

On the Coordination of Various Legal Departments in Foreign-Related Rule of Law Education

-- Taking the Coordination between Criminal Law and International Law as an Example

Yang Jiao

Faculty of International Law, China Foreign Affairs University, Beijing, 100037, China

Abstract: Persisting in the coordinated advancement of domestic rule of law and foreign-related rule of law has become a hot topic in contemporary Chinese legal education. In the current teaching of foreign-related rule of law, there is a lack of coordination among various departments of law, and international law often "does not communicate" with other departments of law. This is specifically manifested as: the awareness of integrating all legal disciplines needs to be strengthened; the relationship between foreign-related rule of law in teaching and international law needs to be clarified; there are differences in the sources of various departments of law, and research methods vary greatly, with the integration of "tools" still pending. There are obvious differences in the topics taught by scholars from different departments of law. Based on the above, teachers need to enhance the international acumen in criminal law teaching; it is necessary to elucidate the common principles of international criminal rule of law; the research community should be broad and gradually establish a community for foreign-related rule of law education.

Keywords: Foreign-related Rule of Law; Domestic Law; International Law; Coordination.

1. Introduction

China has always advocated for the construction of a community with a shared future for mankind. Coordinating the advancement of domestic rule of law and foreign-related rule of law is the mission of Chinese law teachers and meets the needs of reality. It is the only way to maintain world peace, stability, and development, and to build a community with a shared future for mankind. Adhering to comprehensive governance according to the law is inseparable from interactions with the external world, and it is even more necessary to understand the rules and act according to the rules. Therefore, both domestic rule of law and foreign-related rule of law are important parts of China's current rule of law construction and should not be one-sided.

For the teaching of domestic rule of law and foreign-related rule of law, only through thinking exchange can the coordination of teaching and research results be achieved. The following text takes the teaching of criminal law and international law as examples to briefly analyze the problems existing in the coordinated advancement of domestic rule of law and foreign-related rule of law education.

2. Challenges in Harmonizing Domestic Law and International Law Teaching

In current academic research, although the number of research papers published in major legal journals is numerous, interdisciplinary legal research results are still relatively rare. There is a lack of awareness in conducting specialized research on the foreign-related provisions and extraterritorial application of domestic law, which is particularly evident in the field of public law. Behind this phenomenon, it reflects deep-seated issues such as disciplinary "barriers," ways of thinking, and academic evaluation of research outcomes.

Firstly, the teaching of various legal disciplines is not isolated and should cooperate with each other. Due to

historical reasons, the division of legal disciplines has been fixed, and the mode of master's and doctoral research has also been fixed. Although in recent years, some universities with autonomy have made certain explorations and attempts in terms of discipline setting and division, the knowledge structure and thinking system of professional researchers are still influenced by disciplinary thinking, making it difficult to achieve significant breakthroughs. Within the traditional legal disciplines, criminal law, procedural law, and international law are all parallel secondary disciplines. Teachers in each discipline cultivate and grow within their own specialties, lacking content from other disciplines in their knowledge structure. This apparent lack of knowledge reflects deeper differences in research methods and thinking patterns, leading to difficulties in substantive interdisciplinary integration.

Mainstream criminal law scholars generally focus on Chinese criminal law as their research field, and some scholars also include "foreign criminal law." The term "foreign criminal law" here mainly refers to the criminal law of the civil law system countries, represented by Germany and Japan, because the system, structure, and thinking patterns of these countries are consistent with our research, making it easier to establish a similar discourse system. This research approach assumes that foreign criminal law theories, especially those of the civil law system, are universally applicable and explanatory for our criminal law theories, and that foreign theories serve as evidence for our arguments about Chinese criminal law issues. From this research perspective, it can be seen that the study of foreign criminal law also serves the study of domestic criminal law, with foreign criminal law theories and viewpoints providing diverse perspectives and references for domestic criminal law issues. This method is in line with China's situation.

