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Formalizing Foreign-Related Affairs Governance and Exercising Foreign-Related Laws in China*

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Abstract Foreign-related affairs are international relations considered from a domestic perspective, and their governance models vary over time. War has long been a decisive approach to handling international relations. With the Charter of the United Nations requiring peaceful resolutions of international disputes and general banning use of force or threat of force to address international affairs, international relations have been placed on a track of legal governance. Governance of foreign-related affairs has to be formalized, although the associated legal governance model still has a close relationship with other models, and the domestic context plays a great role in this. Legal governance can adopt an approach to international law, domestic law, and policy coordination. The legal governance of China's foreign-related affairs can be regarded as the rule of law applied to foreign-related affairs. To exercise foreign-related laws, China should advance the rule of law in domestic and foreign-related affairs in a coordinated manner, appropriately exercising extraterritorial application and jurisdiction, safeguarding national sovereignty, security, and development interests, as well as common values of humanity, and building a human community with a shared future.

Keywords foreign-related relations, war, legal governance, rule of law in foreign affairs, a human community with a shared future

I Introduction

Foreign-related affairs refer to a country's international relations from a domestic perspective and can also be referred to, in a sense, as external relations. A state, as a political organization different from the gens and other social organs, has the features of regionalism and public power.[1] Regionalism forms the geographical basis of foreign-related relations, from which are derived the distinctions between internal and external, high and low, superior and inferior, Chinese and foreign, civilized and barbaric, aggressively invading and self-defending, specific and general. The public power (political power) determines the fundamental approach to foreign-related affairs. Various coercive means, including the possibility of armed violence, become the material guarantee for the survival and development of a state. As the master of a

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1 Fredrick Engels, 家庭、私有制和国家的起源 (*The Origin of the Family, Private Property and the State*), 人民出版社 (People's Publishing House), at 189 (2018).

state, the people constitute the most active part of the three elements of a nation-state: ethnic groups, territory and political power. Material and cultural exchanges between people of different countries are the most basic content of foreign-related relations. All this is done in the name of a state. Thus, people have their nationality, things have their sources, and systems and cultures both have specific national origins.

A nation-state is a product of society at a certain stage of development, an outcome of society entering an age of civilization, and is a generalization of civilized society. "The more civilization advances, the more it is compelled to cover the evils it necessarily creates with the cloak of love and charity, to palliate them, or to deny them. In short, to introduce a conventional hypocrisy."[2] The foreign-related affairs of a state also bear such civilization feature, and have to balance with social development. This balance is constantly spiraling-upward in a cycle of balance–break–rebalance–rebreak–rebalance. This dynamic equilibrium is influenced by both internal and external factors of a state, including factors related to the rulers and the ruled. State governance, including foreign-related relations, has always been a subject of intense pursuit since the formation of states.

Comprehensive Mirror to Aid in Government, a general chronicle of Chinese history published in the Northern Song Dynasty of China nearly 1,000 years ago, aimed to explore and provide the reference of governance,[3] but the examples it adopted were limited to Chinese territory. With the development of transportation technology, human interactions across the globe became more extensive and frequent, leading to intense conflicts between different countries and regions. The Crusades, colonial aggression, and world wars sparked enormous disasters to humanity. Moreover, various civilizations have learned from each other, promoting mutual development. "Today, we live in a world with different cultures, ethnic groups, skin colors, religions and social systems, and all people on the planet have become members of an intimate community of shared future."[4] The governance of foreign-related affairs has become an important matter for all states. To exercise this governance, it is necessary to draw on historical experience while keeping pace with the times to address current problems. Placing foreign-related affairs on the track of legal governance has become a shared goal of the international community. Whether it is the rule-based international order called by the United States and Europe or the international order based on international law proposed by China, it is necessary to follow and reflect the shared features of legal governance.

Amid global changes of a magnitude not seen in a century, the Chinese nation is embarking on a journey of great rejuvenation. This article focuses on China's foreign-related issues and explores the interaction between international relations and legal systems, discussing the legal governance of

2 See Engels, fn. 1 at 197.

3 The book title of *Comprehensive Mirror to Aid in Government* is bestowed by Emperor Shenzong of the Northern Song Dynasty. SIMA Guang, 资治通鉴(*Comprehensive Mirror to Aid in Government*), 中华书局 (Zhonghua Book Company), at 20 (2013).

4 XI Jinping, 论坚持推动构建人类命运共同体 (*On Building a Human Community with a Shared Future*), 中央文献出版社 (Central Party Literature Press), at 80 (2018).

foreign-related relations by combining and unifying internal and external factors. The article aims to clarify the legal governance of foreign-related affairs, and provides a civilized and progressive method, as opposed to the use of force. It inevitably involves two different legal systems: domestic law and international law. The different approaches to handling these two rule frameworks determine the complexity and challenges of legal governance in foreign-related issues. The international community must coordinate their mutual relationships with a sense of a human community with a shared future.

II The Foundation of Legal Governance in Foreign-Related Affairs

A | Declaring War Illegal

Legal governance in foreign-related relations is inseparable from the legal formalization of international relations. For a very long period in history, war was the decisive means of resolving conflicts between different countries and ethnic groups. Thus, legal prohibition of war becomes the departure point and basis for legal governance of international relations and foreign-related issues.

From a geographical perspective, a country is a political unit that occupies a certain surface area of the Earth.[5] The definition of international relations is based on geographical boundaries. Thus, from the very beginning, a country has both internal and foreign-related affairs. A country is a result of the combined influence of internal and external forces. The changes in territorial boundaries of a country are caused by military conquest and ideological transformations. "There are only two kinds of force: the sword and thought. In the long term, the sword is always defeated by thinking men."[6] Sword and thought are the fundamental means of dealing with a country's foreign-related affairs. Moreover, a country maintains public order and possesses public power. Violence, force, and war are inherent components of society and integral parts of civilization. War has been an important, even decisive, means for a country to maintain order and defend interests.

The two world wars brought catastrophes to humanity and further prompted reflection on the methods of handling foreign-related affairs. The First World War gave birth to the League of Nations, the first inter-governmental organization, which was dedicated to disarmament, peace, and resolving disputes through international arbitration. It established economic sanctions to ensure compliance with the Covenant of the League of Nations but did not declare war illegal. In 1928, the United States and France led in signing the General Treaty for the Renunciation of War as an Instrument of National Policy (also known as the Kellogg-Briand Pact), which condemned the use of war for resolving international disputes and advocated for

5 This is only true in a general sense. However, colonies, nations striving for independence, and political organizations not universally recognized by the international community, also occupy certain geographical areas for a certain period of time.

6 See XI, fn. 4 at 80.

the renunciation of war as a tool of national policy in international relations. The Second World War gave rise to the United Nations (UN). The UN Charter explicitly states that its members shall refrain from the use of force or the threat of force in their international relations or from any other action inconsistent with the UN purposes, which is to respect the territorial integrity or political independence of any state. Unlike the Kellogg-Briand Pact, which does not differentiate the nature and origin of wars, Article 51 of the UN Charter explicitly states that the Charter "shall not impair the inherent right of individual or collective self-defense if an armed attack occurs," providing a basis and channel for the resolution of disputes through the use of force. Therefore, the legitimacy of resorting to force has become an important issue in the legal governance of international relations. The birth of a series of rules and regulations on armed conflicts in 1949 further constrained the use of force. "Lawfare"[7] has become a mode of operation in international relations. The International Court of Justice, as the principal UN judicial body, serves as a major arena for legal disputes in international relations. The International Monetary Fund Agreement, the International Bank for Reconstruction and Development Agreement, and the General Agreement on Tariffs and Trade, all of which came into effect almost simultaneously with the UN Charter, provide legal foundations for international economic and trade relations.

