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Some Thoughts and Recommendations for Stepping up Legislation in the Foreign-Related Field*

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Abstract Stepping up legislation in the foreign-related field is a foundation and prerequisite for advancing the rule of law in domestic and foreign-related affairs in a coordinated manner. It is also an important link in the promotion of the socialist legal system with the Constitution as the core, as proposed in the Report to the 20th National Congress of the Communist Party of China (CPC). Since China introduced the reform and opening-up policy in 1978, China's legal system in the foreign-related field has evolved from initial formulation to mature framework, and China's legislation in the foreign-related field has maintained distinct Chinese characteristics and contemporary features. Currently, China's legislation in the foreign-related field focuses on national security and on high-level opening-up. It continuously strengthens the connection of the rule of law in domestic affairs with that in international affairs, and consistently promotes the China's legal system of extraterritorial application. Furthermore, legislation in the foreign-related field in China still has issues to address, which include the inconclusive status of international treaties within the legal system, a relatively conservative domestic approach in exercising extraterritorial jurisdiction, and a limited scope of legal liability. To better respond to the need of legislation in building a human community with a shared future and to enhance China's right to international legal discourse in global governance, China needs to move faster to introduce the Law on Foreign Relations of the People's Republic of China. This law should reflect the basic positions, principles, and policies that China upholds in matters of foreign relations, as highlighted in the Report to the 20th CPC National Congress. Furthermore, China should continue to improve legislation in key areas of national security and increase the pre-existing punitive measures for responding to actions that harm national security both domestically and internationally. Legislation should also be strengthened to counter sanctions and interference, and supporting measures should be adopted to ensure the effect of relevant legislation. In the field of foreign economic and trade relations, China should incorporate high-standard international economic and trade

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rules in relevant legislations, and should legalize the replicable and promotable legal rules in the building of free trade zones. Additionally, the existing jurisdictional system and international commercial dispute resolution system should be promoted.

Keywords Report to the 20th National Congress of the Communist Party of China (CPC), legislation in foreign-related field, legal system in foreign-related field, rule of law in foreign-related affairs, rule of law in domestic affairs

I Introduction

In the Report to the 20th National Congress of the Communist Party of China (CPC), Chinese President XI Jinping pointed out the need to "step up legislation in key, emerging, and foreign-related fields and advance the rule of law in domestic and foreign-related affairs in a coordinated manner, so that good laws are made to promote development and ensure good governance."[1] Making such a need a key task in the law-based governance on all fronts for the strategic journey in the new era is unprecedented in the history of the CPC national congress. This fully reflects the high importance attached by the CPC Central Committee with Comrade XI Jinping as its core, to the rule of law in foreign-related affairs. Having profound and far-reaching influence, it will play a significant role in advancing China's rule of law in foreign-related affairs to the next level.

The construction of the rule of law in China should prioritize legislation, and legislation in the foreign-related field is the foundation of the rule of law in foreign affairs, and is also a key prerequisite for coordination of advances of the rule of law in domestic and foreign-related affairs.[2] With the implementation of the crucial decision to step up legislation in the foreign-related field, China's legislation will be elevated to a new height. The legislative process will be further accelerated and the legislative content will become further enriched. This will effectively promote a higher level of opening-up to the outside world, better safeguard national interests in security and development, and build a solid foundation for the rule of law in foreign-related affairs, including the building of a human community with a shared future. Moreover, as a permanent member of the United Nations Security Council and as the world's second-largest economy, China inevitably will showcase the latest trends in the interaction between the rule of law in domestic affairs and that in international affairs through its progressively updated legislation in foreign-related field. This influence will also have a positive and profound impact on the rule of law in international affairs in global

1 See XI Jinping, 高举中国特色社会主义伟大旗帜,为全面建设社会主义现代化国家而团结奋斗——在中国共产党第二十次全国代表大会上的报告 (Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for Unity in the Comprehensive Construction of a Socialist Modernized Country: Report to the 20th National Congress of the CPC), 人民日报(*People's Daily*), Oct. 16, 2022.

2 See ZHANG Yan, 涉外法治的概念与体系 (On the Concept and System of the Foreign-Related Rule of Law in China), 2 中国法学 (*China Legal Science*), 280 (2022).

governance.[3]

Since China implemented the reform and opening up policy in 1978, the building of China's foreign-related legal system has always closely followed the pace of the country's overall legal development and opening up to the outside world. After more than 40 years of constant evolution, it has become an important part of the socialist rule of law system with Chinese characteristics.[4] Since the 18th CPC National Congress, under the leadership of the CPC Central Committee with Comrade XI Jinping as its core, making a series of major resolutions rapidly to promote China's rule of law in foreign-related affairs based on the latest developments and changes in international and domestic circumstances, and elevate the building of the rule of law in foreign-related affairs to a new historical height.[5] The most iconic achievement is that the legislation in the field of national security, international economic and trade, countering foreign sanctions, and "long-arm jurisdiction" has been significantly strengthened, and the legislative results are very fruitful, having resolved various long-standing shortcomings in China's legislation.[6]

At present, momentous changes not seen in a century are accelerating across the world, and the instability and uncertainty of the international environment are clearly on the rise. In the face of major tests from high winds, choppy waters, and even dangerous storms in the international situation, the rule of law as the core competitiveness of a country is becoming ever more critical and drawing growing attention. In the face of an increasingly severe and complicated international situation, the method of advancement of the rule of law in both domestic and foreign-related affairs in a coordinated manner, to effectively safeguard fundamental national interests in security and development, has become vital for China. The mission of advancing the rule of law in the foreign-related field is arduous and significant. The institutional development is particularly meaningful, and the legislation in the foreign-related field is increasingly urgent.[7]

3 As ZHAO Jun notes, "Since the reform and opening-up in 1978, there has been a growing positive interaction between the rule of law in domestic affairs and the rule of law in international affairs, and such an interaction has become a fundamental phenomenon." See ZHAO Jun, 全球治理视野下的国际法治与国内法治 (The Relationship Between the Rule of Law in Domestic Affairs and that in International Affairs from the Perspective of Global Governance), 10 中国社会科学 (*Social Sciences in China*), 99 (2014).

4 See HE Zhipeng, 涉外法治：开放发展的规范导向 (Foreign-Related Rule of Law: Normative Orientation for Open Development), 5 政法论坛 (*Tribune of Political Science and Law*), 187 (2021).

5 In October 2014, the Fourth Plenary Session of the 18th Central Committee of the CPC first passed a programmatic CPC document, which specifies that that it is necessary to "step up the rule of law in foreign-related affairs...and use the legal means to safeguard China's sovereignty, security, and development interests. Strengthening legal services in foreign-related affairs is essential to safeguard the legitimate rights and interests of overseas Chinese citizens and legal entities, as well as the legitimate rights and interests of foreign citizens and legal entities in China." The Decision of the CPC Central Committee on the Upholding and Improving Socialist System and Modernizing State Governance was adopted in 2019, as well as the Plan on Developing the Rule of Law in China (2020–2025) was released by the CPC Central Committee in the early of 2021. These documents all require for strengthening the rule of law in foreign-related affairs. See HE Zhipeng, fn. 4 at 178.

6 See HUANG Jin & LU Yang, 习近平法治思想的国际法治意涵 (The International Rule of Law Connotation of XI Jinping Thought on the Rule of Law), 3 政法论坛 (*Tribune of Political Science and Law*), 3 (2021).

7 See ZHOU Xiaofan, 习近平关于涉外法治重要论述对传统国际法的创新与发展 (The Innovation and Development of Traditional International Law by XI Jinping's Important Exposition on the Rule of Law in Foreign-Related Affairs), 1 学术界 (*Academics*), 18 (2022).

