns over China’s legal system. The GMD government, however, touted this event as proof of its success in fulfilling nationalist goals. What has escaped careful consideration in previous studies is how this recently concluded British-U.S. agreement and the long-standing legacy of extraterritoriality informed the pending Sino-U.S. negotiations on the legal status of U.S. troops.\footnote{U.S.-China Treaty, January 11, 1943, 57 Stat. 767. For a comprehensive survey of U.S. extraterritoriality in China, see Wesley R. Fishel, The End of Extraterritoriality in China (Berkeley and Los Angeles: University of California Press, 1952). For the nationalist legacies of extraterritoriality in China, see Eileen P. Scully, “Historical Wrongs and Human Rights in Sino-foreign Relations: The Legacy of Extraterritoriality,” Journal of American-East Asian Relations 9, no. 1–2 (Spring-Summer 2000): 129–46. For recent revisionist studies which highlight extraterritoriality’s limited success in disciplining U.S. nationals in China and the Qing government’s initial preference for letting foreigners deal with their own legal issues through extraterritoriality, see Eileen P. Scully, Bargaining with the State from
Throughout the negotiation process the State Department tried to secure extraterritorial privileges for U.S. troops as a neutral arrangement following the highly publicized abolition of U.S. extraterritoriality in China. In the internal deliberations in December 1942, Foggy Bottom was concerned that the Chinese might “misunderstand” the U.S. demand as extraterritorial, which might cause “undesirable consequences” such as the Chinese assuming jurisdiction over U.S. troops. In the beginning of January 1943, Secretary of State Cordell Hull finally instructed Clarence E. Gauss, the U.S. ambassador to China, on the official justification for exclusive military jurisdiction as wartime expediency, a position quite similar to the one Archibald King had advocated. Adamantly denying the extraterritorial implications of the U.S. demand, Hull declared his support for flexibility in “the particular form of the agreement to be reached.” He characterized the British-U.S. agreement in 1942, the result of difficult negotiations spanning both world wars, as “a simple arrangement” to facilitate Chinese acceptance. But it was not necessary, Hull suggested, to publish the bilateral correspondence on this seemingly innocuous issue. The State Department’s reticence indicated that extraterritoriality, although a taboo that U.S. officials viewed as better avoided, was weighing heavily on how the Americans envisioned their engagement with the Chinese on a highly delicate issue.18


For a compilation of official celebrations of the end of British and U.S. extraterritoriality, see Federal Communications Commission Foreign Broadcast Intelligence Service, Foreign Radio Broadcast Daily Report, 12–14 January 1943. For continuing U.S. concerns over the Chinese legal system during the negotiations to end extraterritoriality and even after the formal treaty, see Secretary of State to Ambassador in the United Kingdom, 27 August, 5, 8 September 1942 and Ambassador in the United Kingdom to Secretary of State, 15 October 1942. FRUS, 1942, China (Washington, DC: U.S. Government Printing Office, 1956), 282, 287, 289, 316; Lieutenant General Albert C. Wedemeyer to the Chief of Staff, 21 January 1946, FRUS, 1946, China (Washington, DC: U.S. Government Printing Office, 1972), 10: 813; H. Freeman Matthews to Secretary of State, 13 January 1943, 793.003/1076, Cordell Hull to Ambassador in China, 11 January 1943, 793.003/1080A, folder 793.003/1072-1099, box 3051, RG 59, NA II.

Contrary to later criticisms from the CCP and radical students in the Shen Chong Incident, the GMD government was not totally negligent in understanding the sovereign implication of jurisdiction over U.S. troops in China. Back in 1942, before the abolition of U.S. extraterritoriality in China, Lieutenant General Joseph W. Stilwell, the top U.S. commander in the China-Burma-India Theater, requested approval from the GMD government to install U.S. military police around U.S. military camps in Kunming for the sake of military expediency. In internal deliberations, the Ministries of Military Administration and Foreign Affairs both pointed to the measure's potential compromise on China's judicial sovereignty, despite the importance of maintaining amicable relations with the United States. In fact, Xu Nianzeng, a Foreign Ministry employee, submitted a memorandum that specifically referred to the potential link between this measure and extraterritoriality in the popular imagination. After receiving reports from Chinese diplomats describing the implementation of similar U.S. measures in Britain and Australia, the GMD government deemed Stilwell’s request acceptable, but only on a temporary wartime basis and with the collaborative assistance of Chinese law enforcement personnel.19

Similar caution regarding sovereign infringement was, however, mostly absent in the GMD government’s negotiations with the United States in 1943. Official discourses of equality notwithstanding, China and the United States, even more so than Britain and the United States, were clearly not equal parties at the negotiating table. This of course did not give the GMD government much leeway other than to accept the non-political justification of such jurisdiction that the State Department proffered. On the other hand, the GMD government’s narrow textual focus on the British-U.S. agreement in 1942 did not help in grasping the fundamental sovereign contentions underlying the British-U.S. negotiations. Moreover, its focus on the end result of a protracted negotiation did not provide the Chinese with deep knowledge of the persistent British reluctance to relinquish jurisdiction over U.S. troops. Instead, it gave them false assurance that if Britain had signed the agreement, China could follow suit safely. Even though it probably would have been impossible for GMD officials to have access to the British and U.S. diplomatic files on their bilateral talks, there is no evidence that it ever occurred to them to talk to their British