However, if criminal law scholars only focus on these common aspects of criminal law theory, their vision is limited. The existing mainstream research path in criminal law only hopes to follow the practices of countries that have developed the rule of law first, with little attention to the international

rule of law situation, which is different from true internationalization.

International interactions require international law, which is a crucial instrument for coordinating national wills, maintaining international order, and promoting global governance. The legalization of international relations has become a developmental trend in the transformation of international order and relations. Using international rules to express national demands, coordinate cooperation and development among nations, and resolve disputes in interactions has become the norm. As an independent secondary discipline, some universities are still piloting international law as a primary discipline, encompassing various academic categories such as public international law, international private law, and international economic law, with a vast content and numerous areas of involvement. In international affairs, China urgently needs to rely on international law to define and safeguard its interests and to counter the risks faced in external interactions.

In practice, the development of international criminal justice is based on history, combined with reality, and has its own patterns. International criminal law reflects more content of international public law and is a concrete practice of the legalization of international relations. International criminal law embodies the integration of various legal systems; for example, when establishing negotiations for several international criminal courts, representatives from various countries participated, and the final treaty outcomes also integrated the content of the common law system and the civil law system. This international rule of law, based on the new international order established after World War II, is the international community's confirmation of reality and is inseparable from the understanding of the rule of law in various countries. The ability to accumulate language learning directly relates to the formation of knowledge structures.

Secondly, the relationship between foreign-related rule of law and international law in the study still needs to be clarified. Foreign-related rule of law does not inherently equate to international law; what their relationship is, still requires a consensus to be formed within the academic community.

From the perspective of normative jurisprudence, foreign-related rule of law refers to the legislative, law enforcement, and judicial activities that are established or recognized by a state, take effect across national borders, protect the state's overseas interests, and participate in global governance. Its recognizing subject is the state, based on the sovereign management of a country; its scope of effectiveness is not limited to within the borders of a single country; and its direct purpose is to maintain the interests of its own nation. The development of foreign-related rule of law is urgently needed by states, and thus, the essential attribute of foreign-related law remains domestic law. The "Rule of Law China Construction Plan (2020-2025)" explicitly proposes to adapt to the needs of high-level opening up to the outside world, improve the system of foreign-related laws and rules, fill in the gaps, and enhance the level of legalization in foreign-related work.

Foreign-related rule of law is the practical aspect of Chinese law that contains foreign-related content. It is first and foremost Chinese law, based on current legislation, and adopts a Chinese perspective. The ultimate focus of teaching on foreign-related rule of law is to solve Chinese issues and address real concerns; the research on foreign-related rule of

law is permeated with the thinking of "using it for our purposes," forming a mechanism for interaction between international law and domestic law. In the work of foreign-related rule of law, international law is the most extensive and effective source of law, and the construction of foreign-related rule of law cannot be separated from the application of international rules. This indicates that education in foreign-related legal governance should not be confined to the participation and leadership of international law teachers.

Pure international law teaching may focus solely on legal issues between states outside one's own jurisdiction, may involve critiques of the latest international judgments, and may also include introductions and responses to the latest developments in international law. This kind of follow-up on legal developments abroad brings inherent advantages to research, helping to produce results that meet the demands of the times. However, if one only pays attention to international law and is even somewhat unfamiliar with new trends in domestic legislation, viewing our compliance with international requirements solely through the demands of international conventions, then we can only follow behind others. As some scholars have stated, "In terms of current research on China's foreign-related rule of law, most of it unilaterally focuses on strengthening the thinking and measures of foreign-related rule of law. There is a lack of systematic research from the perspective of the connection and interaction between foreign-related rule of law and domestic rule of law, and there is also a lack of legal proposals to safeguard China's efforts to promote the construction of a community with a shared future for mankind from the levels of legal rules, institutions, and systems."

Once again, there are differences between the sources of law in various departments, and there are more differences in research methods; the integration of "tools" is still a matter for the future. Is there a common method in legal education? There is no uniform answer to this question to begin with. The diversity of education methods is also a reflection of the prosperity of legal studies.