B | Features of Formalizing International Relations

1. The UN Charter Establishing the Fundamental Principles of International Relations. The UN Charter provides the fundamental principles for handling international relations. In 1970, the UN General Assembly adopted the Declaration on Principles of International Law, further confirming and clarifying the following objectives: maintaining international peace and security, developing friendly relations among states, promoting international cooperation, respecting national sovereignty, safeguarding territorial integrity and political independence, non-interference in internal affairs, peaceful settlement of disputes, and refraining from the use of force or the threat of force in international relations. These objectives provide a solid legal foundation for the entire range of international relations and for individual state in handling foreign-related affairs. "In the world, there is only one international system, i.e., the international system with the UN at its core. There is only one international order, i.e., the international order underpinned by international law. And there is only one set of rules, i.e., the basic norms governing international relations underpinned by the purposes and principles of the UN Charter."[8] The UN Charter universally bans the use of force in international relations,

7 See Kittrie Order F., *Lawfare: Law as a Weapon of War*, Oxford University Press, (2016).

8 XI Jinping, 坚定信心共克时艰共建更加美好的世界——在第七十六届联合国大会一般性辩论上的讲话 (Bolstering Confidence and Jointly Overcoming Difficulties to Build a Better World: Statement by XI Jinping at the General Debate of the 76th Session of the UN General Assembly), 人民日报 (*People's Daily*), p. 2, Sep. 22, 2021.

while also preserving the inherent right of individual or collective self-defense for states and establishing the Security Council to maintain international peace and security. According to Article 39 of the UN Charter, the Security Council has the authority to determine the existence of any threat to peace, breach of peace, or act of aggression, and to take necessary measures. Article 103 of the UN Charter further establishes the relationship between the Charter and other international rules, affirming the supremacy of the Charter: "In the event of a conflict between the obligations of the Members of the UN under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." Per Article 102 of the UN Charter, "every treaty and every international agreement entered into by any Member of the UN after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it." "No party to such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 may invoke that treaty or agreement before any organ of the UN." These rules provide a reliable foundation for the legal governance of international relations.

2. Absence of Authoritative Judicial Institution in the International Community. The UN established the International Court of Justice, and adopted the Statute of the International Court of Justice as part of the UN Charter. Every UN member is an ex officio member of the International Court of Justice. The jurisdiction of the International Court of Justice comprises, firstly, all cases which UN member states refer to it and, secondly, all matters specially provided for in the UN Charter or in treaties and conventions in force. However, the International Court of Justice does not have mandatory jurisdiction over disputes between UN members. Among the permanent members of the UN Security Council, the United Kingdom, France, and the United States initially declared acceptance of the jurisdiction of the International Court of Justice, but the United States and France have withdrawn their declaration; and Russia (or the Soviet Union) and China have never made such a declaration. Outside the International Court of Justice, the UN has also established some specialized courts to deal with issues of criminal liability. The International Criminal Court is one of such courts and has began operating in accordance with the Rome Statute, but the United States, China, and Russia, as permanent members of the UN Security Council, are not signatories to this Statute. The United States has imposed sanctions on the prosecutors of the International Criminal Court, and has also signed agreements with some other countries for exclusion of the jurisdiction of the International Criminal Court.

The dispute settlement mechanism of the World Trade Organization (WTO) and of the International Centre for Settlement of Investment Disputes (ICSID) under the World Bank are the two global mechanisms for resolving economic and trade investment disputes. The former is paralyzed due to the United States obstruction of the selection of appellate body members on the grounds of overreaching

and lawmaking. The latter is facing pressure for reform due to arbitrary or unconstrained rulings by some arbitrators, which has been criticized. The future of these two organizations is uncertain. Regarding the WTO, United States government officials have stated that "reforming the dispute settlement mechanism is not simply about restoring the Appellate Body or going back to the way things were before."[9]

At the regional level, the European Union (EU) is regarded as a supranational entity that goes beyond traditional sovereign states. EU legislation has direct applicability in member states. The European Court of Justice (ECJ) serves as the highest and final judicial authority for internal affairs within the EU. The rulings of the ECJ are binding on all member states. The United Kingdom chose to withdraw from the EU in order to restore its judicial sovereignty. A recent judgment by the Supreme Court of Poland, stating that the rulings of the ECJ are not binding on member states, has sparked a new wave of controversy.[10] The tension between the state and supranational institutions has not been eliminated by the EU mechanism.

It can be seen that, currently, no international court is solely and exclusively specialized in accepting and handling disputes between states, nor is there any universally accepted international judicial framework or mechanism that has final jurisdiction and absolute authority to match those seen in domestic legal systems. The existing international dispute settlement mechanisms are subject to questioning and reform. This is the social reality that the international community now faces.

3. Absence of Utter Separation of Law from Politics or Economy. Responsible for maintaining world security in accordance with the UN Charter, the UN Security Council has 15 members, and five of them are permanent members with veto power. Such a peace keeping framework is a political mechanism. The International Court of Justice, as the principal UN judicial organ, has the power of making judgements and providing advisory opinions, and its jurisdiction derives from the consent of member states, yet it cannot judicially review the resolutions of the UN Security Council. The five permanent members with veto power are the "key minority" that influences global peace and development. While the UN Security Council resolutions can impact non-member states, it is difficult to make a resolution that binds the permanent members themselves. This means that neither the UN Security Council nor the International Court of Justice can adequately resolve disputes between the five permanent members, even though these disputes have the heaviest impact on international relations. The UN Charter itself has some limitations.

In a sense, law serves politics and

9 Ambassador Katherine Tai's Remarks as Prepared for Delivery on the World Trade Organization.

10 See Poland high court rules EU laws violate constitution.

economy. The ideology in various societies becomes a boundary that the law cannot cross, and the law in its own way reinforces this boundary. Law operates on a complex curve, with constant contradictions between form and substance, norms and strength, sovereignty and hegemony, force and peace. The "half legal, half diplomatic" model presented by United States Trade Representative Katherine Tai under the Biden administration reflects the limitations of law in regulating international relations.[11]

It is only on that basis of political, social, and legal reality that international relations have been formalized. The concept of national sovereignty, which was founded in the 17th century, was confirmed and strengthened by the UN Charter in the 20th century. Independence and equality of statehood are not only the sources of right to defend national sovereignty, but are also the root-causes of international contradictions. The UN Charter set up the Security Council system, created a collective security system, and preserved the natural right of each sovereign state to self-defense. The recognition and protection of the right to self-determination of nations, by the UN Charter, has triggered constant internal and external disputes. The conflicting interests of modern countries have sparked new conflicts. The age of "savior-style" frameworks or systems has not yet arrived. The world is still in the stage of "soft law and hard reality," in which international law cannot be ignored, but expectations for it cannot be too high. The role of power and reciprocity in international law must be considered. While rejecting realism as the sole explanation, a realistic interpretation of the international law process is needed.[12]

4. Inherent Incompleteness of International Law. "International law is a language that transcends linguistic, cultural, racial, and religious barriers."[13] It is not only a system of rules but also a system of discourse.[14] It originates from international relations, serves international relations, and constrains international relations. The philosopher G. W. F. Hegel puts it well: "International law arises out of the relations between independent countries, so the self-determination in international law preserves its rightful form, as its reality is based on the various wills of sovereign entities."[15] While recognizing the role of international law in regulating international relations, we must also acknowledge its inherent incompleteness. "It is best to view international law as incomplete, and in a transitional state towards a limited and

11 See Ambassador Katherine Tai's Remarks as Prepared for Delivery on the World Trade Organization.

12 Crawford J., *Chance, Order, Change: The Course of International Law*, Brill Nijhoff, (2014).

13 Robert J., 国际法院院长（1991年至1994年）1992年10月在联合国大会的讲话 (Speech at the UN General Assembly in October 1992 as President of the International Court of Justice from 1991 to 1994), 10 联合国：国际法院 (*United Nations: International Court of Justice*), 11 (2000).

14 See CHE Pizhao, 国际法的话语价值 (The Discourse Value of International Law), 5 吉林大学社会科学学报 (*Jilin University Journal Social Sciences Edition*), (2016).

15 Hegel G. W. F., 法哲学原理 (*Elements of the Philosophy of Right*), translated by FAN Yang & ZHANG Qitai, 商务印书馆 (The Commercial Press), at 392 (2019).

achievable ideal of a society governed by the binding rule of law (as a civilized society generally recognizes and practices within its borders). It should not be seen as a result of a wish to enhance its formal authority as law, but rather as an approximation of perfection and an immutable species that is subject to comprehensive dilution."[16] The same is true in practice. Historically, international law has always lagged behind the development of practice.