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19 For relevant documents between August and October 1942, see File: Zhu Hua Meijun guanxia [Jurisdiction over U.S. Troops in China], 426.1/0085, Academia Sinica Institute of Modern History Archives (IMH), Taipei, Taiwan.
counterparts about the actual British-U.S. negotiations. The Chinese Ministry of Foreign Affairs under the leadership of T. V. Soong did deserve credit for flagging a reciprocity clause on British troops in the United States in the British-U.S. accord that the State Department did not include in its draft of the Sino-U.S. agreement. After his brother-in-law Chiang Kai-shek gave his approval, Soong suggested this single major revision of the State Department’s draft. In late January 1943, he requested as “a matter of face” insertion of the reciprocity clause. The State Department, quite satisfied with the cooperative stance of the Chinese, quickly approved this nominal change.20

Despite accepting the legal immunity of U.S. troops in China as an innocuous wartime practicality as the State Department had hoped, the GMD government was uneasily aware of its haunting extraterritorial characteristics. The Foreign Ministry’s respective reports to Chiang Kai-shek and the Executive Yuan in late January and late March 1943 argued that international law sanctioned extraterritorial privileges for allied troops stationed in a foreign country. In late February, however, in another report to Chiang, the Ministry justified the pending agreement with the United States in terms of international law and the precedent in Britain, but emphatically denied its extraterritorial implications based on the equal treatment of Chinese troops in the United States. Despite the U.S. suggestion for secrecy, the Ministry actually favored the publication of the Sino-U.S. agreement lest the Chinese people might misunderstand the agreement as extraterritorial.21 In addition, some keen legal minds in the GMD government actually took due notice of international law’s inconclusiveness on the scope of visiting forces’ extraterritorial privileges and made sensible suggestions to restrict the application of the U.S. demand. Wang Chonghui, a famed jurist and then secretary general of the Supreme National Defense Commission, the GMD government’s highest decision-making body, cautioned in early March that China should not apply the legal privileges of U.S. troops too broadly and should differentiate the official and private activities of the troops. Wang’s concern, though not reflected in final Sino-U.S. agreement, highlighted the disruptive

20 Gauss to Secretary of State, 19 January 1943, 811.203/239 and C. E. G., “Memorandum of Conversation,” 27 January 1943, enclosure 1, Gauss to Secretary of State, 3 February 1943, 811.203/243, third folder, box 3729, RG 59, NA II; Ambassador in China to Secretary of State, 9 January 1943, Memorandum of Conversation, by the Ambassador in China, 9 January 1943, and Ambassador in China to Secretary of State, 30 January 1943, FRUS, 1943, China, pp. 694–96; Ministry of Foreign Affairs to Chiang Kai-shek, 27 February 1943, File: Zhu Hua Meijun guanxia, 426.1/0085, IMH.

21 Ministry of Foreign Affairs to Chiang Kai-shek, 25 January 1943 and 27 February 1943 and Ministry of Foreign Affairs to Executive Yuan, 24 March 1943, File: Zhu Hua Meijun guanxia, 426.1/0085, IMH.
potentials of a loose application of the U.S. troops' legal exemption, something the Shen Chong case three years later emphasized.22

These concerns aside, the non-political line that the United States preferred prevailed as the GMD government’s official justification to the Chinese public when Chinese and U.S. representatives signed the final agreement on 21 May 1943. Contrary to U.S. desires, the GMD’s official newspaper ZYRB published the agreement’s complete Chinese version on 22 May. This agreement, according to the newspaper, was nothing more than what international law and wartime practicality mandated. It was concurrently in effect in Britain, another U.S. ally, and would ensure equal treatment of Chinese troops in the United States. The subtext was that the legal immunity of U.S. troops had nothing to do with extraterritoriality, which had vanished forever with the January treaty.23

Given contemporary Chinese media reactions to the agreement, the official U.S. and GMD strategy of presenting the U.S. military’s exclusive jurisdiction over its members as a harmless necessity seemed to have worked. The liberal Da Gong Bao (DGB) and the CCP’s Xinhua Ribao (XHRB) published in Chongqing simply repeated verbatim the ZYRB report without further commentaries. The CCP’s Jiefang Ribao (JFRB) published in the party headquarters Yan’an did not cover the agreement at all. The only challenge to the non-political decoy regarding the legal privileges of U.S. troops came from the Shen Bao (SB) in the Japanese-occupied Shanghai, one of the most influential independent dailies in China prior to the Japanese takeover in 1941. In a commentary in mid-June, the SB trumpeted the “contradictions” between the end of extraterritoriality and the legal exemption of U.S. troops in China, an unwanted connection Washington and Chongqing tried gingerly to avoid, and lampooned the farcical “equality” with the United States that the GMD government was touting. Here the SB uncannily revealed the political implications of the exclusive military jurisdiction both the U.S. and GMD officials intentionally downplayed. Yet its collaborationist agenda with the Japanese did not quite dismantle the GMD government’s non-political justification of such jurisdiction.24