Therefore, we should earnestly study and comprehend the essence and significance of major decisions made at the Report to the 20th CPC National Congress on stepping up legislation in the foreign-related field. We should look at the associated issues and needs, and accurately grasp the new mission and requirements proposed in the Report to the 20th CPC National Congress for advancing the related rule of law. We should conduct in-depth research on the major theoretical and practical issues facing legislation in this field. Based on this, we should vigorously strengthen legislation, providing a substantial and refined legal basis for China's rule of law in foreign-related affairs to reach a higher level. This is the key to coordinating the promotion of rule of law in both domestic and foreign-related affairs in the new era.

II Historical Review of Legislation in China's Foreign-Related Field

Review of history provides a better plan for the future. Review of the historical process of China' legislation in the foreign-related field, summarizing its characteristics, development trends, and successful experience, provides the foundation for well conceiving legislation in the foreign-related field and a prerequisite for ensuring that legislation in this regard maintains Chinese characteristics.

"The rule of law in foreign-related affairs is neither the traditional rule of law in the domestic field that does not include international law, nor the traditional rule of law in the international field that does not include domestic law. It transcends the dichotomy between domestic law and international law in terms of form and theory, embodying both the domestic nature of the rule of law in the international field and the international nature of the rule of law in the domestic field."[8] As an important component of the national legal system, the rule of law in foreign-related affairs encompasses various areas of law-based activities, such as legislation, enforcement, and judicial practices. Among these areas, legislation in the foreign-related field is the core of the rule of law in foreign-related affairs,[9] and it regulates foreign-related legal relationships arising from a country's external exchanges. The legislation in different fields of foreign-related legal relationships collectively builds the national legal system in the foreign-related field.[10] Over the past 40 years of reform and opening-up, China's legal system in the foreign-related field has gone from nonexistence to establishment, from weakness to strength, and from gradual development to increasing maturity. It has always maintained distinct Chinese characteristics and prominent features of the times. Generally, it has experienced the

8 HAN Liyu, 涉外关系治理的法律化与中国涉外法律实施 (Legalizing Foreign-Related Relations Governance and the Exercising Foreign-Related Laws in China), 2 吉林大学社会科学学报 (*Jilin University Journal Social Sciences Edition*), 44 (2022).

9 See ZHANG, fn. 2 at 268.

10 HUANG Huikang, 准确把握"涉外法治"概念内涵，统筹推进国内法治和涉外法治 (Accurately Understanding the Essence of the Concept of "Rule of Law in Foreign-Related Affairs" and Taking a Coordinated Approach to the Rule of Law at Home and in Matters Involving Foreign Parties), 1 武大国际法评论 (*Wuhan University International Law Review*), 12 (2022).

following three stages of development.

A | The Initial Stage of Legal System in the Foreign-Related Field

During a long period of socialist revolution and economic development after the founding of the People's Republic of China in 1949, legislation in China went through an extremely difficult and tortuous path due to the unique historic factors of that time. It was almost stagnant, and legislation in the foreign-related field was particularly rare, with only a few legislations in domestic fields having foreign-related elements. These related to specific areas such as diplomacy and maritime business. Not only were they scarce in number, but their content was also simple, falling short of development of a complete legal system in the international field.[11] In 1978, the far-reaching strategic policy of reform and opening-up was launched at the Third Plenary Session of the 11th CPC Central Committee. China ushered in a vibrant era of legislation, and the economic sector was opened up to the outside world at a rapid pace. The abundant practices relating to opening-up created an urgent need for legislation in the foreign-related field, directly promoting a substantial growth of legislation and the initial development of a legal system in that field. This stage roughly extended from 1978 to the 1990s.

The circumstances of that stage determined that legislation in the foreign-related field in China at that time had certain salient features. The legislation focused on the economic sector directly relating to opening up. The core objective of legislation was to utilize legal means to eliminate inherent institutional barriers in areas such as foreign trade and foreign investment, in order to expand foreign trade, attract foreign investment, and enhance the confidence of foreign businesses in investing and operating in China. This was aimed at creating a favorable domestic legal environment.[12] From the late 1970s to the late 1980s, China successively formulated foundational laws such as the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (Equity Ventures Law), Law of the People's Republic of China on Foreign-Funded Enterprises (Foreign-Funded Enterprises Law), and Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (Joint Ventures Law). These laws regulated foreign investment activities and

11 After the founding of the People's Republic of China, the Common Program of the Chinese People's Political Consultative Conference, which had the nature of a "temporary constitution," stipulated the principles for handling treaties concluded by the old China. In 1954, the Constitution of the People's Republic of China (hereinafter referred to as the "Constitution") stipulated the principles for conducting foreign relations for the new China, as well as involving matters related to treaty-making power and the appointment and removal of diplomatic representatives. Other legislation concerning diplomacy, maritime affairs, customs autonomy, and shipping management are mostly promulgated and implemented through decrees and administrative orders. See HE Zhipeng & SUN Lu, 中国与国际法的相互建构 (The Mutual Construction of China and International Law), 9 国际关系与国际法学刊 (*Journal of International Relations and International Law*), (2020), 厦门大学出版社 (Xiamen University Press), at 69–72 (2021). LIU Shengping, 论新中国法律的发展及其历史经验 (On the Development of New China Law and Its Historical Experience), 3 中国法学 (*China Legal Science*), 45–46 (1984).

12 See LI Tao, 法治与改革：1978—2018 年法律制定的实践研究 (The Rule of Law and Reform: A Study on the Practice of Legal Formulation from 1978 to 2018), Ph.D. Dissertation of Huazhong Normal University, 47–49 (2019).

promptly filled the domestic legal gaps in the field of foreign investment. They played a crucial role in successfully attracting a large amount of foreign investment and promoting the development of the national economy during the early stages of reform and opening up.[13] With the birth of the "Three Laws on Foreign Investment," the development of China's foreign-related legal system entered the right track. A large number of laws related to import and export trade, foreign investment management, external exchange management, customs supervision and other areas of foreign trade and investment were introduced to continuously meet the practical needs of legislation in the foreign-related field for opening-up to the outside.

In the initial stage of legal system in the foreign-related field, a series of legislations in the foreign-related field, represented by the "Three Laws on Foreign Investment," created a new situation in the building of China's foreign-related legal system. They provided necessary and prompt legal support and guarantee for the smooth progress and high-level development in the early stages of reform and opening up. The significant progress achieved in legislation in the foreign-related field became an important symbol of China's opening-up at that time.[14]

B | The Growing Stage of Legal System Development in the Foreign-Related Field

With the growing pace of China's opening-up, China's foreign-related affairs in various areas such as politics, economy, society, and culture increased significantly, and fast-tracked legislation. The scope of legislation in the foreign-related field continued to expand, and was not limited to foreign trade and economic areas. The process entered the stage of overall development of the foreign-related legal system. This stage spanned from the 1990s to the first decade of the 21st century.

During this stage, China promulgated various fundamental legislations in the foreign-related field, such as the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, the Law of the People's Republic of China on the Procedure of the Conclusion of Treaties (Treaty Conclusion Law), the Law of the People's Republic of China on the Territorial Sea and Contiguous Zone, the Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China, the Anti-Secession Law of the People's Republic of China, the Extradition Law of the People's Republic of China the Arbitration Law of the People's Republic of China (China Arbitration Law), and the Law of the People's Republic of China on Choice of Law for Foreign-Related Civil Relationships (Choice of Law for Foreign-related Civil Relationship). These legislations involved various key areas of external exchanges and opening-up. Moreover, the legislative authorities made

13 See the Research Office of the Legislative Affairs Commission of the National People's Congress Standing Committee, 加强涉外领域立法, 加快构建系统完备, 衔接配套的涉外法律规范体系 (Strengthening the Legislation in the Field of Foreign-Related Affairs and Accelerating the Building of a Well-Developed System Supporting Foreign-Related Legal Norms), 18 民主与法制 (*Democracy & Legal System*) (*Weekly*), 55 (2022).