International law is a kind of process. Per the former President of the International Court of Justice, Judge Rosalyn Higgins, this process focuses on various requests and counter-requests of decision-makers, state practices, and resolutions. She views international law as a decision-making system that decision-makers can utilize as an authoritative framework within a decentralized system, rather than solely relying on the International Court of Justice as its core.[17] James Crawford, a UK international law professor, further points out that this process involves referencing norms based on explicit agreements or customary practices to claim rights and obligations. International law is a process of assertion and dependence, as well as a system of principles and rules. Together, process and principle constitute the progression of international law.[18] Therefore, when considering international law, one has to focus on its norms and recognizes its process and the interaction between norms and processes. This situation also reflects the inherent incompleteness of international law.

III Legal Governance of Foreign-Related Relations

A | The Essence of Foreign-Related Relations Governance

Foreign-related affairs concern international relations from a domestic perspective. The true meaning of foreign-related relations governance is the approach to handling foreign-related affairs. In the Chinese context, "governance" was originally synonymous with "administration,"[19] primarily referring to national management, which is a top-down management mode. With the establishment of the concept of people's sovereignty and the deepening of people's participation in state governance, the concept of governance through joint efforts between the government and the public is accepted, and the term "governance" has become widely used. Correspondingly, there is a transformation from government administration to social governance. The change from "rule by law" to "rule of law" in Chinese expression, sometimes referred to as a metaphorical shift from "knife control" to "water control," also reflects a similar concept.

The internationally influential concept of governance was put forward in Our Global Neighborhood: Report of the

16 Lauterpacht H., *The Function of Law in the International Community*, Oxford University Press, 440 (2011).

17 Higgins R., *Problems and Process: International Law and How We Use It*, Clarendon Press, 10 (1994).

18 See Crawford, fn. 12 at 21.

19 See 荀子・君道 (*XUN Zi*): "The clear division of responsibilities and the orderly management of affairs by competent officials are essential for achieving fairness in public matters and preventing interference in private affairs. When public justice is evident and private matters are well-regulated, a harmonious and just society can be established."

Commission on Global Governance (Report) published in 1995 by the Commission on Global Governance. The Commission was created in 1992 by internationally renowned personalities. "Governance" is the synthesis of various approaches by which individuals, institutions, and the public and private sectors administer their common affairs. It is an ongoing process through which conflicting or multiple interests can be accommodated and cooperative action can be taken. It includes both formal institutional and procedural arrangements for enforcement, as well as non-formal arrangements that individuals and institutions have agreed upon or consider to be in their interests.[20] This concept of governance produces an approach that involves multiple actors and methods. The Report calls for collective actions from governments, individuals, non-governmental organizations, multinational corporations, etc., to play a leading role. The global governance concept or proposals put forward in the Report are based on compromising national sovereignty. It suggests "rewriting old norms" and argues that "in certain areas, states will have to accept that sovereignty should be exercised collectively." It also states that "in an increasingly interdependent world, the traditional concepts of territory, independence, and non-interference have lost some of their relevance."[21] Before the Report was released by the Commission, a book published in 1992 and considered a classic work for public administration, *Governance Without Government*, raised four questions: who governs, why do they govern, how do they govern, and what results (effects) does governance produce. The book noted that "The erosion of national sovereignty is a major trend in the world today… Corresponding to the decline of national sovereignty, a sense of integration and convergence among the members of the association of the polycentric world is growing."[22] "This is a world in which global governance is becoming more prevalent and government less functional." "Governance without government will be more informal, diverse and detailed than the measures of governance known during the Cold War. A pluralistic order tends to have multiple tillering centers of decision making, but governance is essential for its durability."[23] The global governance envisaged in the above literature is global governance of civil society. Critics argue that such an envisaged governance fails to consider the obstacles posed by sovereign states putting their own interests first and defending them through force, and that it also fails to take into account the reality that international law cannot be enforced on sovereign states without the use of force.[24]

Having both internal and external

20 See the Report of the Commission on Global Governance: Our Global Neighborhood.

21 Ingvar C. & Shridath R., eds., 天涯成比邻——全球治理委员会的报告 (*Our Global Neighborhood: Report of Commission on Global Governance*), 中国对外翻译出版公司 (China Translation and Publishing Corporation), at 65, 67 (1995).

22 Rosenall, J. Rosenau, ed., 没有政府的治理 (*Governance Without Government*), translated by ZHANG Shengjun et al., 江西人民出版社 (Jiangxi People's Publishing House), at 326 (2001).

23 Id. at 329, 337.

24 See Harris E., Summary and Conclusion, in Harris E. & Yunker J., eds., *Toward Genuine Global Governance: Critical Reactions to "Our Global Neighborhood,"* Praeger Publishers, at 161 (1999).

functions, a country is a product of internal and external forces with two manifestations: internal and external. In the international community composed of countries, the geographic boundaries and power boundaries of a country determine its internal and external relations (foreign-related affairs). The fundamental characteristics and requirements of internal and external relations of a country provide the highest unity internally while providing equality and independence externally. However, internal and external relations are not completely separate or contradictory, but mutually influence and shape each other. Countries handle their international relations based on their intrinsic needs for survival and development. From the perspectives of both Chinese history and world history, external relations of a country often greatly impact its survival and development. It is even more true in the present age of interdependence and globalization, whether a country embraces or resists globalization.

The governance of foreign-related affairs is different from the domestic social governance of a country and from the global governance beyond the nation proposed by the Commission on Global Governance. The governance of foreign-related affairs is an integral part of state governance. It cannot be separated from the core element of sovereign states, and its goal is to safeguard national sovereignty, security, and development interests. Furthermore, the governance of foreign-related affairs cannot be separated from the international community and must follow the principles of mutual respect and win-win cooperation among nations. It should observe a framework led by the government, with social participation, public-private cooperation, and internal-external coordination. Transnational corporations and non-governmental organizations, which were once considered critical units in promoting global governance, are established based on domestic laws and should be subject to the constraints of domestic laws of the countries they operate in. With the rise of sentiments of deglobalization and the resurgence of nationalism, issues such as national security, investment security, cyber security, and supply chain security have become focuses of universal attention. Putting the people (workers) at the center, protecting labor rights and the environment, and addressing the problem of imbalanced development have become the goals of governments around the world, highlighting the role of national governments. Furthermore, the role of international organizations has been marginalized. The International Monetary Fund, World Bank, World Trade Organization, and other organizations have lost the glamour that they experienced in the 1990s. Therefore, the governance of foreign-related relations is not the global governance, or citizen governance, or social governance mentioned above, which are based on the premise of compromising national sovereignty. Instead, it is a governance centered around the country.

The content of foreign-related affairs is multifaceted, including war, peace, politics, economy, religion, culture, and so on. Conquest through war or military intervention has not been phased out of history. Political oppression and

economic sanctions have emerged one after another. Religious extremism and cultural hostility persist. The role of governance of foreign-related affairs is to integrate these intricate relationships into a unified and coordinated framework from the standpoint of a country. Whether they are official or unofficial, governmental or non-governmental, the state, government, enterprises, and citizens are all participants and actors in foreign-related affairs, playing different roles. Moreover, there is a dialectical relationship between human rights and sovereignty. Non-governmental organizations play a positive role in promoting governance, but their behavior should be subject to certain constraints. The role of governance of foreign-related affairs is to integrate all actors involved into a unified governance framework, in which various governance actors can play their respective roles within a unified framework. It is necessary to transform the simple and one-way government regulatory status, while preventing governments from compromising their core role.

B | The Inevitability of Formalizing Foreign-Related Relations Governance

The governance of foreign-related affairs is being formalized along with that of international relations. The unified framework of the governance of foreign-related affairs is a legal framework.

Theoretically and historically, war or force is a mode of handling foreign-related affairs. With the general prohibition of the use of force or threat of force in international relations under the UN Charter, the use of war or force is limited to exceptional cases of collective security or self-defense. In reality, the use of war, force or the threat of force is still common and plays a role that no other measures can do. It acts as a "midwife" for other resolutions, but its side effects are obvious. Sudden and intense military actions are not sustainable, and eventually, post-conflict issues need to be resolved through non-violent means. The post-conflict peace treaty is the best example of non-violent means.