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22 Wang Chonghui, “Feng jiao he yi Waijiaobu dui Meijun zai Hua xingshi anjian you Mei junshi fating shenpan yi'an yijian” [“Opinions Regarding the U.S. Military Court's Jurisdiction over Criminal Cases Involving U.S. Troops in China as Presented by the Ministry of Foreign Affairs”], 10 March 1943, ibid.

23 “Zhuhua meijun xingshifan shenpan banfa yi guiding” [“Procedures to Try Criminals in U.S. Troops in China Established”], ZYRB, 22 May 1943. The Executive Yuan promulgated the agreement in a separate regulation in October of the same year. For a reprinted copy, see FRUS, 1943, China, pp. 699–700.

24 “Zhong Mei zuo huanwen” [“China and the U.S. Exchanged Notes Yesterday”), Da Gong Bao (hereafter, DGB), 22 May 1943; “Zhong Mei huhuan zhaohui” [“China and the United
Concluded during China's war against Japan, the 1943 Sino-U.S. agreement stipulated that it “shall be in effect during the present war and for a period of six months after.” On 15 August 1945, Emperor Hirohito proclaimed Japan's surrender, which the United States formally accepted on September 2. Japanese troops surrendered in China one week later. With the Sino-Japanese War concluded in early September 1945, the legal immunity of U.S. troops in China should have ended by March 1946 according to the schedule the 1943 agreement set forth. Why then did the two marines in the Shen Chong case still stand trial in U.S. courts-martial instead of Chinese courts in early 1947?\footnote{u.s.-China Agreement, 1943, 57 Stat. 1248. Hungdah Chiu contends that because the Japanese Peace Treaty did not enter into force until 28 April 1952, the 1943 agreement’s ending point should be six months beyond that date. There are two problems with this argument. First, the Guomindang (GMD) government itself, as this article will explain later, actually treated early March 1946 as the scheduled expiration of the agreement and never used the lack of a peace treaty with Japan as a reason to extend it. Second, the GMD government in Taiwan was not a signatory to the multilateral 1952 treaty, but signed a separate peace treaty with Japan on 28 April 1952, which did not enter into force until 5 August of that year. See Hungdah Chiu, “The United States Status of Forces Agreement with the Republic of China: Some Criminal Case Studies,” \textit{Boston College International and Comparative Law Review} 3, no. 1 (1979): 68.} The GMD government had begun deliberating on the duration of the 1943 agreement in late 1945, but did not formally extend it until June 1946. In mid-November, the Executive Yuan inquired with the Military Affairs Commission, then the top command of Chinese military forces, about whether the agreement should be allowed to lapse once the deadline passed. By February 1946, the consensus within the GMD government was that U.S. troops should enjoy the legal privileges for one more year because their tasks in China “were not yet over.” Yet the announcement of the extension in the \textit{ZYRB} did not come until June 5, three months after the expiration of the 1943 agreement. Tucked in the middle of a series of government announcements, the extension order simply stated, without explanation, that the extension of the original agreement from 3 March 1946 for another year.\footnote{Executive Yuan to Military Affairs Commission, 13 November 1945 and Ministry of Foreign Affairs to Ministry of Military Administration, 15 February 1946, File: Zhu Hua Meijun guanxia, 426.1/0085, 1MH; “Guofu mingling,” 5 June 1946, \textit{ZYRB}.}
In 1946, the GMD and U.S. governments also were negotiating terms for the establishment of the U.S. Military Advisory Group (MAG) to China. Chiang Kai-shek first offered complete legal immunities for the MAG members, civilian and military, probably to reassure the U.S. government. This was even more generous than the continuing legal immunities for regular soldiers, which only covered criminal offenses. Although the U.S. State Department cautioned against such an offer based on its extraterritorial implications, the military, including U.S. Army Lieutenant General Albert C. Wedemeyer, considered it necessary because of the alleged corruption in Chinese politics. To avoid the extraterritorial snag, General George C. Marshall saw the MAG as part of U.S. diplomatic efforts in China and asked the GMD government to grant its members regular immunities as foreign service personnel. The State Department concurred, settling the issue as such in the draft agreement between the two governments. In addition to providing complete legal immunities for the MAG members, the accord also stipulated that the GMD government could assume jurisdiction should the U.S. government prefer not to do so. Because of this diplomatic categorization of the MAG, this article does not treat its legal status. The negotiations on the final agreement continued throughout the year and the talks finally ended because of what the U.S. government perceived as “adverse publicity,” probably referring to the CCP hostility toward the U.S. military presence in China. Wedemeyer to the Chief of Staff, 29 January 1946, Memorandum by the Director of the Office of Far Eastern Affairs to the Under Secretary of State, 8 April 1946, Acting Secretary of State to the Embassy in China, 1 May 1946, Enclosure to Department of State to the Embassy in China, 1 May 1946, Acting Secretary of State to the Ambassador in China, 19 September 1946, and General George C. Marshall to the Commander of the Seventh Fleet, 17 December 1946, FRUS 1946, China, 10, pp. 811, 813, 814, 826, 828, 829, 835, 845, 848. According to Katherine Reist, the legal privileges for the MAG members were not “extraordinary.” Katherine K. Reist, “The American Military Advisory Missions to China, 1945–1949,” Journal of Military History 77, no. 4 (October 2013): 1384. The author thanks one of the anonymous reviewers for bringing Reist’s article to his attention.