14 See LI, fn. 12.

provisions regarding foreign-related matters in domestic legislation in various areas such as civil and commercial, economic, criminal, and administrative law. They included legal relationships with foreign elements within the scope of legislative adjustment, expanding the applicability of the law itself. After 20 years of constant evolution, legislation in the foreign-related field formed a unique foreign-related legal system with Chinese characteristics. This system is centered around the foreign-related affairs provisions contained in the Constitution, and includes specialized legislations in various foreign-related areas such as politics, diplomacy, maritime affairs, national security, foreign trade and economic cooperation, international judicial assistance, and resolution of foreign-related civil and commercial disputes, along with foreign-related provisions in other domestic laws.[15]

The most representative legislative practice of this 20-year period in the foreign-related field is the massive revision and amendment work of domestic laws China made for joining the World Trade Organization (WTO). This work involved introducing or revising relevant domestic legislation in accordance with legal rules covered by the WTO agreements, in order to meet the requirements for member countries' domestic legislation in relevant areas. For example, China enacted foreign-related laws such as the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise, the Maritime Law of the People's Republic of China, and the Foreign Trade Law of the People's Republic of China (Foreign Trade Law). Furthermore, China systematically revised the Equity Ventures Law, the Joint Ventures Law, the Foreign-Funded Enterprises Law, and related laws in the field of intellectual property rights. On the back of a series of legislative works, including the adoption of new laws and the revision of existing laws, China integrated its economic legislations with the WTO multilateral trade rules, eliminating major legal roadblocks to China's WTO membership and facilitating China's eventual accession into WTO in 2001.[16]

It is worth emphasizing that during this stage, the overall quality of legislation in the foreign-related field in China significantly improved, and the domestic legal foundation for external exchanges became increasingly solid. In particular, the extensive legislative and amendment work carried out by China in the foreign-related field for accession to the WTO was unprecedented. This demonstrated China's firm confidence and determination in opening up to the outside world, created the necessary conditions for China's entry into the WTO, and laid a solid domestic legal foundation for China's deeper integration into the process of globalization and its gradual development into the world's second-largest economy.[17] China's accession to the WTO has played a significant role in promoting its legal system development.

15 See HUANG, fn. 10 at 8–9.

16 See the Research Office of the Legislative Affairs Commission of the National People's Congress Standing Committee, fn. 13 at 55.

17 See HUANG, fn. 10 at 8–9; LI Lin, 新中国法治建设与法学发展60年 (The 60th Anniversary of Rule of Law and Legal Studies in New China), 社会科学文献出版社 (*Social Sciences Academic Press*), at 575–578 (2010).

It has had an impact on various aspects, including the development of China's market economy system, legislative content, enforcement methods, and the interpretation of international treaties.[18]

C | The Mature Stage of Legal System Development in Foreign-Related Field

Since the 18th CPC National Congress in 2012, with the improvement of China's international status and the rapid growth of its overall economic strength, the depth and breadth of external exchanges have changed tremendously. The importance of developing a legal system in the foreign-related field has become even more prominent. During this stage, China has faced unprecedented changes in the international situation. The new circumstances and new tasks of China's external exchanges and of reform and opening up have given rise to higher requirements for legislation in the foreign-related field. Since the 18th CPC National Congress, the CPC Central Committee, with XI Jinping as the core, has attached great importance to the rule of law in foreign-related affairs and has focused on promoting important legislation in this field. Many significant breakthroughs have been made, and the development of the legal system in foreign-related affairs has entered a mature stage.[19]

During this stage, China has legislated various laws in the foreign-related field, demonstrating features of a major country and distinct characteristics of the new era. For example, the Law on Countering Foreign Sanctions of the People's Republic of China (China Countering Foreign Sanctions Law), the Law on Safeguarding National Security in the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong National Security Law), the E-Commerce Law of the People's Republic of China (E-Commerce Law), and the Personal Information Protection Law of the People's Republic of China (Personal Information Protection Law) have been promulgated. These legislations have responded rapidly to the urgent needs of foreign-related legislation to deal with the national security circumstances, and have made legislative adjustments promptly to address the associated impacts of the digital economy and other new economic formats. In order to promote high-level opening-up, China has promulgated a series of legislations regarding the development of free trade zones. The Standing Committee of the National People's Congress (NPC) passed the Decision of the Standing Committee of the NPC on Authorizing the State Council to Temporarily Adjust the Application of Relevant Legal Provisions in Pilot Free Trade Zones in October 2019. In June 2021, the Hainan Free Trade Port Law of the People's Republic of China (Hainan Free Trade Port Law) was formulated. Local legislative bodies in Shenzhen, Shanghai, Beijing, and other places have also promulgated regulations on free trade zones, introducing a number of high-standard international economic and trade rules, and turning the free trade

18 HAN Liyu, 入世对中国法治的影响 (The Impact of China's Accession to WTO on the Rule of Law in China), 5 中国青年政治学院学报 (*Journal of China Youth University for Political Sciences*), 115 (2011).

19 See ZHANG, fn. 2 at 265.

zones into key examples of rule of law and opening-up. China's free trade zones bear the task of conducting institutional reform "experiments," and the core purpose of these "experiments" has been promoting the rule of law, which is a key concept that runs through the entirety of these "experiments" of the free trade zones.[20]

In addition, the inclusion of foreign-related provisions in domestic legislation is continuously increasing refined in various fields. The legislative focus is more prominent, and its well-conceived nature is stronger. This greatly enriches China's legal toolbox for safeguarding its legitimate rights and interests in international struggles and lays a more solid legal foundation for promoting high-level opening-up.

III Characteristics and Key Issues of Legislation in the Foreign-Related Field in China

After more than 40 years of unremitting efforts in the reform and opening-up process, China's legislative work in the foreign-related field has scored remarkable achievements. As of March 2022, among the 291 existing effective laws in China, more than 50 of them are specialized foreign-related laws, in addition to the Constitution, which has some provisions in the foreign-related affairs. These specialized laws cover the seven major legal sectors. The number of domestic laws with foreign-related provisions is even bigger, accounting for about half of the current domestic legislative quantity. This clearly demonstrates the important position that foreign-related legislation holds in China's current legal system.[21]

In summary, the Constitution establishes the basic principles guiding China's foreign relations (Preamble, Paragraph 13), specifies the rights and obligations of foreign enterprises, organizations, and individuals in China (Articles 18 and 32), and defines the division of responsibilities for state bodies in handling foreign relations (Chapter 3). These provisions in the Constitution serve as the fundamental guiding principles for China's legislative work in the foreign-related field. China currently has more than 50 specialized foreign-related laws, covering various aspects and fields such as national sovereignty, diplomacy, economy, trade, and judiciary. These laws constitute the backbone of China's foreign-related legal system. In addition, a large number of domestic laws with foreign-related provisions are playing an increasingly important role in China's political, economic, and social foreign-related affairs. The foreign-related provisions in these laws are an integral part of China's foreign-related legal system.

A | Characteristics of Legislation in the Foreign-Related Field in China

Overall, legislation in the foreign-related field in China today has the following primary characteristics.

20 GONG Baihua, 中国自贸试验区到自由贸易港法治理念的转变 (The Rule of Law Concept Transformed due to the Shift from Pilot Free Trade Zone to Free Trade Port), 3 政法论丛 (*The Collection of Political and Legal Studies*), 119 (2019).

21 See the Research Office of the Legislative Affairs Commission of the National People's Congress Standing Committee, fn. 13.

Firstly, national security legislation has become a focus of legislative work. The significant changes in the international landscape have led to shifts in the global security landscape. Facing an increasingly complicated national security environment, China faces a growing demand for legislation in the field of national security, and strengthening legislation in this field should top China's legislation in the foreign-related field.[22] Since the 18th CPC National Congress, China has prioritized legislation in the field of national security and intensified efforts to continuously advance this legislation for better safeguarding China's national sovereignty, security, and development interests.