Domestic legislation and international legislation differ in their authorities, procedures, and levels of participation. Based on different sources of law, each department of law has formed its own research traditions and thought processes. Furthermore, driven by mainstream scholars, a education inertia has been established. This inertia increases the difficulty of interdisciplinary education.

At present, the mainstream of domestic legal research is Dogmatics of Law. Therefore, the teaching of criminal law mainly presents the methods of criminal law interpretation. The source of criminal law is statutory criminal law, and it is precisely this emphasis on adherence to statutory law that makes the research in criminal law fully introspective, forming a closed system and lacking attention to social reality.

As a safeguard law for other domestic departments of law, criminal law has a broad scope of legal interest protection, which leads to the subject matter of this discipline being extensive. At the same time, practice also provides momentum for the advancement of criminal law theory. China is a country with statutory law, and in the field of criminal law, there is a firm adherence to the principle of legality of crimes and punishments. The process of criminal law interpretation is logically strong, making it difficult for scholars from other fields to participate. If the logic within the discipline is overemphasized, it is difficult to form a correct understanding of the "outside world," and it is even more

challenging to make a reasonable response to the construction of foreign-related rule of law.

Taking the study of "illegal detention crime" as an example, the legal interest protected by this crime is the personal right of individual freedom. The teacher's focus on this crime is to determine the scope of freedom protected by this crime, which freedoms are adequately protected by other laws, which freedoms need to be elevated to the level of protection by this criminal offense, and which "freedoms" are not recognized by the law. Following this line of thought, criminal law will hypothesize various extreme cases to see if they constitute an infringement of the freedom in the crime of illegal detention. Specifically, it is a discussion of whether the legal interest protected by the crime of illegal detention is the freedom of action or the freedom of the human body. These two interpretations may affect the characterization of specific actions, that is, the determination of guilt or innocence. So it is evident that the content of criminal law teaching is becoming increasingly detailed.

The sources of international law include international treaties, international customary law, principles of international law, judicial precedents, and scholarly writings, among others. Since there is no unified legal enforcement body with supranational sovereignty in the international community, and the "principle of state consent" is a fundamental principle of international law, the teaching content of international law is broad and generally dispersed, which is different from domestic law.

The traditional teaching content of international law relies on international cases. The interpretation of these cases not only contains the interpretation of the spirit of international law but also reflects the changing and developing trends of international law. For example, in the field of international criminal law, the teaching on genocide mainly explores the process by which the international community has moved from not recognizing to recognizing genocide as a distinct crime, and analyzes the specific expansion and changing trends of the crime. The specific teaching approach starts from the representative judicial positions of each tribunal, from the Nuremberg trials after World War II, the Rwanda Tribunal, International Criminal Tribunal for the former Yugoslavia, other *ad hoc* international criminal tribunals, to the International Criminal Court, discussing various viewpoints in international criminal law. In international criminal law, the issue of jurisdiction of the tribunals is a hotly contested topic, as it relates to whether the entire case is initiated. In contrast, in the teaching of domestic criminal law, jurisdiction issues are rarely focused on, and there is little attention to existing precedents.

The perspective of international law teaching is very open, and the content of interest is not limited to domestic issues. There are some of the latest international situations, such as the arrest warrant case involving the former Sudanese President Bashir, the Russia-Ukraine conflict, etc. These cases involve relationships between countries and between states and international organizations, and they do not have a direct relationship with the application of domestic law in our country. These issues belong to the content of international law and do not necessarily belong to the content of foreign-related rule of law.