Given the stakes of the jurisdictional issue pertaining to its troops, the United States was unlikely to be unaware of the GMD government’s decision. American Embassy, Chinese Press Review, 5 June 1946.
This seemingly uncontroversial extension of the legal immunity of U.S. troops in China that the GMD government made in 1946 concealed, however, a critical shift in justifying these privileges. Political implications aside, temporary wartime expediency ultimately justified prior U.S. agreements with various allies on this issue in both world wars. But U.S. troops in China in 1946 were no longer engaged in a clearly defined combat mission that legitimized, however tenuously, their legal privileges. With the surrender of Japanese forces in 1945, the United States officially maintained a non-interference position in China and President Truman sent General Marshall as his personal envoy to mediate between the two major political parties, whose wartime alliance had broken down after the New Fourth Army Incident in 1941. U.S. troops in China thus mostly became logistical assistance units charged with the repatriation of remaining Japanese citizens and advising of GMD forces. To be sure, the contending GMD and CCP military units were engaged in scattered hostilities in 1946 that escalated into a full-blown civil war in 1947. U.S. troops, despite providing personnel and materiel support to the GMD forces, were not participating in the conflict directly. Therefore, the GMD government, having extended the legal privileges of U.S. troops in 1946, began to base the privileges on their mere presence instead of active combat duty. This was a new legal regime that even Archibald King, the ardent defender of such privileges, did not envision. Granted that the GMD government was approaching the extension not so much as a legal issue but as an expedient one, it nevertheless created an unprecedented justification for the same privileges in a new environment.

The GMD government’s new justification was embroiled in the embryonic phase of a global Cold War and it prefigured the hallmark regime of such privileges in the form of the SOFA from the early 1950s. Military expediency associated with combat missions only justified the legal privileges of U.S. troops during a finite period of time, such as both world wars. The presence of U.S. troops during a transitional period between war and peace by contrast could potentially require the same privileges for an indefinite time. While the CCP’s victory in 1949 quickly settled this confusing time in Chinese history during 1946, the global Cold War turned out to be a four-decade-long period of war and peace that prolonged U.S. troops’ non-combat foreign deployment and institutionalized, on a global scale, the SOFA that sanctioned their exemption from local law. Compared to earlier agreements on exclusive U.S. jurisdiction, the SOFA did allow the host states to claim primary jurisdiction over U.S. troops.

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for their alleged offenses off duty. But the U.S. military is known for its extreme reluctance to waive its right and its unswerving attempts to “bend the interpretation of these categories’ to request ‘sympathetic consideration’” from the local authorities in handling U.S. soldiers. In fact, the unwillingness of the United States to cede jurisdiction over its troops wherever they deploy is consistent.30

While the GMD government’s retreat to Taiwan might have made it a seemingly less important party in the ongoing Soviet-American Cold War, understanding of the significance of its de jure revamping of the extraterritorial privileges of U.S. troops in 1946 has been inadequate. The British government, for example, simply used the 1942 United States of America (Visiting Forces) Act, a piece of World War II era legislation, to govern informally the returning U.S. troops since 1947 and did not ratify the up-to-date SOFA until 1952. In this sense, the SOFA probably owed an unacknowledged debt for the conceptual lesson the Chinese government’s decision in 1946 taught because its transformation of the previous justifications of U.S. troops’ legal immunities overseas, though soon irrelevant in mainland China, became the foundational doctrine that governed the legal status of U.S. troops abroad for the next several decades.31

Once the GMD government extended the extraterritorial privileges of U.S. troops in China from wartime to a period of precarious peace, the escalating