In 2015, China adopted the new National Security Law of the People's Republic of China (National Security Law). This new law is not a revision of the State Security Law of the People's Republic of China enacted in 1993 but a completely fresh one formulated in response to changes in the national security circumstances. This new law comprehensively stipulates the fundamental legal system for safeguarding national security and serves as the basic law in the field of China's national security.[23]

In 2020, China enacted the Law on Safeguarding National Security in the Hong Kong Special Administrative Region and incorporated it as Appendix III of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. This law provides a comprehensive and systematic framework for the legal system and enforcement mechanisms for safeguarding national security in Hong Kong. The implementation of the Hong Kong National Security Law has proven crucial in restoring security and stability, ensuring prosperity and strength, and maintaining the long-term smooth exercise of "One Country, Two Systems" principle in Hong Kong.[24]

In 2021, China enacted its Countering Foreign Sanctions Law. This law establishes a framework and rules for countering sanctions, providing a Chinese model for international sanction legislation practices. The law is developed based on the logic of countering sanctions and meets the practical needs of China's struggle against foreign sanctions. It upholds the basic principles, rules, and international practices of international law, draws on successful experience and practices of other countries, and specifies legal rules on countermeasures, procedures, and measures. It provides a powerful legal tool for countering hegemonism and power politics, safeguarding national and people's interests, and solidifies the domestic legal foundation for conducting external struggles.[25]

The aforementioned significant

22 See ZHOU, fn. 7 at 20.

23 The Counterespionage Law of China was passed on November 1, 2014, at the 11th Session of the 12th NPC Standing Committee. According to Article 40 of this law, it simultaneously repealed the State Security Law of the People's Republic of China that was passed on February 22, 1993, at the 13th Session of the Seventh NPC Standing Committee.

24 LIU Yiliang, 香港国家安全法是"一国两制"行稳致远的定海神针 (The Law on Safeguarding National Security in the Hong Kong Special Administrative Region: Key to Ensuring the Steady and Enduring Growth of the Cause of "One Country, Two Systems"), 4 统一论坛 (*Reunification Forum*), 16–17 (2020).

25 HUO Zhengxin, 反外国制裁法的国际法意涵 (An Interpretation of the Anti-Foreign Sanctions Law of China Under International Law), 4 比较法研究 (*Comparative Law Research*), 143 (2021).

laws, along with the Counterespionage Law of the People's Republic of China enacted in 2014 (China Counterespionage Law), the Counterterrorism Law of the People's Republic of China enacted in 2015 (China Counterterrorism Law), the Law of the People's Republic of China on the Administration of Activities of Overseas Non-Governmental Organizations within the Territory of China enacted in 2016, the Cybersecurity Law of the People's Republic of China enacted in 2016, and the National Intelligence Law of the People's Republic of China enacted in 2017, among other laws containing provisions related to foreign-related affairs, collectively constitute the core content of China's national security legal system, providing a comprehensive legal basis for effectively safeguarding national security.[26]

Secondly, legislation meets the practical needs of high-level opening-up promptly. Since China introduced the reform and opening up policy in 1978, the field of foreign economic and trade affairs has always been the most active legislation field in China's foreign-related affairs, keeping pace with the continuous expansion of China's opening-up. Over the past 40 years, many important laws in the field of foreign economic and trade affairs, represented by the Foreign Trade Law, for example, covering areas such as import and export trade, international investment, customs supervision, inspection and quarantine, entry and exit, and international commercial dispute resolution, have been enacted successively. These laws have provided solid legal guarantees for China's remarkable achievements in opening-up.[27]

Since the 18th CPC National Congress, China has attached greater importance to legislation in the field of foreign-related economic and trade affairs, significantly improving the timeliness, advancement, and internationality of legislation in order to promote high-level opening-up in the new era. For example, in response to the new changes in foreign-related economic activities, China officially initiated the legislation of the E-Commerce Law in 2013 and adopted it in 2018. It clearly states that China promotes cross-border e-commerce. It is beneficial to the optimization and upgrading of China's foreign trade structure and promotes a new system of opening-up. In response to the new situation of foreign investment and the new changes in international economic and trade rules, China combined the pre-existing "Three Laws on Foreign Investment" into a unified Foreign Investment Law of the People's Republic of China in 2019, which establishes the basic framework of China's new legal system for foreign investment and provides targeted provisions on the admission, promotion, protection, and administration of foreign investment. Moreover, this new law aligns with the latest international economic and trade rules, and incorporates the high-standard international investment legal rules, demonstrating China's firm determination and confidence in furthering opening-up. As a specialized code for foreign

26 XIAO Junyong, 论国家安全法律制度的体系化构建 (On the Systematic Construction of National Security Legal System), 4 西南政法大学学报 (*The Journal of Southwest University of Political Science and Law*), 43–44 (2022).

27 See LI, fn. 17 at 572–574.

investment, this law reconstructs China's fundamental laws on foreign investment.[28] In addition, to enhance the development quality of free trade pilot zones, China formulated the Hainan Free Trade Port Law in 2021 to ensure that Hainan will be built under the rule of law into a land with a higher level of opening-up, a better business environment, and a stronger radiating effect. As a fresh institutional design, this law provides an executive framework of laws and regulations for the Hainan Free Trade Port, and delegates Hainan Provincial People's Congress Standing Committee with the legislation power which the central authorities has, so that Hainan can develop laws and regulations for themselves. It creatively establishes an open system for the Hainan Free Trade Port to align with the highest level of opening-up worldwide, reflecting distinct Chinese characteristics.[29] In 2021, China formulated the Personal Information Protection Law, which specifies the legal application for handling personal information of natural persons both within and outside China, as well as the rules governing cross-border flow of personal information. It serves as a guideline for cooperation on personal information protection between China and other countries or regions. It is not only China's first domestic law on personal information protection but is also significant and far-reaching to regulate cross-border flow of personal information and to formulate international legal rules in the related fields.

Thirdly, there is an efficient connection between legislation in the foreign-related field and the rule of law in international affairs. China has always valued the rule of law, and has consistently been committed to promoting the rule of law in international affairs for global governance. China actively participates in international legislative activities by ratifying or joining many international treaties and agreements. China promptly enacts legislations based on the international treaties that China has ratified or joined, ensuring the efficient connection between domestic legislation and the rule of law in international affairs, effectively fulfilling its international treaty obligations.[30] As of March 2022, 440 international treaties and agreements have been approved by the Standing Committee of the National People's Congress of China. Internationally, the number of these treaties and agreements is large, their coverage is wide, and their importance is paramount, highlighting China's major-country responsibility and commitment.

Since the 18th CPC National Congress, the connection between legislation in the foreign-related field and the rule of law in international affairs has been further strengthened, achieving significant

28 KONG Qingjiang, 《中华人民共和国外商投资法》与相关法律的衔接与协调 (The Relationship and Connection Between the Foreign Investment Law of the People's Republic of China and Other Laws and Regulations), 3上海对外经贸大学学报 (*The Journal of Shanghai University of International Business and Economics*), 5 (2019).

29 HAN Long, 论《海南自由贸易港法》对我国法治的重大发展 (The Significant Contribution of the Hainan Free Trade Port Law to the Development of the Rule of Law in China), 1 中国高校社会科学 (*Social Sciences in Chinese Higher Education Institutions*), 72 (2023).