Even though both criminal law teachers and international law teachers pay attention to the field of international criminal law, there are inherent differences in their focus. Criminal law teachers focus on mainly includes international fugitive

repatriation and asset recovery, international judicial cooperation, and the principles of international criminal justice. These contents are closely related to China's practical needs and have strong operability. On the other hand, the content of international criminal law that international law teachers focus on is mostly the development trends of international adjudication, which is highly contemporary and helps to promote international dialogue, but some content has no relation to their own country. The outward-looking criminal law in foreign-related rule of law teaching needs to sort out domestic relevant legislation, find the "connection" between domestic law and foreign law, international law, and also conform to the recognized trends of the international community. In this process, it is necessary to pay integrated attention to various sources of law.

3. Promoting the Internationalization of Domestic Law Education

The article uses the example of extraversion criminal law to illustrate the internationalization path of domestic law teaching.

Firstly, it is essential to enhance the international acumen in criminal law education. The internationalization of criminal law teaching should be based on the integration of domestic and foreign-related rule of law, coordinate the content of various departments of law, closely monitor the development trends of international rule of law, address new challenges in the international situation, and safeguard national interests.

The Chinese criminal law education should not focus solely on issues of criminal law interpretation, nor should it merely refer to the criminal law theories of civil law system countries. Instead, it should identify the connection points between the development of Chinese law and the development of international rule of law. Judging the current international situation is a prerequisite for conducting such teaching work. The curriculum of foreign-related criminal law primarily encompasses the following modules: jurisdictional conflicts and their resolution in foreign-related criminal cases; governance of transnational crimes; extradition and other forms of criminal justice cooperation; and the establishment of a system for pursuing fugitives and recovering assets. Taking the hot issue of the extraterritorial application of Chinese criminal law as an example, firstly, as the extraterritorial application of law and "long-arm jurisdiction" rapidly becomes a practice in some countries, it is our right to make appropriate "countermeasures." Appropriately expanding the extraterritorial application of law can protect the interests of Chinese citizens and the nation without violating international law. Secondly, teaching on the extraterritorial application of law requires the cooperation of criminal law and international law theories. Criminal law needs to stipulate and clarify jurisdiction principles and the resolution of specific jurisdictional conflicts, which in turn depend on international law theories to provide legitimate and regular interpretations of jurisdiction principles. The provisions on universal jurisdiction in Chinese criminal legislation are vague and difficult to operate, while provisions on other jurisdictions are relatively complete. In addition, there is no special chapter or specific rules on foreign-related content in criminal law, and the systematic nature of legislation needs to be strengthened. Lastly, there are no provisions on the application of international crimes in

Chinese criminal law, and judicial practice is lacking. In the further, we should set up a special topic for foreign-related criminal law to explain and discuss its urgency and cross-cutting issues.

Secondly, it is necessary to elucidate the common principles of international criminal rule of law. The International Criminal Court (ICC), as a permanent international institution currently in place, is established based on a convention, and more than one hundred countries around the world have joined. Although the United States, China, and Russia have not joined the ICC, it cannot be denied that the ICC, through its adjudicative practice, continuously enriches and perfects international law, playing a more significant role in hot-spot events. Closely following the existing judgments and cases under investigation by the International Criminal Court, and promptly tracking the argumentation content of disputed issues, can better enrich the legal theory of international criminal law.

The international community's awareness of using rules is growing stronger, and the overall development trend of international judicial institutions is to expand their jurisdiction, wanting to intervene in serious events occurring worldwide. In response to this momentum to end "impunity," we need to strengthen our analysis, especially regarding situations where international institutions exercise jurisdiction over non-state parties, as well as sanction laws, whether they infringe upon a country's judicial sovereignty. These issues require timely research and the provision of legal strategies that protect national interests and are in accordance with legal principles. As some scholars have pointed out, China's foreign-related rule of law should adopt a stance that includes both the struggle paradigm to maintain its core interests and the cooperation paradigm that advocates common values and promotes mutually beneficial win-win cooperation. For international situations that are harm national interests, we must discern whether they belong to the common legal principles and respond in a timely manner at the legal level.