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31 Rowe, “Historical Developments Influencing the Present Law of Visiting Forces,” pp. 18–23. It is worth pointing out that the 1942 act, though the British Parliament clearly designed this legislation for World War II, technically remained in effect until “periods as may be mutually agreed upon” after the war ended. Dudziak’s argument that the normal bracketing of war into disparate time periods obscures the permeation of war into “the normal course of American life” is apparently relevant on a larger scale. See Dudziak, *War Time*, pp. 25–26. The connection between the Chinese case in 1946 and the later SOFA here is largely conceptual, so it does not mean that British drafting of the SOFA made explicit references to the Chinese case.
criminal cases involving U.S. soldiers accelerated the friction between this legal regime and Chinese society. These privileges met a major challenge after the Shen Chong Incident erupted at the end of 1946. The scandalous rape prompted unprecedented public scrutiny of the extraterritorial privileges that American soldiers hitherto quietly enjoyed, sealing antipathy in popular memory of U.S. troops. But the nationwide demonstrations, though often clamoring for assertion of China’s judicial sovereignty, failed to restore Chinese jurisdiction over the Shen case, a concrete measure toward that goal which the 1943 agreement did not preclude. The emotional outburst following Shen’s rape, in many ways a positive factor in sustaining a largely nationalist movement and particularly so in increasing the CCP’s appeals in cities, hampered a focused legal challenge to the extraterritorial privileges of U.S. troops and reinforced the GMD emphasis on the non-political nature of allowing exclusive U.S. jurisdiction. The Shen Chong case, not simply a key event amid the looming Chinese Civil War as previous scholarship has demonstrated, also highlighted the difficulties in challenging the entrenched extraterritorial status of U.S. troops, which soon would gain further protections with the spread of the SOFA across the globe.32

Among those who championed Chinese jurisdiction over Shen Chong’s rape case, her fellow students at PKU were, unsurprisingly, the most vocal. These activists flatly repudiated the GMD government’s non-political interpretation of the jurisdictional issue and condemned what they saw as a brazen affront to China’s judicial sovereignty and Chinese sensibilities. But their insistence on Chinese jurisdiction based on political and emotional reasons showed little interest in understanding the extraterritorial privileges of U.S. troops as a legal issue. In an undated open letter to students nationwide following the Shen case, PKU students asked these rhetorical and poignant questions:

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32 To be sure, the Shen Chong case was not the first time observers questioned such privileges. Other than the earlier citation of SB commentaries in 1943, a U.S. Navy sailor’s accidental killing of a rickshaw puller in Shanghai in late September 1946 caused Lianhe Ribao, a local leftist newspaper, to advocate for Chinese jurisdiction. But this case, involving a coolie laborer from an impoverished region of the neighboring Jiangsu Province, neither received wide news coverage beyond the local leftist media nor incited massive demonstrations. Students in Shanghai only used it as an auxiliary one during their protests following Shen’s rape. For this earlier case in Shanghai, see Mark F. Wilkinson, “American Military Misconduct in Shanghai and the Chinese Civil War: The Case of Zang Dayaozi,” Journal of American-East Asian Relations 17, no. 2 (Summer 2010): 156–57. For the role of scandals in shaping public understandings of law in China, see Melissa Macauley, Social Power and Legal Culture: Litigation Masters in Late Imperial China (Stanford, CA: Stanford University Press, 1998).
We have independent sovereignty, [but] why cannot our judiciary try foreigners committing crimes within our territories? We have territorial integrity, [but] why are there menacing U.S. soldiers everywhere persecuting our fathers and brothers, and raping our sisters?

To further incite the moral indignation of those having experienced Japanese occupation, this open letter equated the United States to Japan in their common oppression of the Chinese. The students thus demanded the establishment of a joint Sino-U.S. court to try the two marines, in addition to the U.S. military’s open apology and immediate withdrawal from China. The Peking University students repeated similar grievances and demands in open letters to the Chinese people, Chiang Kai-shek, President Truman, and Secretary of State James F. Byrnes. In the opinion of these students, the political and emotional affronts, rather than a judicious examination of the 1943 agreement’s applicability in 1946 and its provision for Chinese jurisdiction, were sufficient in supporting their demand for Chinese authorities to have concurrent jurisdiction over U.S. troops.33

Student activists from other schools in Beiping as well as other Chinese cities shared the intense indignation over two U.S. Marines raping an elite Chinese woman. But their diminished interest in the jurisdictional issue proved that emotion alone was not sufficient in sustaining a focused challenge to the extraterritorial privileges of American troops. Demonstrators from a few other schools in Beiping, as well as some in a handful of other cities such as Shanghai, Nanjing, Suzhou, and Wuhan, also called for Chinese jurisdiction because of evocative reasons such as “public indignation” (gongfen) at the “inhuman and shameless behavior of animals.” Similar intense emotions often resulted in patriarchal proclamations. “The rape of a Chinese woman amounts to the announcement of her death penalty,” one demonstrator proclaimed. Many students in Beiping and most of their counterparts in other cities, however, did not challenge exclusive U.S. jurisdiction, but only pressed for severe punishment of the defendants.34 In fact, among all Chinese student demonstrators, only some in Chongqing referred to the 1943 agreement and made a problematic yet legal