30 XIAO Yongping, 全面依法治国的新阶段：统筹推进国内法治与国际法治建设 (The New Stage of Advancing the Rule of Law Comprehensively: Promoting Coordination of Rule of Law at National and International Levels), 1 武大国际法评论 (*Wuhan University International Law Review*), 1–12 (2018).

progress. In this regard, legislative bodies comprehensively consider the specific circumstances of international treaties and agreement rules, as well as China's actual circumstances, with particular emphasis on ensuring the effective domestic implementation of international treaties and important agreements ratified or joined by China. Different domestic application methods have been adopted in accordance with different nature of treaties and agreements. Some treaties and agreements are translated into domestic laws before they can be applied in China, while others can directly be applied through domestic legislation.[31]

In addition, in order to enhance the advanced nature of domestic legislation in relevant fields in China and to provide domestic legal support for China's participation in global economic governance, Chinese legislative bodies revise relevant domestic legislation in accordance with the latest developments in the rule of law in international affairs in the respective fields. For example, China amended the Patent Law of the People's Republic of China in 2020, extending the protection period of design patents from 10 years to 15 years, for aligning the law with the Hague Agreement concerning the International Registration of Industrial Designs (Hague Agreement), to which China has applied for membership.[32]

Building a human community with a shared future is not only a Chinese approach and contribution, but also a reflection of the wisdom of all humanity and the common aspiration of different countries. It embodies the inherent principles of international law and the development trend of international relations.[33] To promote the building of a human community with a shared future, China has conducted relevant foreign-related legislative activities in coping with global challenges. For instance, China has enacted the Law on Doctors of the People's Republic of China and amended the Animal Epidemic Prevention Law of the People's Republic of China, thereby strengthening the legal framework for epidemic prevention and control. These legislative activities provide a domestic legal basis for China's participation in international health and pandemic prevention activities, as well

31 For example, in 2018, China enacted the Law of People's Republic of China on International Criminal Judicial Assistance to effectively fulfill its obligations under international criminal judicial assistance treaties. This law incorporates relevant provisions of such treaties into domestic law, providing a solid legal basis for strengthening international cooperation in combating transnational crimes and in repatriating fugitives and illicit assets from abroad. Another example is the amendment of the Copyright Law of the People's Republic of China in 2020, specifically extending the protection period for photographic works and adding provisions on performers' rental rights, broadcast remuneration rights for sound recordings, and mechanical performance rights. These amendments ensure that domestic intellectual property legislation is consistent with the requirements of relevant international treaties that China has newly concluded or acceded to. See the Research Office of the Legislative Affairs Commission of the National People's Congress Standing Committee, fn. 13 at 56–57.

32 In February 2022, China submitted its instrument of accession to the Hague Agreement to the World Intellectual Property Organization. This move is beneficial for China to actively integrate into the global system of industrial design and participate in the global governance of intellectual property rights.

33 LIU Huawen, 推动构建人类命运共同体：法律化及其落实 (On Promoting the Building of a Community with a Shared Future for Mankind: Legalization and Implementation), 6 厦门大学学报（哲学社会科学版） (*Journal of Xiamen University* [*Philosophy and Social Sciences*]), 32 (2019).

as for promoting global human rights governance. Furthermore, in the field of jointly building a community of life for humans and nature, China has stressed strengthening legislation in the field of eco-environment protection. China continuously introduces new laws and revises pre-existing ones, providing a Chinese legal framework and contributing Chinese legal strength to promote global environmental governance.

Fourthly, legislation in China substantively promotes the development of a legal system that is extraterritorially applicable. Since the 18th CPC National Congress, Chinese legislative bodies have continuously improved legislation in the foreign-related field based on the basic principles of international law and by drawing on advanced international experience and practices. This has substantively promoted the development of a legal system for the extraterritorial application of Chinese law. China continuously improves the provisions on the extraterritorial application of domestic laws based on the principle of personal jurisdiction, which applies domestic law to protect the overseas interests of Chinese enterprises or citizens. By improving this principle, the extraterritorial application of relevant domestic laws is strengthened. For example, the National Security Law, enacted in 2015, stipulates that the state shall take necessary measures to protect the security and legitimate rights and interests of overseas Chinese citizens, organizations, and institutions, and protect the overseas interests of China from threats and infringements, in accordance with the law. Moreover, China formulates or revises provisions on the extraterritorial application of relevant domestic laws based on the principle of protective jurisdiction to enhance the extraterritorial application of Chinese laws and increase the legal deterrent effect. For example, the amended Securities Law of the People's Republic of China in 2019 stipulates that activities involving the issuance and trading of securities outside the territory of China that disrupt the domestic market order and harm the legitimate rights and interests of domestic investors shall be dealt with and those engaged in such activities shall be held to be legally accountable in accordance with relevant provisions of this law. This new law plays a significant legal deterrent role in maintaining the order of the Chinese capital market and in preventing interference and destruction by international forces. The Biosecurity Law of the People's Republic of China, enacted in 2020, and the Anti-Organized Crime Law of the People's Republic of China, enacted in 2021, both contain provisions on extraterritorial application. Additionally, China formulates or improves provisions on the extraterritorial application of domestic laws based on the clauses of international treaties and agreements, incorporating the rights conferred to sovereign states by international treaties and agreements into the provisions of domestic laws, making them more specific and practical. For example, Article 81 of the Coast Guard Law of the People's Republic of China, enacted in 2021, stipulates that "When a coast guard agency performs law enforcement tasks in areas outside the

waters under the jurisdiction of China in accordance with laws, regulations, and international treaties concluded or acceded to by China, the relevant procedures may be governed, mutatis mutandis, by the relevant provisions of this Law."

B | Key Issues of Legislation in the Foreign-Related Field in China

After more than 40 years of unremitting efforts since the launch of reform and opening up in 1978, China's legal system in foreign-related affairs has become mature and possesses distinct Chinese characteristics and contemporary features. While affirming the achievements, we should soberly recognize that the goals and tasks set at the 20th CPC National Congress have put forward new and higher requirements for legislation in China's foreign-related affairs. Compared with the current situation and tasks, especially when compared with the level of legislation in the foreign-related field in some major developed countries, China still has significant room for improvement of relevant legislation. In particular, some institutional issues remain unresolved and should become the focus of future legislative work. This is primarily reflected in the following features.[34]

Firstly, the status of international treaties in China's legal system is not yet clear. It involves major legal issues such as the relationship between international law and domestic law, the legal status of treaties in the domestic legal system, and judicial practice in the application of international treaties. Many countries stipulate the status of international treaties in their own legal systems in their constitutions or other important basic laws. For many years, China's international law academia has been calling for the clear definition of the status of international treaties in China's domestic legal system, and for the specific elaboration in China's Constitution or other important basic laws, such as the Law on Foreign Relations of the People's Republic of China (China Foreign Relations Law). This not only promotes China's image as a major country that honors its commitments but also provides a legal basis for resolving conflicts between treaties and domestic laws in judicial and law enforcement activities in the foreign-related field. However, this legislative goal has not been achieved so far.[35]

The Civil Code of the People's Republic of China (Civil Code) enacted in 2020 does not include the original Article 142 of the General Principles of the Civil Law of the People's Republic of China (General Principles of Civil Law) regarding the application of international treaties. This has led to a scenario where the provisions in the original civil laws regarding the application of international treaties have not been carried forward in the new law, significantly weakening the status of treaties in China's domestic legal system. This situation could easily lead to confusion in the application of laws in foreign-related civil and commercial

34 The development of the rule of law theory and practice in Western countries in the field of international affairs has undergone a process from the abstract rule of law to the concrete rule of law, characterized by distinct features of the times and politics. See ZHANG, fn. 2 at 274–277.