Thirdly, the professional teaching community for foreign-related rule of law should be broad. The construction of this community should be based on the coordinated development of the rule of law. It is necessary to widely accept legal scholars from all fields, to communicate and coordinate with each other to promote progress. As individual researchers, one should broaden their horizons and not confine their thinking to their own field, nor should they merely follow the research of mainstream scholars within their own discipline. Academic research should inherently be diverse, and the field of foreign affairs is highly comprehensive. Faced with the impact of new technologies such as AI, the demand for mature rule of law is more urgent. Scholars should share academic developments with each other, coordinate on the basic legal principles of their respective disciplines, and strengthen discussions. Only in this way can teaching outcomes be aligned with real-world needs.

For instance, to promote legislation that blocks improper jurisdiction by foreign countries, is a common mission for teachers in the field of foreign-related criminal law. In this process, scholars from different fields should share the basic knowledge and theoretical deduction models of their respective professions to avoid contradictions between legal contents.

Similarly, from the perspective of student learning and employment, real legal affairs often involve multiple legal

relationships. Foreign-related legal work cannot be distinguished by the direction of various departments of law. Therefore, the cultivation of foreign-related rule of law talents is comprehensive, including course lectures, topic design, and legal analysis. These all require coordination between domestic law and international law and cannot rely solely on existing teaching materials.

In the reform of curriculum teaching, firstly, research and analysis should be conducted, that is, to investigate and analyze the commonalities and differences between domestic law teaching and international law teaching in terms of textbook structure, teaching methods, reference materials, and research threads. Taking criminal law and criminal procedure law teaching as examples, what are the foreign practices and international practices that Chinese university teachers often focus on? Are these contents consistent with the foreign-related provisions of our country's laws, and how are these contents coordinated in teaching? After that, it is necessary to research whether it is necessary to separately offer courses on the extraterritorial application of Chinese law and the blocking application of foreign law, and to study the status and subject attributes of these contents within the existing legal system. Finally, it is also necessary to summarize the foreign-related rule of law issues that our country needs to address urgently, and to implement these in the teaching design of various departments of law, and to evaluate the plans in a timely manner.

Acknowledgments

Funding: This research was supported by 2022 Key Projects of Teaching Management and Reform in CFAU: Persisting in the coordinated exploration of teaching practices for domestic rule of law and foreign-related rule of law in Xi Jinping's Thought on the Rule of Law.

References

- [1] Wang Han, (2021). On the Cultivation of the Rule-of-Law talent of Foreign-Related Affairs and the Construction of the Rule of Law in Foreign-Related Affairs, *Legal Education Research* (1):24.
- [2] Zhang Yan, (2022). The Concept and System of Foreign-Related Rule of Law, *China Legal Science* (3):269.
- [3] Liu Renshan, (2022). Main Progress, Obvious Problems and Suggestions on Research Concerning Foreign-Related Rule of Law in China, *Journal of International Law* (1):35-51.
- [4] ICTY, Prosecutor v. Tadić, Case No. IT-94-1-A, Appeal Judgement, 15 July 1999.
- [5] ICC, Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision on the confirmation of charges, 29 January 2007.
- [6] Stephen Ranieri, (2016). Extended Joint Criminal Enterprise in International Criminal Law: From Foreseeability, to Intention, to Control over the Crime, *The Journal of Criminal Law* (6):436-445.
- [7] Song Xiao, (2021). The System Construction of Extraterritorial Jurisdiction: the Demarcation between Legislative Jurisdiction and Judicial Jurisdiction, *Chinese Journal of Law* (3):171-191.
- [8] Chen Xingliang, (2010). Dogmatics of Criminal Law, China Renmin University Press, 19.
- [9] Zhang Mingkai, (2021). Crimes against person and crimes against property, Peking University Press, 117.

[10] Li Shouping,(2022). Improvement and Development of the International Legal Regulation for Autonomous Weapons Systems, Wuhan University Law Review (1):165-174.

[11] He Zhipeng,(2021). Foreign-Related Rule of Law in a Modernizing Great Power, Jilin University Journal Social Sciences Edition (2):49.