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33 National Peking University students probably wrote this undated open letter between the rape on 24 December 1946 and the demonstration six days later. *KMZHBYZH*, pp. 135, 138, 141, 144.
case for China's concurrent jurisdiction. Pointing to Shen Chong's Chinese citizenship and China's recovery of its sovereign independence after Japan's surrender, these students insisted on the principle that China's judicial sovereignty overrode the exemption of U.S. troops from Chinese law stipulated in the 1943 agreement. But even these Chongqing students who were not totally consumed by indignation were yet to address the 1943 agreement's legal standing beyond World War II and exploit its provision for Chinese jurisdiction.35

A few women's magazines even challenged exclusive U.S. jurisdiction and demanded a Chinese-only court with power to impose heavy punishments of the perpetrators. This was not so much a reasoned critique of the extended 1943 agreement as emotional outcry against Americans violating a fellow Chinese woman. According to the DGB on 1 January 1947, Funü yu Jiating and Sichuan Funü, two magazines in Chongqing, declared their call for the Chinese people to conduct an open trial of the two marines because the rape of Shen represented "a great humiliation of our nation." Xiandai Funü, another Chongqing leftist magazine, published an article provocatively titled "The Shen Case Is Not Over" in early February after Pierson's court-martial sessions the prior month. Unlike the purely emotional statements from the other two magazines, the author Yi Na pinpointed the extraterritorial 1943 agreement and lamented its deleterious effect on "the success of China's independence and liberation." But Yi never seemed to consider the possibility of Chinese jurisdiction as a legal question within the framework of the agreement and its extension. Instead, the author vengefully called for the abolition of the agreement and establishment of a Chinese court to mete out the death penalty on the rapist, an extreme measure even according to the five-year minimum non-capital sentence in the Chinese criminal law.36

Chinese lawyers and law professors also weighed in on Chinese jurisdiction over the Shen Chong case, but even these professionals did not always make a grounded legal argument against the continuing effect of the 1943 agreement in 1946. Most of the legal professionals admitted that the two U.S. Marines' rape of Shen was not a regular legal case, but had deeper political repercussions. Some of them, like the vast majority of the public, chose, however, to

35 KMZHBYZH, p. 628.
gloss over its legal complexities and highlight what seemed to be black-and-white moral issues. In the CCP newspaper *XHRB* in mid-January 1947, Chen Jinkun, a Communist jurist, praised the “righteous anger” of the Chinese people in the massive demonstrations. He asserted that China’s judicial sovereignty applied to U.S. troops in China because the United States already had renounced extraterritoriality in 1943. In a mid-January interview with the leftist newspaper *Wen Hui Bao* (*WHB*) in Shanghai, Sha Qianli, a left-leaning lawyer and entrepreneur, asserted that there was no need for the Americans to examine carefully the evidence for rape because “sexual intercourse in the open place is enough evidence of rape by the U.S. soldiers... [and] even the most romantic female student in Chinese universities would not be so shameless.” Following the outburst of public indignation, neither Chen nor Sha cared to substantiate their disagreement with the extraterritorial status of U.S. troops with careful examination of the 1943 agreement, as their profession normally would have required.37

Only a few legal professionals actually zeroed in on the GMD government’s extension of the 1943 agreement in 1946 and challenged its legal rationale. Yet none of them seemed to have considered or pressed for Chinese jurisdiction in the Shen Chong case, a permissible scenario fully in accord with the stipulations of the 1943 agreement. In the same issue of the *WHB* where Sha Qianli dismissed the U.S. court-martial, lawyers Liang Zhuming and Han Xuezhang both criticized the extension of the 1943 agreement at a time when the (wartime) tasks of U.S. troops in China had ended and incisively flagged this ill-considered policy as the key legal problem underlying the Shen case. The otherwise insightful review of existing jurisprudence and practices of the legal status of visiting forces by Zhou Ziya, the Xiamen University law professor referenced earlier, also ignored the stipulations on Chinese jurisdiction in the 1943 agreement, which could have provided a concrete legal basis for restoring China’s judicial sovereignty.38

Similarly, the CCP’s shrewd exploitation of the public outrage the Shen case generated was critical in expanding its popularity among Chinese urbanites, but it did not offer a sustained critique of the legal privileges of U.S. troops in China. Prior to the rape of Shen Chong in late 1946, the CCP paid scant, if any, attention to these special rights. The profound public indignation that the incident caused provided the CCP, which had been involved in scattered territorial skirmishes with the GMD forces ever since the early 1940s, a golden opportunity

37 *KMZHBYZH*, pp. 620, 623.
to augment its popular support. By asking its operatives to “use the tone of indignation rather than happiness to achieve more sympathy (for the party) in the propaganda,” the CCP was trying to manipulate public emotions for another propagandist offensive against the GMD. But the extraterritorial status of American soldiers, a smaller issue in comparison to the demand for withdrawal of U.S. troops and the end of U.S. meddling did not constitute from the CCP perspective an agenda worthy of consistent propaganda coverage.