In addition to war, diplomacy is a mode of handling foreign-related affairs. "Diplomacy takes advantage of intelligence and strategy to handle official relations between independent governments, sometimes extending to their relationships with dependent territories and relationships between governments within international organizations; or simply put, it is the peaceful means of handling affairs between nations."[25] Use of intelligence and strategy to handle affairs between nations peacefully is an essential feature that distinguishes diplomacy from war. Diplomacy is the everyday and customary form of handling foreign-related affairs. Intense diplomatic activities take place around the world every day, but diplomacy still needs to be based on law, and international law constitutes part of the content and activities of international relations. The Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations provide the basic framework for diplomacy.

In today's world, both force and diplomacy necessitate legal support.

25 Roberts S., ed., *Satow's Diplomatic Practice* (7th edition), Oxford University Press, at 3 (2017).

Law provides norms of behavior. Force, diplomacy, and law are interdependent and interconnected, with law serving as the foundation. The UN Charter outlaws the use of force or the threat of force in international relations. This is a sign of law playing an independent role in regulating foreign-related relations, indicating that the time has arrived for law to play a role in handling foreign-related relations. Formally, war has been outlawed; seeking legitimacy for military actions then becomes the goal of some actors. Furthermore, the traditional function of war in handling international relations needs to be replaced and it needs to be implemented through law, with corresponding legal remedies and protection. The sanctions framework defined in Chapter VII of the UN Charter, including economic sanctions, has largely filled this gap. The development of legal systems in various sectors, such as trade law, human rights law, and environmental law, has further enriched the content of law and expanded its operational space. International treaties and organizations provide a material basis by which countries can handle foreign-related relations through legal channels. The more than decade-long Airbus-Boeing dispute between the US and the European Union, the dispute between the US and European countries caused by the US sanctions for Nord Stream 1 and Nord Stream 2, the dispute between the US and other developed countries caused by the US sanctions on Cuba and Iran, and the dispute between the United Arab Emirates and Qatar, have all sought resolutions through legal avenues.[26]

The governance of international relations and of foreign-related affairs through legal process has its own unique value and role compared to war and diplomacy. The rule of law represents the achievements of human civilization and is a universally accepted fundamental governance method in the international community. Although the rule of law is not omnipotent, it provides legitimacy and remedies, guaranteeing individual interests, social interests, human rights, and order based on due process. It provides stability, predictability, transparency, and gives people a sense of effective participation and of benefits. The governance of foreign-related affairs through legal process also represents advancement and modernity. Both national governance and global governance need to follow the path of rule of law and it is necessary to modernize governance systems and capacities. Looking back at history and looking into the world, different countries, cultures, and systems have all made contributions to human development and progress. The international community currently faces shared problems such as climate change, terrorism, global pandemics, cybercrime, and data security, which require joint efforts from the international community. Even economically developed countries do not have "ready-made resolutions," and the old practices of colonization or the use of force are insufficient to resolve current problems. Responding to the calls of the times and

26 In response to a series of restrictive measures taken by Gulf countries against Qatar, the Qatari government and enterprises have respectively filed a series of lawsuits or arbitrations with the World Trade Organization, the International Court of Justice, and the International Investment Dispute Settlement Center.

addressing the challenges of the times by providing legal resolutions are feasible and effective.

International treaties are an important basis for the governance of foreign-related affairs through legal process, but they are not the only or even the most reliable basis. From the perspective of a country, relying solely on international law to defend its own interests is insufficient, especially for major countries. Power struggles, competition for national interests, competition between social systems, and even racial discrimination and conflicts permeate international relations. The implementation of international law, including international treaties, largely depends on the trust and good faith of relevant countries. The UN Charter and the Vienna Convention on the Law of Treaties, which reflect international customary law, both require the obligation of "good faith performance" or treaty compliance. As states simultaneously act as legislators, law enforcers, and judges, the lack of authoritative judicial mechanisms and enforcement organizations in the international arena undermines the binding force of international legal obligations for major countries. For smaller countries, their interests may lack robust protection. In practice, both major and small countries may fail to comply with international arbitration rulings. Conversely, the practices and competitions among states also play roles in promoting the formation and development of international legal rules. Therefore, formalizing the governance of foreign-related affairs through legal process is not only a requirement for the building of the rule of law but also a requirement for national governance, and it has its historical inevitability.

C | The Characteristics of Formalization of Foreign-Related Relations Governance

The use of law to regulate foreign-related affairs is a step forward for human civilization and better protects human life, dignity, property and order. However, law does not exist in a vacuum, and law is not enough in itself. Formalization of foreign-related governance has its own characteristics.

Firstly, law provides norms and guarantees for the governance of foreign-related affairs.

Law is a product of human civilization. Law is a code of conduct, both for individuals and for countries. Law is the will of the people and the country and is presented in specific procedures and reflects the experience and vision of social development. Law is used to regulate foreign-related affairs so that these relations operate within the legal framework and are stable and predictable. Law provides transparent, rational process and legal remedies to better deliver social equity and justice, and to prevent war or force from triggering catastrophic loss of life and property, safeguarding order for human life and international relations. A series of domestic and international laws, once introduced and implemented, can further formalize the legal basis of foreign-related governance, and facilitate the delivery of sound laws and good governance. The differences and controversies surrounding

the legality of certain measures further highlight the role of law. Law serves as a means of state governance and plays an irreplaceable role, which is also be reflected in the governance of foreign-related affairs.

Secondly, legal governance of foreign-related affairs reflects the leading role of the domestic nation in the governance of foreign-related relations.

Foreign-related affairs are international relations from the perspective of a country, representing the country's external relations with other countries. Unlike international relations without a specific country, or domestic relations without international factors, foreign-related affairs have a clear national subjectivity and dominance. The legal governance of foreign-related affairs revolves around a country's national interests and extends to the international community. The relationship between international law and domestic law is no longer an abstract monism or dualism but a legal relationship guided by a country's sovereign rights and interests. The hierarchy, effect, jurisdiction, and implementation of laws all reflect the national will of the country, based on its political, economic, social, and cultural factors. Given the aforementioned characteristics of international law, domestic law plays a pivotal and foundational role in the legal framework of foreign-related affairs. The role of domestic law primarily lies in establishing the legal system and framework for a country's foreign-related affairs as well as the relevant implementation mechanisms. Through legislation in different fields, based on different authorized grounds, domestic law regulates the rights and obligations that exist between different entities both substantively and procedurally. A country's legislative, judicial and administrative measures are not only conducive to maintaining a country's internal legal order, but also to safeguarding a global community with a shared future. With its own interests serving as the departure point and the ultimate goal, and under the prerequisite of upholding the fundamental principles of international law, correctly handling the relationship between domestic law and international law is highly significant to the legal governance of foreign-related affairs.

Thirdly, force, trade and security are the three primary elements that should be addressed in the legal governance of foreign-related affairs.

In this context, trade refers to economic and trade relations in a broad sense, including investment, finance and personnel exchanges. Foreign-related affairs should first involve economic and trade exchanges between different countries. Security is the bottom line of foreign-related relations; it also balances trade and force, and determines whether a country's foreign-related affairs are inclined to trade or force. Force is still the basic element in foreign-related affairs, and provides a background to trade and security. Force may replace or be replaced by trade, and force may also exclude or be excluded by trade, or both can empower each other, whereby force protects trade and trade promotes force. The relationship between force and security is similar to that between trade and security. Security is the "commander in chief" and its specific

meaning may change, but its core position remains unchanged. Force and trade are both means to achieve security. Therefore, force and trade cannot be viewed simply or in isolation. The law links these three elements together and forms corresponding norms, systems and procedures.

Fourthly, the legal governance of foreign-related affairs is closely related to international morality.