35 See HUANG, fn. 10 at 15.

cases.[36]

Secondly, the jurisdictional system in China is relatively conservative and does not yet fully meet the practical needs of the extraterritorial application of Chinese law. China has long predominantly followed traditional theories of jurisdiction in legislative jurisdiction, judicial jurisdiction, and administrative enforcement jurisdiction. This has resulted in a relatively conservative jurisdictional system in China's legislation in foreign-related field. In terms of criminal jurisdiction, the Criminal Law of the People's Republic of China (China Criminal Law) does address crimes committed by individuals outside of China that specifically target China. However, due to the limitations of jurisdiction, it only stipulates that criminal liability should be pursued, without specification of key issues such as imposition of fines or confiscation of assets. This often leads to the possibility of such criminal activities not being effectively punished under Chinese law.[37] In addition, the existing jurisdictional system has failed to give the China Criminal Law the functions it should have in international relations. For example, the functions of the China Criminal Law to prevent and punish international crimes such as war crimes, crimes against humanity, and genocide, expanding and maintaining overseas interests, intervening in international affairs moderately with legal means, and appropriately countering and retaliating against other countries, have not been fully utilized, resulting in the China Criminal Law incapable of playing its full role in international struggles as it should have.[38] In the field of administrative law, the Administrative Compulsion Law of the People's Republic of China, the Law of the People's Republic of China on Administrative Penalty (Administrative Penalty Law), and the Public Security Administration Punishments Law of the People's Republic of China follow the strict principle of territorial jurisdiction but lack provisions on extraterritorial application. As such, when facing serious illegal activities that intentionally evade Chinese laws and violate the legitimate rights and interests of the Chinese state, enterprises, or citizens

36 Regarding the application of international rules, Article 142 of the General Principles of Civil Law states: "The application of laws in foreign-related civil relations shall be determined in accordance with the provisions of this chapter. If there are different provisions in international treaties concluded or participated in by the People's Republic of China regarding civil laws, the provisions of the international treaties shall apply, except for the clauses reserved by the People's Republic of China. If there are no provisions in Chinese laws or international treaties concluded or participated in by the People's Republic of China, international customary practices may apply." However, the General Provisions of Civil Law, passed on March 15, 2017, did not inherit this provision. Since China has already enacted the Law on Application of Laws in 2010, it is reasonable for the General Provisions of Civil Law to not specifically address the application of laws in foreign civil relations. However, the Law on Application of Laws does not address the issue of the application of treaties and customary practices. Therefore, the overall abandonment of the provision in Article 142 of the General Principles of Civil Law by the General Provisions of Civil Law is a research-worthy issue. See CHE Pizhao, 《民法典》颁行后国际条约与惯例在我国的适用 (On the Application of Treaties and International Commercial Custom After the Promulgation of the Civil Code), 6 中国应用法学 (*China Review of Administration of Justice*), 2–3 (2020).

37 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*), 27 (2019).

38 XIAO Yongping & JIAO Xiaoding, 从司法视角看中国法域外适用体系的构建 (Establishing a System of Extraterritorial Application of Chinese Law from the Judicial Perspective), 5 中国应用法学 (*China Review of Administration of Justice*), 58 (2020).

overseas, Chinese administrative agencies often have no jurisdiction to exercise.[39] In terms of civil jurisdiction, the Civil Procedure Law of the People's Republic of China (China Civil Procedure Law) has long upheld the "effective connection principle" in jurisdiction. As a result, civil and commercial cases that do not have an "effective connection" with China cannot be subject to the jurisdiction of China. This severely limits the scope of the people's courts in handling foreign-related civil and commercial cases. It also creates a jurisdictional obstacle for the newly established International Commercial Court to play a greater role. In the long run, it is not conducive to the efforts of building China into an international commercial dispute resolution center.[40]

Thirdly, the limited legal liability and the lenient punishment have limited effect of Chinese laws in the international arena. China's domestic legislation has long primarily focused on China's actual national conditions and economic and social development, without considering the application of laws outside the domestic jurisdiction. As a result, some legislation fails to ensure the extraterritorial effect of legal application. For example, the China Counterterrorism Law sets criminal liability for acts of terrorism committed abroad only in Article 13, without establishing administrative liabilities such as fines or confiscation of illegal gains for such acts. Although administrative penalties have stricter territoriality, considering the regional or even global nature of terrorist activities, limiting the punishment strictly to terrorist activities within the jurisdiction of one's own country is clearly detrimental to the prevention and punishment of terrorist activities and significantly reduces the deterrent effect on extraterritorial illegal actions.[41] Another example is the Export Control Law of the People's Republic of China, which establishes an on-site verification system for controlled items' end-users and end-uses. However, it does not explicitly define the legal liability for obstruction and non-cooperation with on-site verifications by end-users. It only sets legal liability for exporters who refuse to accept regulatory investigations. In laws such as the Nuclear Safety Law of the People's Republic of China, there are also numerous provisions that only punish domestic natural persons and legal persons for illegal activities outside the territory, without penalizing foreign natural persons and foreign legal persons. This significantly weakens the effect of the relevant laws.[42]

In addition, the compensation liability and administrative fines imposed by Chinese laws for violations are relatively inadequate. This is related to China's economic development level. However,

39 SHI Qifei, 论治安管理处罚法的域外效力 (The Extraterritorial Effect of the Public Security Administration Punishment Law), 5 净月学刊 (*Journal of Jilin Public Security Academy*), 89–95 (2013).

40 "Currently, China has become the world's second-largest economy. Adopting an overly conservative jurisdictional position is not conducive to protecting China's national and corporate interests, and may even result in jurisdictional vacuum or false jurisdictional issues." SUN Nanxiang, 美国法律域外适用的历史源流与现代发展——兼论中国法域外适用法律体系建设 (The Origin and Modernization of Extraterritoriality in the American Judiciary: With Reflections on the Extraterritorial Application of Chinese Laws), 3 比较法研究 (*Comparative Law Research*), 182 (2021).

41 See LIAO, fn. 37 at 26–27.

42 See LIAO, fn. 37 at 27.

if the sovereign entities, organizations, or individuals responsible for compensation or administrative fines are from outside the jurisdiction, such a relatively inadequate compensation liability or administrative fines cannot serve the desired deterrent effect of Chinese law.[43] For example, the Chinese civil compensation scheme generally does not include punitive damages. Although Article 179 of the Civil Code stipulates that "where any law provides for punitive damages, such a law shall apply," the China Countering Foreign Sanctions Law and other foreign-related laws do not contain any specific provisions regarding punitive damages. As a result, infringements by foreign entities, organizations, or individuals against Chinese entities, organizations, or individuals outside China cannot be subject to punitive damages similar to those in countries or economies such as the United States or the European Union, whose punitive damages for extraterritorial infringements could be up to tens of millions or even billions of dollars. Article 51 of the Administrative Penalty Law specifies very small punitive damages under the "simplified procedure" (less than 200 yuan for natural person and less than 3000 yuan for legal persons or other organizations). For foreign organizations or individuals who violate Chinese laws, the cost of non-compliance is almost negligible. Article 84 of the same law stipulates that "foreigners, stateless persons, and foreign organizations who commit illegal acts within the territory of China shall be subject to administrative penalties in accordance with this law, except as otherwise provided by law." This provision means that the law mentioned above does not apply to illegal acts committed by foreigners, stateless persons, or foreign organizations outside the territory of China, even if these acts have consequences within the territory of China and violate Chinese laws. As a result, the deterrent effect of Chinese law is significantly reduced.[44]

In addition to the aforementioned shortcomings and gaps, there is an increasing demand for legislation in the foreign-related field. Some existing laws are no longer suitable for the new international and domestic situations and need to be revised and improved. Due to significant changes in the international situation, the United States has identified China as its biggest strategic competitor and frequently suppresses China using ideological tools and other means. China's national security constantly faces new challenges and issues. In particular, the rapid development of advanced technology in recent years has brought new challenges to national security. Relevant legislation needs to be revised promptly based on the practical requirements of safeguarding national security. There is a need to continuously enrich the legal toolbox relating to this issue. The rapid advancement of science and

43 Chinese civil law scholars are generally conservative towards punitive damages. See ZHU Guangxin, 美国惩罚性赔偿制度探究 (Punitive Damages in the United States), 3 比较法研究 (*Comparative Law Research*), 167–168 (2022).

44 On December 24, 2018, the Airport Branch of the Shanghai Administration for Industry and Commerce imposed a fine of RMB 200,000 on Booking.com B.V., a company registered in the Netherlands. While this decision achieved the purpose of applying foreign-related laws within the jurisdiction of China and punished the offender, the fine sum is too low for the Dutch company. See LIAO, fn. 37 at 35–36.

technology has led to significant changes in the form and structure of foreign-related economic exchanges. Transnational crimes, terrorism, corruption, money laundering, and other crimes are appearing in new forms, and existing laws have not yet covered these new types of crimes and lack relevant rules applicable outside the jurisdiction. In the field of economy and trade, new forms of transactions such as those involved in digital trade, cross-border data flow, digital currencies, and virtual currencies, continue to emerge and expand in scale. Existing legal provisions are too general and relatively outdated, making it difficult to provide reasonable regulations for the emerging new economic forms in the international field.