On 31 December 1946, the CCP headquarters listed Chinese jurisdiction as a concrete slogan in a directive to top cadres in different Chinese cities describing how to mobilize more demonstrations after the Shen case. By the beginning of 1947, the CCP quickly watered down this line of attack to a general call for the "punishment of perpetrators" (chengxiong). The jurisdictional issue did not resurface in the editorials of the two party mouthpieces—XHRB and JFRB—until 15 January, two days before Pierson’s scheduled court-martial. The XHRB editorial particularly imitated the style of the PKU students and asked a series of emotionally charged questions in its critique of the 1943 agreement: “Is this what a fully sovereign nation could endure? Is not extraterritoriality abolished? Why is this happening?” But the CCP, busy taking political advantage of the public anger at the GMD government and U.S. troops in China, was not interested in understanding and challenging the legal foundations of why the 1943 agreement was still in effect at the time of the rape of Shen Chong.

The GMD government, already bedeviled by a military confrontation with the CCP and a rapidly deteriorating economy, branded nationwide demonstrations as nothing but Communist agitation and clung to the 1943 agreement as an uncontroversial solution to the Shen Chong case with no compromise of China’s judicial sovereignty. Just days after the Shen case, the Beijing municipal government and the central government’s Regional Military Command (xingyuan) in the city both confirmed that the U.S. military would maintain exclusive jurisdiction over the two marines per the 1943 agreement. In a report to the central government two weeks later, Beijing’s mayor dismissed the “uninformed proposal” (mangmu zhuzhang) of Shen Chong’s father and newspapers for a trial in Chinese courts. On the first day of student demonstrations in Beijing, Hu Shi, the PKU president and China’s leading liberal intellectual, cautioned students not to confuse the rape of Shen as a legal problem (with established procedural solutions) with the stationing of U.S. troops in China as

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39 To make Shen Chong a vulnerable victim in U.S. military justice instead of a successful plaintiff was more helpful to the CCP’s propaganda campaign against the GMD. The CCP was probably not motivated to make a legal case against the exclusive U.S. jurisdiction. KMZHRYZH, pp. 3, 6, 17–30.
a political issue (something students were not expected to solve). Down in the
capital Nanjing, the Ministry of Education soon confirmed Hu's differentiation
between law and politics and urged other university presidents to follow suit in
dealing with massive student demonstrations. In an interview with the official
ZYRB in early 1947, Zhao Chen, president of the Capital Superior Court, con-
flated the World War II and post-World War II missions of U.S. troops in China
when he reasoned that the extension of the 1943 agreement was natural
because of these troops' unfinished tasks. In Zhao's opinion, students should
not make undue diplomatic troubles out of a simple issue. Even private sources
echoed such disapproval of student politicization of a legal issue, such as the
diaries of Wang Shijie, then minister of foreign affairs.40

Long accepted as a key factor in diminishing the GMD government's popular
support in this volatile environment has been its hasty dismissal of public
demonstrations in the late 1940s in reaction to the looming civil war in China.
But what scholars have not duly emphasized is that the jurisdictional issue
actually offered a potential opportunity for the beleaguered GMD government
to demonstrate its nationalist credentials to an agitated public. In sticking to
the ordinary execution of the 1943 agreement without any consideration of the
“special reasons” clause, however, the GMD lost its fighting chance.41

40 Wang Guohua (ed.), "Beiping shizhengfu youguan Shen Chong Shijian laiwang handian
xuanbian" ["Selection of the Beiping Municipal Government's Correspondence on the
Shen Chong Incident"], Beijing dang'an shiliao [Beijing Archives Series], no. 1 (1994), 14, 18;
Wang Guohua and Geng Laijin (eds.), "Hu Shi dang'an zhong youguan Shen Chong Shijian
laiwang handian xuan" ["Selection of Correspondence on the Shen Chong Incident in the
Hu Shi Archives"], Beijing dang'an shiliao, no. 2 (1994), 34–35; KMZHBYZh, pp. 485, 489, 491;
"Zhao Chen tan Beiping shijian" ["Zhao Chen Talks About the Beiping Incident"], ZYRB,
7 January 1947; Diary Entry, 4 January 1947, Wang Shijie riji [Wang Shijie Diaries], vol. 6,
pp. 2–3 (Taipei: Academia Sinica Institute of Modern History, 1990). The GMD govern-
ment's Ministry of Foreign Affairs sent multiple telegrams to its commissioner in Beijing
and Tianjin on 2 and 4 January 1947 asking him to "secretly approach the Beiping munic-
ipal government and U.S. military authorities, and jointly deal with the case (huitong
banli ci'an)." Given the general attitude among GMD officials, the last phrase probably
means the coordination among these entities instead of a joint court. See Zuo, "1946 nian
Shen Chong Shijian," p. 73. A student publication at the missionary Yenching University in
Beijing mentioned on 6 January that “the United States has accepted in principle a joint
trial of the perpetrator;" the only problem being the lack of the qualified Chinese judge
and lawyer. This is the only uncorroborated source suggesting the official acceptance of
the possible change of jurisdiction in the Shen Chong case. See KMZHBYZH, p. 131.