Legal governance differs from international morality but follows that as a guiding principle. With its unique legal operating mechanism, legal governance implements and promotes the common values of peace, development, fairness, justice, democracy, and freedom for all of humanity through specific rights and obligations and by providing remedies for illegal actions. It can be said that legal governance is a means to achieve international morality. However, from the perspective of one country, there exists the challenge of reconciling national interests with international interests. For a long time, Western powers resorted to their economic and military strength and established their dominant positions through colonization and plunder, at the expense of the rights of other countries, regions, and ethnic groups. In the present day, the conflict between "might is right" and "rule-based governance" is reflected in the choice between prioritizing one's own country or pursuing common development. National sovereignty needs to be defended by law; it can also be abused. The historical classification and labeling of civilized and uncivilized countries or nations have deprived some countries and nations of their rights. The extraterritorial privileges enjoyed by Western powers in other countries are a typical example of hegemonic legal governance in foreign-related relations. Therefore, legal governance in foreign-related relations should be based on the principles of mutual respect and win-win cooperation.

D | The Approach to Legal Governance of Foreign-Related Affairs

Countries can handle their foreign-related affairs through three means: international law, domestic law, and policy coordination. The legal governance of foreign-related affairs involves a country's relations with other countries. In terms of legal forms and functions, the norms that regulate foreign-related affairs mainly include international law and domestic law, and the "soft law" or "gentlemen's agreements" without legal binding force also play important roles. Before Jeremy Bentham first used the term "international law" in his book published in 1789, *An Introduction to the Principles of Morals and Legislation*, "law of nations" was considered to encompass various aspects and was regarded as a legal framework for regulating foreign-related relations. In 1956, American scholar and judge Philip Jessup tabled the concept of "transnational law," which refers to all laws that regulate cross-border transactions. These expressions are categorized based on subjects, origins, or interactions,[27] reflecting the diversity of legal relations and norms

27 Mark Weston Janis, 美国与国际法 (1776—1939) (*America and the Law of Nations from 1776 to 1939*), translated by LI Mingqian, 上海三联书店 (Shanghai SDX Joint Publishing Company), at 20 (2018).

in foreign-related affairs. The governance of foreign-related relations requires the comprehensive utilization of various types of laws.

1. International Law. As an international law, customary international law is determined by general practices that are accepted as law (opinio juris). These practices must be general, widely and consistently observed, and represent the common interests of countries. The evaluation of international practice should consider all known practices, as a whole. If practices of a specific country are inconsistent, the weight given to such practices may be reduced accordingly.[28] Therefore, practices of a specific country, regardless of whether they are accepted or opposed by other countries, can influence the development of customary international law. China's approach to handling international affairs can also play a role in shaping customary international law. China can boldly adopt practices that consider its own interests while also taking into account the common interests of humanity, thus promoting the development of customary international law with confidence.

International treaties are legally binding agreements signed or acceded to by various countries. They are essential tools for a country to apply for handling its foreign-related affairs, and also serve as vehicles for promoting shared values. Compared to customary international law, treaties are more targeted, have clearer content, and are easier to negotiate and conclude. Bilateral treaties, in particular, can better serve a country's legal governance of its foreign-related affairs. In the context of increasing global integration and closer interconnections between countries, multilateral treaties concluded by multiple countries and multilateral treaties joined by the majority of the world's countries have broader and more stable characteristics. International organizations provide benefits, over those of bilateral agreements, in handling foreign-related affairs, providing countries with opportunities to define, organize, and develop interdependence.[29] However, they may also suffer from bureaucratic inefficiency and a tendency towards rigidity. The decision-making mechanism of international organizations reflects the "democratic deficit" or "democratic surplus" in different degrees at the domestic and international levels.[30] Nevertheless, engaging in the international community and safeguarding one's interests through interactions are important avenues and mechanisms for legal governance of foreign-related affairs. The network of international treaties is considered an important tool by which the US handles its foreign-related affairs.[31]

2. Domestic Law. Domestic law is the unilateral and voluntary expression of a country's will, directly reflecting the will of its people. In the legal governance of

28 International Law Commission, 习惯国际法的识别 (*Identification of Customary International Law*), A/73/10 (Official Records of the General Assembly, Seventy-Third Session, Supplement No. 10, A/73/10), 2018.

29 De Visscher C., *Theory and Reality in Public International Law*, Princeton University Press, at 268 (1957).

30 See Psygkas A., *From the "Democratic Deficit" to a "Democratic Surplus,"* Oxford University Press, (2017).

31 See Raustiala K., *Does the Constitution Follow the Flag*, Oxford University Press, at 27 (2009).

foreign-related affairs, domestic law plays a fundamental role. It provides norms, frameworks, mechanisms, institutions, powers, and procedures. Fulfilling duties in accordance with the law and following due process are basic requirements of legal governance. In foreign-related affairs, this reflects the sovereignty, dignity, interests, equality, and respect of a country. Scholars in China have pointed out that without clear domestic legal foundation, the legitimacy of China's economic sanctions against other countries may be questioned, which is not conducive to maintaining China's international image as a country under the rule of law.[32] In terms of regulating and adjusting foreign-related affairs, domestic law can be divided into two categories: explicit adjustment and implicit adjustment.[33] The former includes laws governing entry and exit of the country, Foreign Trade Law of the People's Republic of China, Export Control Law of the People's Republic of China, International Investment Law of the People's Republic of China, and Anti-Foreign Sanctions Law of People's Republic of China. Licensing and differences are fundamental characteristics of these laws. The latter includes laws that are not explicitly aimed at entry and exit, such as laws related to civil and commercial matters, and possibly even a country's constitution. In the same law, both types of regulations may coexist. For example, Article 4 of Part 1 on the General Principles of Civil Procedure Law of People's Republic of China states that litigation within the territory of China should follow this law. Article 5 further stipulates that foreign nationals, stateless persons, foreign enterprises, and organizations, have equal rights and obligations in litigation in China. Part Four of the same law specifies provisions for Specific Regulations on Civil Procedure in Foreign-Related Civil Actions. Article 259 of this Part states that these provisions shall apply to foreign-related civil litigation conducted within the territory of China, and in cases where these provisions do not apply, other relevant provisions of this law shall apply. Therefore, it is necessary to analyze which specific legal norms regulate foreign-related affairs based on the actual terms and conditions of the laws rather than their names. Additionally, legal provisions that involve extraterritorial jurisdiction clearly fall within the scope of laws that regulate foreign-related affairs.

The law regulates social relations by defining rights and obligations. According to the different objects and methods of adjustment, laws can be distinguished and different types of laws can be formulated, such as constitution, administrative law, criminal law, civil and commercial law, dispute resolution procedure law, and conflict law. Public law and private law, and substantive law and procedural law, are distinct from each other, yet they complement each other in terms of obligation fulfillment and right remedies.

32 See LIAO Shiping, 中国法域外适用法律体系：现状、问题与完善 (Extraterritorial Application Legal System of Chinese Law: Current Situation, Problems and Improvement), 6 中国法学 (*China Legal Science*), (2019).

33 China has domestic laws to govern domestic matters. For instance, China had tax laws to levy taxes separately from domestic companies and from foreign-invested companies. Similarly, China once had the Economic Contract Law applicable to domestic business contracts and the Law on Economic Contracts Involving Foreign Interest applicable to foreign-related business contracts.

Rules of different forms, nature, and content jointly regulate foreign-related legal relations in different ways. The constitution is the fundamental law of a country, and sets out basic systems and rights. The legal governance of foreign-related affairs must not contradict the constitution. Substantive law directly regulates legal relations, conflict law indirectly regulates legal relations, and procedural law provides right remedies. Criminal law punishment, administrative law supervision and civil law self-discipline reflect the autonomy of national will and the autonomy of natural persons and legal persons.

3. Policy Coordination. When it is not practical or feasible to handle foreign-related affairs through international law, such as when there are no existing international rules or appropriate international dispute settlement mechanisms, resorting to domestic law becomes a unilateral choice. The application of domestic law by a country, such as extraterritorial application of laws or unilateral sanctions, may be opposed by relevant countries. In such cases, a kind of legal governance can develop whereby countries engage in policy communication and coordination based on their respective domestic laws, and subsequently make legal adjustments. The US and European countries have carried out policy coordination on the principle of effect in the application of their anti-monopoly laws, and have achieved good outcomes. The non-legally binding cooperation memoranda, also known as "gentlemen's agreements" or "soft law," agreed among relevant countries during coordination, provide certain norms and flexibility. In the matter of the Belt and Road Initiative, China cherishes policy communication and promotes the Belt and Road Initiative by signing memorandum-based cooperation agreements with relevant countries, and this results in a manifestation of policy coordination.