IV Recommendations on Stepping up Legislation in the Foreign-Related Field

The overall strategic plan for the development of socialist rule of law with Chinese characteristics as outlined in the 20th CPC National Congress provides core requirement for stepping up legislation in the foreign-related field. It is also essential to consider the practical requirement of promoting high-level opening-up, effectively safeguarding national security and development, and building a human community with a shared future. The author believes that in order to achieve the above strategic goals, future development objectives should be based on the formulation of new foreign-related laws, the revision of existing foreign-related laws or provisions in laws related to foreign-related affairs, to further consolidate the legal foundation for high-level opening-up in the new era. The development process should continuously enrich the legal resources that are available to address various threats and challenges facing national security and development interests. It should enhance the toolbox of laws to counter international hegemonism, unilateralism, foreign sanctions, interference and "long-arm jurisdiction," and should better respond to the domestic legislative needs for building a human community with a shared future. The overall result should be to enhance China's voice in international rule of law discourse relating to global governance.[45]

Specific and clear work arrangements have been made in the Report to the 20th CPC National Congress regarding promoting high-level opening-up, effectively safeguarding national security and development interests, and building a human community with a shared future. These specific and clear work arrangements should be the focus of strengthening legislation in the foreign-related field, and should include upgrading the legal system for foreign trade and foreign investment based on high-standard international economic and trade rules and the experience gained from the development of pilot free trade zones. It is also important to strengthen legislation in the security field, such as the National Security Law, to

45 HUANG Huikang, 习近平法治思想关于国际法治系列重要论述的实践逻辑、历史逻辑和理论逻辑 (Xi Jinping Thought on the Rule of Law in Relation to the International Rule of Law: Series of Important Theories and Its Practical, Historical and Theoretical Logics), 1 国际法研究 (*Chinese Review of International Law*), 14–15 (2021).

address legal gaps in key areas of national security. Furthermore, strengthening of legislation entails establishing a system to counter foreign sanctions, with the China Countering Foreign Sanctions Law at its core. The jurisdiction system in criminal, civil, and administrative domains should be improved, and legal systems to protect the legitimate rights and interests of Chinese citizens and legal persons overseas, as well as safeguarding maritime rights and interests, should be enhanced. Domestic legislation should focus on implementing the principles of international exchanges based on upholding the international system centered around the United Nations, the international order based on international law, and the basic norms of international relations based on the purposes and principles of the United Nations Charter. This can then lay the foundation for the promotion of building a human community with a shared future.

According to the goals and tasks set out in the Report to the 20th CPC National Congress and considering the current status and practical needs of legislation in China's foreign-related field, the author puts forward the following specific recommendations to step up relevant legislation.

Firstly, China should move faster to promulgate the Foreign Relations Law to legalize the basic positions, principles, and policies of China's foreign relations as outlined in the Report to the 20th CPC National Congress. This law should also clarify important legal issues, such as the status of international treaties in China's legal system, in order to provide fundamental legal principles for legislation in various sectors of external exchanges.

The Report to the 20th CPC National Congress points out, "For its part, China has always been committed to its foreign policy goals of upholding world peace and promoting common development, and is dedicated to promoting a human community with a shared future." To this purpose, the Report puts forward the basic positions, principles, and policies of China's foreign relations in the new era, providing fundamental guidelines for China's external exchanges. These guidelines should also serve as the principles for legislation in China's foreign-related field.

China has long lacked a basic law in foreign relations field to define the fundamental legal principles for foreign relations. Therefore, it has become a top priority to formulate a foreign relations law in foreign-related field. At the end of 2022, the NPC released the Law on Foreign Relations of the People's Republic of China (Draft), marking the upcoming birth of China's first Law on Foreign Relations of the People's Republic of China.[46] China should further legalize the basic positions, principles, and policies of its foreign relations as proposed in the Report to the 20th CPC National Congress, clearly defining them as fundamental legal principles for legislation in China's foreign-related field. This process will provide a guiding framework for legislation in various departments in the foreign-related field, filling up the long-standing gap of a

46 Please refer to the "Solicitation of Comments on Draft Laws" section.

basic law for China's foreign relations.[47]

Furthermore, the finalized version of the Law on Foreign Relations of the People's Republic of China should specify the role of international treaties in China's legal system, and the basic principles and procedures for implementing the resolutions of the United Nations Security Council resolutions and the rulings of international dispute settlement organizations. It should specify circumstances in which treaties can be transformed or directly applied. The relationship between treaties or agreements at various levels and relevant domestic laws, regulations, and administrative rules should be clarified. The specific interpretation rules of treaties applied by the people's courts, and the basic legal principles of countering sanctions, interference, and long-arm jurisdiction must also be defined. These provisions will provide basic guiding principles for legislation in various departments in the foreign-related field.

Secondly, China should further strengthen legislation in key areas of national security, improve legislation on national security risk monitoring, early warning, and emergency management systems, enhance the criminal legal system related to national security, and increase the criminal punishment for acts that pose threats to China's national security, both domestically and internationally.

The Report to the 20th CPC National Congress places great importance on China's national security issues, indicating the need of "improving the national security system, making sure that our leadership system for national security is high-performing and authoritative. Improvements will be made in the legal, strategy, and policy systems for national security as well as the risk monitoring and early warning systems and the national emergency management system. We will create a coordinated, multi-dimensional, and highly effective system for protecting national security across all domain."

Since the promulgation of the National Security Law in 2015, significant changes have occurred in the international situation, and China's national security situation has become more complicated. Many new problems in various forms have emerged in the field of national security, especially in the areas of economic security, financial security, technological security, and ideological security. Therefore, in accordance with the goal of modernizing the national security system and capabilities, as proposed at the 20th CPC National Congress, relevant provisions of the National Security Law should be revised. Key national security laws for different sectors, such as economic security, financial security, technological security, and ideological security, should be formulated based on the basic principles established by the National Security Law. China should further improve the national security risk monitoring and early warning systems and national emergency management systems by revising the Emergency Response Law of China and adding provisions applicable to foreign-related affairs. Amendments

47 HAN Yonghong, 中国对外关系法论纲——以统筹推进国内法治和涉外法治为视角 (The General Discussion on the Laws of China on Foreign Relations: From the Perspective of Promoting Domestic Rule of Law and Foreign-Related Rule of Law in a Coordinated Manner), 10 政治与法律 (*Political Science and Law*), 85 (2021).

should be made to the China Criminal Law and the China Criminal Procedure Law regarding provisions related to national security crimes, in order to improve the system of criminal jurisdiction in the field of national security and increase the criminal punishment for acts that pose a threat to China's national security both domestically and abroad.

Thirdly, China should strengthen legislation and enrich the domestic legal toolbox regarding countering sanctions, interference, and "long-arm jurisdiction" in order to further implement and enhance the effect of laws such as the China Countering Foreign Sanctions Law.

The Report to the 20th CPC National Congress proposes that "Mechanisms for countering foreign sanctions, interference, and 'long-arm jurisdiction' will be strengthened." Therefore, we should strengthen the legislation in countering sanctions, interference, and "long-arm jurisdiction." In countering foreign sanctions, a series of supporting measures, such as implementing regulations and judicial interpretations, should be enacted to strengthen the legal effect and role of the China Countering Foreign Sanctions Law and to ensure the implementation of its provisions. Particularly, Article 12 of the China Countering Foreign Sanctions Law should be further specified to facilitate Chinese citizens and organizations in seeking effective legal remedies within China against any individual or organization that harms Chinese citizens or organizations due to the enforcement of illegal foreign sanctions.