41 Wang, "Beiping shizhengfu youguan Shen Chong Shijian laiwang handian xuanbian" p. 16;
Editorial, Yi Shi Bao, 1 February 1947; Pepper, Civil War in China, pp. 52–58. In a directive
dated 6 January 1947, the CCP headquarters admitted that its local operatives “initially
Existing documentation gives little clue as to whether the United States dictated the GMD position in settling the Shen Chong case. But it does indicate that U.S. officials, even those more abreast of the complex situations in China, never seemed to consider extraterritorial privileges of U.S. troops a problem that might further damage their country’s image in China. Myrl Myers, the U.S. consul general in Beijing, did not even mention the student demand for a joint Sino-U.S. court in his reports to the Secretary of State Byrnes immediately following the rape. After spending Christmas in Beijing and Tianjin when the Shen Chong case erupted, John Leighton Stuart, U.S. ambassador and former president of the missionary Yenching University in Beijing, met with Chiang Kai-shek to discuss the case on 2 January 1947. In his open statement later on the same day, Stuart invoked the “normal military practice” (zhengchang zhi junshi xili) and called for a speedy court-martial. On 6 January, Major General Samuel L. Howard, the U.S. Marine commander in Beijing, emphasized, like Hu Shi did, the difference between law and politics and the need for a judicious investigation (by U.S. authorities). However sympathetic these U.S. officials might be to the Chinese demonstrators, they were in no mood even to discuss the extraterritorial privileges of U.S. troops, now the new normal even though the world wars that helped justify their institution had passed.42

The lack of a coherent push for the judicial scrutiny of the 1943 agreement from the bottom, coupled with official inaction from the top, therefore failed to upend the extraterritorial privileges that the GMD government already had extended to U.S. troops. Once the Shen Chong case entered the U.S. military justice system, the Chinese only could witness the extraterritorial status of U.S. troops add insult to their existing wound. While Pierson received a sentence of a 15-year prison term plus demotion in the original trial in China in January 1947, the following August the newly established Department of Defense acquitted him on grounds of insufficient evidence. The alarmed GMD government protested to the U.S. embassy to no avail and bitterly questioned Washington’s overturn on judicial grounds in internal memoranda. Student

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activists, while critical of this turn of events, had long shifted their attention to other issues, most notably the imminent civil war. The GMD government and public might have felt differently if they had received a reminder of how in 1904 the Ningbo merchant groups in Shanghai, after organized public demonstrations and concerted legal actions, actually forced a Russian military tribunal to increase the sentence for two Russian sailors who accidentally killed a Ningbo sojourner.43

Between 1943 and 1947, U.S. troops benefited from legal exemption in China. Though evolving out of the abolition of U.S. extraterritoriality in China in early 1943, this was in essence a continuation of extraterritorial privileges for particular Americans. Focusing on this seemingly insignificant issue helps ground what transpired in China in the legal foundations of the rising U.S. global military hegemony from a temporary wartime expedient to potentially universal and permanent application. The smooth Sino-U.S. negotiations on the legal privileges of U.S. troops in 1943 were part of the larger legal concession of allies to U.S. military superiority. The GMD government's extension of the 1943 agreement in 1946 facilitated the perpetuation of the legal privileges of U.S. troops beyond World War II. The Shen Chong Incident in 1946 demonstrated the difficulties in challenging such entrenched privileges even with massive demonstrations.

The Shen Chong Incident was of course not the end the troubles that the United States experienced because of its sense of entitlement to extraterritorial privileges for U.S. troops. In late March 1947, to the resentment of many Chinese in Qingdao, the U.S. court-martial of a U.S. Navy steward's mate accused of stabbing to death a Chinese rickshaw puller proceeded even though the GMD government's 1946 extension of the 1943 agreement already had expired early in the month. In July 1947, a few months after expiration of the first extension, the GMD government extended the 1943 agreement again, this time until the complete withdrawal of U.S. troops. In May 1957, a political uproar against ceding exclusive U.S. military jurisdiction erupted in the United States after the U.S. government, following Japan's reassurance of a lenient sentence, decided to let a Japanese court try a U.S. Army specialist charged

with killing a Japanese woman. That same month, angry mobs stormed the U.S. embassy in Taipei, the new capital of the GMD government after the CCP forced it to flee from mainland China in late 1949, because the U.S. court-martial acquitted a U.S. Army master sergeant accused of murdering a Chinese. In 2012, Afghans infuriated in response to a U.S. army staff sergeant's murder of sixteen civilians found that their outrage had no bearing on exclusive U.S. jurisdiction, which was according to U.S. officials a pre-determined technical arrangement. In October 2014, Filipinos were watching closely whether the United States actually would honor, as it had not in the past, their country's jurisdiction over a U.S. Marine private first class recently accused of killing a local cross-dresser. While no longer creating problems in China or in Sino-American relations, the specter of extraterritoriality continues to inflict damage on the image of the United States in international affairs.44