IV China Introducing the Rule of Law in the Foreign-Related Field

A | Introduction of the Rule of Law in the Foreign-Related Field

With deepening reform and opening up, a growing number of Chinese enterprises and citizens have been exploring business opportunities overseas, while an increasing number of foreign enterprises and citizens have been operating their business in China. As such, more and more transnational disputes have come up and are increasingly complicated. Consistent with the trend of legalization of international relations, China should also adopt a legal approach in handling its foreign-related affairs. "We must use a variety of politics, economics, diplomacy and the rule of law, to address foreign-related affairs. We must give greater prominence to the use of the rule of law response, speaking and acting in line with rules, and must protect China's political and economic security as well as the legitimate rights of China's enterprises and citizens."[34]

The legal governance of foreign-

34 HE Hipeng, 涉外法治：开放发展的规范导向 (Foreign-Related Rule of Law: Normative Orientation of Open Development), 5 政法论坛 (*Tribune of Political Science and Law*), 256–257 (2021).

related affairs in China can be expressed by the term "rule of law in the foreign-related field." The CPC Central Committee put forward law-based governance, upholding and improving the modernization of governance system and capacity in China,[35] and this requires thorough handling of the two overall situations at home and abroad, the two markets at home and abroad, and the two sets of rules at home and abroad. The central conference on the law-based governance in China decided that XI Jinping Thought on the Rule of Law serves as the fundamental guideline for law-based governance in China. Advancing the rule of law in domestic and foreign-related affairs in a coordinated manner is an important part of XI Jinping Thought on the Rule of Law, and it is an approach that answers a series of important questions, such as why and how to exercise law-based governance for the new era, from the perspective of linking history with current reality, linking international and domestic relations, and combining theory with practice.[36] XI Jinping Thought on the Rule of Law provides a guideline for the legal governance of China's foreign-related affairs.

Advancing the rule of law in domestic and foreign-related affairs in a coordinated manner means that the task of the rule of law in the foreign-related field differs from that in the domestic field. The rule of law in the foreign-related field more directly handles national sovereignty, security and development interests, and more directly addresses the contradiction and unity between solidarity and struggle, and more directly serves the "concept of building of a human community with a shared future." Such rule of law serves in "upholding the international order and system underpinned by the purposes and principles of the UN Charter, and offering Chinese wisdom and a Chinese approach to reforming and building the global governance system."[37]

B | The Rule of Law in the Foreign-Related Field, in the Domestic Field and in the International Field

The legal governance of China's foreign-related affairs is expressed as "the rule of law in the foreign-related field," which provides a deeper understanding of that concept. Being a governance proposition and concept instead of an expression of the source of law, the rule of law in the foreign-related field is neither the traditional rule of law in the domestic field excluding international law, nor the rule of law in the international field excluding domestic law in the traditional sense. It removes the barriers between domestic law and international law in terms of origin and theory, and has the essence of both domestic rule of law in the international field and international rule of law in the domestic field. Some scholars note that "the rule of law in the

35 See the Compilation Group of This Book, 中共中央关于坚持和完善中国特色社会主义制度推进国家治理体系和治理能力现代化若干重大问题的决定 (*The Decision of the Central Committee of the CPC on Major Issues Concerning Upholding and Improving Socialism with Chinese Characteristics and Modernizing the State Governance System and Capacity*), 人民出版社 (People's Publishing House), (2019).

36 坚定不移走中国特色社会主义法治道路，为全面建设社会主义现代化国家提供有力法治保障 (Sticking to the Path of Socialist Rule of Law with Chinese Characteristics and Providing Sound Legal Guarantees for Socialist Modernization), 人民日报 (*People's Daily*), p. 1, Nov. 18, 2020.

37 See HE, fn. 34.

foreign-related field is the foreign-related expansion of the rule of law promoted by a country in the process of opening up and development, and it also represents the normative orientation of foreign-related affairs and the transformation of the rule of law."[38] Traditionally, the rule of law in the domestic field is opposite to the rule of law in the international field. The rule of law generally refers to the rule of law in the sense of domestic law. The rule of law in the international field refers to the rule of law in the sense of international law, that is, the rule of international law. Such distinction appears in the report of the UN Secretary-General. "The UN defines the rule of law as a principle of governance, and per this principle, all individuals, institutions and entities, public and private sectors, including the state itself, are responsible for complying with laws that are publicly promulgated, uniformly enforced, independently adjudicated, and consistent with international human rights norms and standards. The rule of law also requires measures to ensure compliance with the principles of supremacy of the law, equality under the law, accountability to the law, impartial application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency." The report continues, "At the international level, the rule of law provides predictability and legitimacy to a country's actions, strengthens sovereign equality and enhances a country's responsibility towards all individuals within its jurisdiction." It also states, "At the national level, the rule of law lies at the heart of the social contract between the state and individuals under its jurisdiction, ensuring that justice permeates all levels of society."[39] In 2005, the UN Summit Declaration stated that "the rule of law needs to be fully observed and implemented at both the national and international levels."[40] Domestic law and international law are two distinct legal systems and to bridge the gap between them requires efforts from the international community and individual states. The rule of law in the foreign-related field is such a bridge.[41]

The rule of law in the foreign-related field is the rule of law concerning foreign-related affairs and concerning international relations from a domestic perspective. In terms of domestic law, it needs to deal with foreign-related affairs, while in terms of international law, it needs to care about the interests of specific countries. Generally, neither domestic law nor international law alone can serve this purpose. It is widely recognized that the practice of states is the driving force and form for the formation and development of international law. "State practice consists of the actions taken by the states, whether

38 See HE, fn. 34.

39 Report of the Secretary-General of the UN, 伸张正义：加强国内和国际法治行动纲领 (*Advancing Justice: Strengthening the Agenda for Domestic and International Rule of Law*), A/66/749, pars. 2–4, Mar. 16, 2012.

40 UN General Assembly Resolution, 世界首脑会议成果 (*Outcome of the World Summit*), A/RES/60/1, par. 134, Sep. 16, 2005.

41 Professor HE Zhipeng reveals the relationship between the rule of law in foreign-related field and domestic and international rule of law through charts, from the subject of action, the field of action, the mode of action and the goal of action. A comparison is made in four aspects. See HE, fn. 34.

those actions involve exercising executive, legislative, judicial or other functions." Furthermore, "Practice can take various forms, including both actual behavior and verbal behavior. In some cases, it may also include inaction. The forms of state practice include but are not limited to: diplomatic behavior and correspondence; actions related to resolutions adopted by international organizations or at intergovernmental conferences; actions related to treaties; administrative actions, including 'field' operations; legislative and executive actions; judgments of national courts."[42], Different countries, in handling foreign-related affairs, may clash in debate, move towards consensus, and ultimately align their legislative, judicial, and law enforcement practices, closely combining domestic law with international law.

XI Jinping proposes that advancing the rule of law in domestic and foreign-related affairs in a coordinated manner, is the requirement and embodiment of exercising law-based governance and modernizing the national governance system and capacity under the rule of law. Such an approach helps to bring China's relations with the world under the rule of law, increasing stability and predictability. It also helps to prevent deterioration and conflicts in foreign-related affairs and to control risks and losses within manageable limits. The legal governance of foreign-related relations sets up a legal system for handling foreign-related relations domestically and lays down a unified, coordinated and effective legal mechanism.

C | The Application of Foreign-Related Law in China

1. Strengthening the Role of Domestic Law in the Legal Governance of Foreign-Related Affairs. Although being an important tool and means by which a country can legally govern foreign-related affairs, international law has continuously faced skepticism regarding its status as true law and doubts about its enforcement capabilities. Despite the widespread recognition of human rights today, occasional arguments and practices that prioritize human rights over sovereignty still come up.[43] Having the different legislative method and application from that of domestic law, international law plays a major role in international affairs, yet it has its inherent limitations. As a system of international agreements between countries, international law lacks a strong enforcement mechanism similar to that existing for domestic law. In situations where powerful countries exploit their strength to bully weaker ones, international law may not provide rapid, sufficient, and effective remedies. Even seemingly "robust" institutions like the World Trade Organization have been exposed as weak and powerless in the face of obstruction by a single country like the United States. It is

42 International Law Commission, 习惯国际法的识别 (*Identification of Customary International Law*), Official Records of the General Assembly, Seventy-Third Session, Supplement No. 10, A/73/10, 136–138 (2018). Dunoff J L, Ratner S R, Wippman D, *International Law: Norms, Actors and Process* (4th edition), Wolters Kluwer, at 114 (2015).