To counter foreign interference, China should formulate its Law on Countering-Foreign Interference to specify circumstances of foreign interference and the legal means, methods, procedures, and responsibilities for countering such interference, in order to fill the domestic legal gaps in this field. In terms of countering "long-arm jurisdiction," equivalent measures should be added to relevant laws such as the China Criminal Procedure Law and the China Civil Procedure Law to establish foreign "long-arm jurisdiction" countermeasures, and to create foreign-related legal tools such as "anti-suit injunction" and "prohibition."

Fourthly, in relevant legislation in the field of foreign economic and trade, China should actively adopt high-standard international economic and trade rules, and legalize replicable and promotable rules through the development of free trade pilot zones, in order to provide a more solid legal guarantee for high-level opening-up under the rule of law.

The 20th CPC National Congress has made a comprehensive deployment for promoting high-level opening-up, proposing a series of new goals and tasks. In order to adapt to the new goals and tasks put forward in the Report to the 20th National Congress, relevant legislation in the field of opening-up, such as the Foreign Trade Law, should be revised promptly. By the end of 2022, the NPC revised the Foreign Trade Law of the People's Republic of China, but only deleted Article 9, which had regulated the registration of foreign trade operators. This revision has substantially expanded the foreign trade operation rights to all enterprises within

China's territory.[48] However, it has failed to respond to the new forms of foreign trade and the new challenges posed by trade sanctions. In the future, China should further incorporate new issues arising from foreign trade and emerging areas into the regulatory framework. Specifically, it should explicitly state the legal principles against protectionism in foreign trade and establish basic rules and procedures for targeted trade countermeasures.

China has applied to join high-level international economic and trade agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Digital Economy Partnership Agreement. These agreements encompass various areas such as international trade, cross-border investment, intellectual property rights, and the digital economy, giving rise to many new international legal rules. Currently, China should actively incorporate and learn from new international economic and trade rules in its legislation in the areas of trade, investment, and other aspects of opening up to the outside world. This will promote the continuous modernization and internationalization of legislation in these fields based on China's opening up. Moreover, China should reflect the replicable and promotable legal rules, that have been formed in the development of free trade pilot zones in recent years, in the relevant legislation in the field of opening up to the outside world. This can deal with areas such as pre-entry national treatment, the negative list system for foreign investment, new rules on intellectual property rights, trade and investment facilitation rules, and innovative customs supervision systems. China should codify these successful experiences in legal form to promote legislation in the field of opening-up at a higher level, should promptly meet the new demands of high-level opening up for the rule of law development, and should lay a more solid rule of law foundation for high-level opening up.

Fifthly, China should improve the jurisdiction system and international commercial dispute resolution system, further enhancing the international influence of Chinese law and the rule of law in China. The Report to the 20th CPC National Congress points out that "We will steadily expand institutional opening up with regard to rules, regulations, management, and standards." The Report also emphasizes the necessity to "foster a world-class business environment that is market-oriented, law-based, and internationalized." These overall goals, as outlined in the Report, present new issues and tasks for the development of extraterritorial application of China's legal system. Currently and in the future, China should prioritize the improvement of the jurisdiction system and the international commercial dispute resolution system within the Chinese legal system. Legislative and amendment work in the criminal, civil, and administrative fields should revolve around these two major tasks, focusing on strengthening legislation in the foreign-

48 Please refer to the Report of the Constitution and Law Commission of the NPC Standing Committee on the Deliberation Results of the Law of the People's Republic of China on Foreign Trade (Draft Amendment), published on December 30, 2022.

related field.

In terms of the jurisdiction system, the criminal jurisdiction system established in China Criminal Law has increasingly shown a conservative approach. It does not adequately match either China's status as a major country or the need to engage in international legal battles, and does not effectively safeguard the legitimate rights and interests of Chinese citizens and enterprises abroad. Therefore, it should be promptly revised and improved, drawing on international advanced experiences and practices, and appropriately expanding criminal judicial jurisdiction. The "effective connection principle" that China has long observed in its foreign-related civil jurisdiction system should undergo fundamental changes. By revising relevant provisions of the China Civil Procedure Law and other relevant laws, the civil judicial jurisdiction in China should be expanded to enhance the legal basis for the development of the system of extraterritorial application of Chinese law, and to provide more legal assistance for the development of an international commercial dispute resolution center. At the end of 2022, the NPC announced the Law of the People's Republic of China on Foreign State Immunity (Draft) and the China Civil Procedure Law (Draft Amendment). The former provides a legal basis for Chinese courts to exercise jurisdiction over civil cases involving foreign states and their properties. The latter makes important adjustments in the jurisdiction of foreign-related civil matters, adding the principle of "appropriate connection." Both of these draft laws will substantially expand China's jurisdiction in foreign-related civil matters. They should be implemented as soon as possible and, based on further analysis of judicial practice, the system of jurisdiction in foreign-related civil matters in China should be improved.[49] In addition, according to the new circumstances and new developments in international interactions, China should promptly revise the foreign-related provisions in key areas of legislation (such as combating transnational crimes, anti-corruption, anti-monopoly, financial regulation, intellectual property protection). It is important to increase law enforcement efforts in these key areas, and to significantly increase the costs of violating Chinese laws and of committing crimes.

In terms of the international commercial dispute resolution system, China should expedite the formulation of the International Commercial Court Law, and further the development of the International Commercial Court in China. This can expand the influence and discourse power of China's judiciary in the international commercial and maritime fields, respond to advanced legal systems and innovative rules in international arbitration, and fast-track the revision of the China Arbitration Law in light of the development practices of commercial arbitration in China. These efforts will create a better legal environment for Chinese arbitration to move closer to the world center stage. In addition, China has been fully involved in the drafting and finalizing process of the United Nations Convention on International Settlement Agreements Resulting from Mediation (also

49 Please refer to the "Solicitation of Opinions on Draft Laws" section.

known as the "Singapore Convention on Mediation"). As one of the first signatories of the Singapore Convention on Mediation in 2019, China has contributed heavily to the birth of this important international convention in the field of international commercial dispute resolution. In addition to ratifying the Singapore Convention as soon as possible, China should promptly formulate its Law on Commercial Mediation, and develop a legal system for international commercial mediation with Chinese characteristics.[50]

V Conclusion

The Report to the 20th CPC National Congress proposed stepping up legislation in the foreign-related field and advancing the rule of law in domestic and foreign-related affairs in a coordinated manner as important tasks for improving the socialist legal system with Chinese characteristics with the Constitution as its core, which has a profound impact and great significance, and should be thoroughly understood and implemented through practical measures.

Stepping up legislation in the foreign-related field is the foundation and prerequisite for advancing the rule of law in domestic and foreign-related affairs in a coordinated manner. It is an important part of improving the socialist legal system with Chinese characteristics with the Constitution as its core. China should thoroughly review and summarize the legislative experience in the foreign-related field since the reform and opening up began in 1978, especially the important achievements in legislation in this field since the 18th CPC National Congress. Based on the spirit, overall requirements, and strategic deployment outlined in the Report to the 20th CPC National Congress, a comprehensive analysis should be conducted on the current status of legislation in the foreign-related field in China, identifying shortcomings. The key focus of legislative work in the foreign-related field should be determined based on the three strategic goals and tasks of promoting high-level opening up to the outside world, more effectively safeguarding national security, and building a human community with a shared future. China should also strengthen theoretical research on legislation in the field, focusing on addressing issues and practical needs. It is important to prioritize the advancement of relevant legislation in the field, promptly enacting new laws and revising existing ones. This will further promote the establishment or improvement of key legal systems in the foreign-related field, better coordinate the development of the rule of law in domestic and foreign affairs, and provide a more solid and effective legal guarantee for the achievement of the major goals and tasks outlined in the Report to the 20th CPC National Congress.

50 LIU Jingdong, SUN Wei & FU Panfeng et al., 批准《新加坡调解公约》对我国的挑战及应对研究 (Singapore Convention on Mediation: Legal Challenges and Its Ratification in China), 1 商事仲裁与调解 (*Commercial Arbitration & Mediation*), 58–59 (2020).