43 In 1999, NATO air bombardment of Federal Republic of Yugoslavia for more than two months was deemed by the Kosovo International Independent Commission to be morally and politically justified, although it violated international law. See Charlesworth H, International Law: A Discipline of Crisis, 65 *The Modern Law Review*, 380–381 (2002).

important to recognize that international law, which evolved from European public law to universal international law, has never fully overcome the barriers of inequality, and its development and application have been discriminatory. The self-labelled "civilized nations" work for their own benefit one way or the other to deprive or restrict the rights of certain other countries. The "Western logic" continues to exert influence in international affairs.[44] The enforcement of international law without resorting to military actions is, in practice, weak. Therefore, it is crucial to strengthen the role of domestic law in the legal governance of foreign-related affairs.

As mentioned earlier, foreign-related laws include both specialized and implied laws that regulate foreign-related affairs. However, this understanding has not been widely accepted, leading to a disconnect in the application of domestic laws to foreign-related affairs. In the new era, it is necessary to change the traditional mindset that "if it is not explicitly foreign-related, it is not foreign-related" and establish a new legal mindset that "if it is not excluded from being foreign-related, it is foreign-related." This is similar to the "pre-establishment national treatment plus a negative list" approach adopted by China's Foreign Investment Law. Only in this way can we advance the quality of China's foreign-related laws, improve the application of Chinese foreign-related laws, and achieve sound governance through good laws.

2. Strengthening the Role of Domestic Law in Extraterritorial Application and in Extraterritorial Jurisdiction. The implementation of foreign-related laws in China should focus on two aspects: extraterritorial application and extraterritorial jurisdiction.

A country is a combination of people, regions and governments. The concept of the world in traditional Chinese culture means that "under the heaven, there is no land that does not belong to the king; within the border of the land, there is no one that is not loyal to the king." This concept has formed the traditional international order of the tribute system in East Asia.[45] In modern Europe, the Westphalian system established the sovereign state system, which is recognized by the UN Charter and upheld by China.[46] In the international community, there are cases from time to time that challenge the sovereignty framework defined by the Westphalian system, including territorial sovereignty. Economic globalization has further increased interdependence among countries and raised the question of how to govern foreign-related affairs legally. More specifically, it raises the issue of how one country should handle extraterritorial

44 Obsolete rule of law, authoritarianism, non-market economy, developed developing countries, country capitalism and so on can be regarded as the manifestations of such labels.

45 See CHEN Shangwu, 朝贡制度与东亚地区传统国际秩序 (Tributary System and Traditional International Order in East Asia), 2 中国边疆史地研究 (*China's Borderland History and Geography Studies*), (2015).

46 "There is only one system in the world, that is, the international system with the UN as its core. There is only one order, that is, the international order based on international law. There is only one set, that is, the basic norms of international relations based on the purposes and principles of the Charter of the UN." XI Jinping, 坚定信心，共克时艰，共建更加美好的世界——在第七十六届联合国大会一般性辩论上的讲话 (Speech at the General Debate of the Seventy-Sixth Session of the UN General Assembly on Firm Confidence to Overcome Difficulties and Build a Better World Together), 人民日报 (*People's Daily*), p. 2, Sep. 22, 2021.

jurisdiction and extraterritorial application of laws. This is also a problem that needs to be addressed in China's foreign-related rule. Just as XI Jinping notes, "We need to step up legislation in the foreign-related field and to promote China's system of laws for extraterritorial application in order to provide a legal foundation for our foreign-related law enforcement and judicial work."[47]

The geographical territory of a country is the spatial scope in which a nation exercises its governing authority. Law, as a means of exercising sovereignty, should ideally be applicable within the borders of a country, which is known as territorial jurisdiction. However, before and after the establishment of the modern sovereign state system, there have always been rules that govern and protect individuals based on their identity (nationality), known as personal jurisdiction, where the law follows the person. There has always been a contradiction and conflict between personal jurisdiction and territorial jurisdiction. The jurisdictional principle confirmed by the Permanent Court of International Justice in the Lotus case involving an open-sea collision, between a French ship and a Turkish ship in 1926, is still controversial but remains the starting point for handling jurisdictional issues in international law. The primary restriction imposed by international law on a country is that, in the absence of contrary permission rules, it may not exercise its powers in any form on the territory of another country. In this sense, jurisdiction is undoubtedly territorial. In other words, unless permitted by customary international law or treaties, a country cannot exercise jurisdiction outside its own territory.[48] So far, there have been no specific and clear rules in international law to resolve this issue. Consequently, the legal governance of foreign-related affairs faces the problem of extraterritorial jurisdiction. Countries generally base their jurisdiction on territoriality, accompanied by protective jurisdiction.[49] This inevitably leads to the issue of extraterritorial jurisdiction and extraterritorial application of laws beyond territorial borders. Article 8 of the Criminal Law of People's Republic of China, which applies to crimes committed outside Chinese territory, represents extraterritorial jurisdiction and application. The sovereign rights and jurisdiction of coastal countries, as provided by the UN Convention on the Law of the Sea, over activities such as natural resource exploitation in exclusive economic zones, also fall under extraterritorial jurisdiction. Article 2 of Marine Environmental Protection Law of People's Republic of China provides the corresponding basis in domestic law: "This Law shall apply to the internal waters, territorial seas, contiguous zones, exclusive economic zones, continental shelves of the People's Republic of China, and all other sea areas under the jurisdiction of the People's Republic of China. The Law shall also apply to any pollution to the sea areas under the jurisdiction of the People's Republic

47 XI Jinping, 论坚持全面依法治国 (Advancing Law-Based Governance on All Fronts), 中央文献出版社 (Central Party Literature Press), at 257 (2020).

48 See PCIJ, SS Lotus, PCIJ reports, Series A, No. 10 (1927), 18–19.

49 See The American Law Institute, *Restatement of the Law Fourth, the Foreign Relations Law of the United States*, § 404. St. Paul, American Law Institute Publishers, at 17 (2018).

of China originating from areas beyond the sea areas under the jurisdiction of the People's Republic of China." It can be said that there are legal bases in both domestic and international law for extraterritorial jurisdiction and extraterritorial application. China's building of the rule of law in foreign-related affairs needs further improvement and implementation of the extraterritorial jurisdiction and application system.[50]

In international affairs, jurisdiction refers to national jurisdiction at the international level, and is the division and definition of jurisdiction between different countries. On this basis, it can be further divided into national legislative jurisdiction, judicial jurisdiction (trial jurisdiction) and enforcement jurisdiction.[51] Legislative jurisdiction is the foundation, while judicial and enforcement jurisdictions are the implementation. Legislation is not limited to the legislative authority of a country. In practice, judicial institutions have the function of interpreting laws, and in some legal systems, also have the function of making laws. Executive institutions also have a certain role in law-making. Therefore, there is a possibility of expansion of national jurisdiction, leading to a closer relationship between extraterritorial application of laws and extraterritorial jurisdiction. American scholar Tonya Le Putnam has indicated that without the extraterritorial jurisdiction of the American courts, the US would not have achieved its current hegemony.[52] It is the consistent position and practice of Chinese government not to seek hegemony. China will not and should not take advantage of extraterritorial jurisdiction to seek hegemony. However, extraterritorial jurisdiction is indispensable in protecting the legitimate interests of China and Chinese people.

3. Distinguishing Extraterritorial Legal Effectiveness and Extraterritorial Effect. Under certain conditions, domestic law can be used for extraterritorial jurisdiction and can be applied extraterritorially, which means that the law has extraterritorial effect. In a sense, extraterritorial jurisdiction, extraterritorial application of law, and extraterritorial effect are different ways of expressing or emphasizing the same issue, with different focuses and targets. They are closely interconnected. From the perspective of origin, because the law itself provides for extraterritorial application, it has extraterritorial effect, and the legal provisions are the result of exercising legislative jurisdiction. From the perspective of logic, because the law has extraterritorial effect, it leads to extraterritorial application

50 In international private law or international civil litigation, the selection of a dispute resolution institution by the parties or the application of foreign-related law to resolve disputes between them is also considered extraterritorial jurisdiction or application of law. However, this scenario only applies to domestic courts or arbitration institutions handling civil and commercial disputes and falls under the "passive" jurisdiction and passive application of foreign-related law by courts or arbitration institutions. This article fundamentally emphasizes the active jurisdiction and active application of domestic laws by relevant institutions in a country.

51 As different countries have their specific legal systems, there is no consensus among them on the classification of legislative, judicial and law enforcement jurisdiction in the world. Some divide jurisdiction into legislative and enforcement jurisdiction. Since judicial jurisdiction mostly refers to court jurisdiction, yet some law enforcement agencies also have trial functions, sometimes judicial jurisdiction refers to administrative trial and court trial.

52 Putnam TL, *Court Without Borders: Law, Politics, and U.S. Extraterritoriality*, Cambridge University Press, at 274 (2016).

of laws. From the perspective of outcome, because the law provides for extraterritorial application, it leads to the processes and outcomes of judicial and administrative bodies exercising extraterritorial jurisdiction and extraterritorial application. All of these are the results of a country exercising its sovereignty. The emphasis on extraterritorial effect of law aims to highlight the binding force of a country's law on individuals or actions outside its territory. This includes both the extraterritorial actions of its own citizens and those of foreign individuals. Failure to comply with the law may result in corresponding punishment or liability. For example, the Anti-Monopoly Law of China stipulates that "This Law shall apply to the conducts outside the territory of China if they eliminate or have restrictive effect on competition on the domestic market of China," thereby explicitly imposing constraints on foreign business operators. In practice, relevant operators are required to report to Chinese regulatory agencies and to accept additional conditions imposed by these agencies after being reviewed in accordance with the law.

The extraterritorial application and the extraterritorial effect of law need to be distinguished from the extraterritorial consequences of domestic application of law. When a law is applied within a jurisdiction but affects, or even partially affects, the interests of individuals outside that jurisdiction, it cannot be considered as extraterritorial application. The most noticeable examples are import controls and market access laws, such as product inspection and quarantine, anti-dumping, countervailing measures, safeguard measures, foreign investment laws, and so on. These laws restrict or prohibit the entry of foreign products, capital, etc. and establish conditions for entry, but they do not have binding force on actions outside the jurisdiction and do not have extraterritorial effects. For example, a government may provide subsidies to its domestic enterprises, but as long as subsidized products are not exported to countries implementing anti-subsidy measures, neither the subsidies nor the recipients of the subsidies are subject to the constraints of the laws of the implementing country, and there will be no corresponding adverse consequences. In addition, when a country's judicial or administrative authorities penalize a person who is outside their country then, such as confiscating his or her assets within their jurisdiction, sentencing him or her imprisonment, or imprisoning him or her through practices such as "fishing" enforcement or extradition, he or she cannot choose which penalty he or she prefers. Thus, such a penalty is a matter of extraterritorial application, instead of application effects of domestic law.

V Conclusion: Advancing the Rule of Law in Domestic and Foreign-Related Affairs in a Coordinated Manner

Regarding territorial sovereignty, law, and governance, their significances do not completely overlap. In the legal governance of foreign-related affairs, domestic law and international treaty overlap, complement, and even empower each other to jointly

regulate the legal governance of foreign-related affairs. A country can exercise sovereignty and administration rights in an area where it does not enjoy traditional sovereignty. For example, as per Article 56 of the UN Convention on the Law of the Sea, coastal countries have certain sovereign rights over the exploration and exploitation of natural resources in their exclusive economic zones, as well as jurisdiction over certain activities and governance rights. Furthermore, in areas where a country enjoys territorial sovereignty, it may also agree to allow other countries to enforce laws within its territory appropriately, for instance, through signing mutual legal assistance agreements. The Mekong River joint enforcement by China is based on the cooperation agreement by the countries concerned.[53] It should also be noted that the UN Security Council has repeatedly passed resolutions urging the international community to combat piracy and armed robbery at sea off the coast of Somalia. Moreover, in response to the request of the Transitional Federal Government of Somalia, the UN Security Council has taken steps in line with Chapter VII of the UN Charter to authorize relevant countries and international organizations to take all necessary measures within Somalia for investigations and prosecutions. Furthermore, the UN Security Council has advocated all countries to criminalize piracy in their national laws and to establish a special court for Somalia, including the establishment of a special court outside Somalia to try piracy suspects.[54] All these UN moves show the different levels of legal governance of foreign-related affairs and demonstrate the interaction between sovereignty, law, and governance.

Traditionally, the rule of law is a concept in domestic law. This can be seen from the background and content of the concept of rule of law put forward by British scholar Albert Venn Dicey, who considered the rule of law as a fundamental principle of the British Constitution. With the development of legal formalization of international relations and the increasing role of international law in international affairs, the concept and goal of the international rule of law have emerged. Historian Paul Johnson argues that the great cause of the last millennium was establishing the rule of law within the nation-state, and the task of this new millennium is to build the rule of law at the international or global level.[55] The UN's proposed goal of the international rule of law supports this. In contrast to the concept of international rule of law, the concept of rule of law in the domestic sense has become known as domestic rule of law. It can be seen that domestic rule of law and international rule of law exist on two different levels and have different content. In terms of the legal governance of foreign-related affairs, both

53 On October 5, 2011 China, Laos, Myanmar, and Thailand signed the *Joint Declaration on Law Enforcement and Security Cooperation in the Mekong River Basin*, after 13 Chinese sailors were killed in the Mekong River. Then, the cooperation mechanism among these countries has been further improved.

54 UN Security Council resolution 1851 (2008), S/RES/1851 (2008), 16 December 2008, adopted by the Security Council at its 6046th meeting; UN Security Council resolution 1976 (2011), S/RES/1976 (2011), adopted by the Security Council at its 6512th meeting on 11 April 2011.

55 Brian Z. Tamanaha, 论法治 (*On the Rule of Law*), translated by LI Guilin, 武汉大学出版社 (Wuhan University Press), at 161 (2010).

domestic law and international law are indispensable norms and means. Domestic rule of law or international rule of law alone seem unable to cover this content or provide corresponding means. Domestic law and international law also influence and shape each other. The legal governance of foreign-related affairs should not abandon any of these norms or means.

The protection of rights, imposition of obligations, provision of remedies, and maintenance of order through law are the foundation of governance. In the perception of legal practitioners in China, domestic law regulates domestic affairs, while international law regulates international affairs. Some domestic laws also include norms for regulating cross-border and overseas conduct, but enforcement, judiciary, and legal research in this area have not received sufficient attention. There is still an inherent thinking that focuses only on domestic legal affairs or separates domestic and international affairs. This situation clearly does not adapt to the domestic and international environment that China is currently facing, nor does it meet the requirements of coordinating domestic governance and international governance. XI Jinping states that "We should take a coordinated approach to the rule of law at home and in affairs involving foreign parties," and "We should accelerate our efforts to create a strategic framework for the rule of law in foreign-related affairs, pursue coordinated progress in both domestic and international governance, and better safeguard our country's sovereignty, security and development interests." Furthermore, "We must firmly uphold the international system with the UN at its core, the international order based on international law, and the fundamental principles of international law and international relations based on the purposes and principles of the UN Charter... And we promote the reform of global governance and the building of a global community with a shared future."[56] XI Jinping Thought on the Rule of law provides exactly the necessary guiding philosophy to learn and study the legal governance of foreign-related relations, and provides the fundamental principle and guideline for practical handling of foreign-related affairs.

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56 XI Jinping, 坚定不移走中国特色社会主义法治道路，为全面建设社会主义现代化国家提供有力法治保障 (Sticking to the Path of Socialist Rule of Law with Chinese Characteristics and Providing Sound Legal Guarantees for Socialist Modernization), 5 求是 (*Qiushi*), 1 (2021).