

法律外交与国际法治（译本 B） Legal Diplomacy and International Rule of Law

作者：林巍 张法连

译者：杨现晴

概括而言，“法律外交”是指以法治思维、通过法律手段和程序处理对外关系、国际事务的外交活动。

所谓“国际法治”，是指在国际社会中追求和推广法治原则、力图以法律规范为基础构建、调整合理公正国际秩序的理念。

显然，“法律外交”与“国际法治”之间高度重合，但又有所不同。

二者都有这样一些性质，如多边性——无论是法律外交还是国际法治，都需要多个国家、地区或国际组织的参与，通过制定、遵守共同的法律规则，以实现共同利益的最大化；合作性——以强烈的合作精神为驱动，求同存异，顾全大局，方能双赢；平等性——各方都有均等表达自己观点、维护自己权益的地位和份额，以求取得真正公平的结果；全球性——将法治的期待与实践超越国内体制的狭隘视野，以人类共同利益为基础，旨在促进世界范围的和平与繁荣。

具体而言，国际法治的基本原则是法律外交理论体系的重要内容，而国际法治的贯彻与执行又是

In a nutshell, “legal diplomacy” refers to diplomatic activities that handle foreign relations and international affairs with a legal mindset, through legal means and procedures.

The so-called “international rule of law” refers to the concept of pursuing and promoting the principle of the rule of law in the international community and striving to build and adjust a reasonable and just international order based on legal norms.

While “legal diplomacy” and “international rule of law” demonstrate a high degree of conceptual convergence, they remain substantively differentiated.

Obviously, “legal diplomacy” shares some of the same characteristics with both. For instance, it is multilateral — whether it is legal diplomacy or international rule of law, the participation of multiple countries, regions or international organizations is required, and common legal rules are formulated and observed to maximize common interests; it is cooperative — driven by a strong spirit of cooperation, seeking common ground while reserving differences, and considering the overall situation, so as to achieve a win-win situation; it is equal — all parties have an equal position and share to express their views and safeguard their rights and interests, in order to achieve truly fair results; and it is global — transcending the narrow perspective of domestic systems, the expectations and practices of the rule of law are based on the common interests of humanity, aiming to promote peace and prosperity worldwide.

Specifically, the fundamental principles of the international rule of law constitute a crucial component of the theoretical framework of legal diplomacy. Meanwhile, the implementation and enforcement of

法律外交实践体系的核心部分。可以说，法律外交是在国际法的基础上、推行国际法治理念，促进国际社会的有序、良性发展；而法律外交的广泛实践，又不断丰富、完善着国际法体系的形成。

就执行主体而言，如同国家是国际法的唯一主体，国际法治的倡导与执行者亦是以国家和国际组织为主，而法律外交的主体则呈多元化，包括外交部等部委、议会（全国人大）、司法部门、法学院校、研究机构、律师协会及法律专家学者等。

其实，国际法治的“法”应该特指“国际良法”，即预期得以遵行的国际规范都是好的规范，具有妥当的价值目标，如符合人本主义、和谐共存、可持续发展等价值要求，同时具有规范的法律形式——严谨的逻辑和完善的体系。国际法治的“治”，是指其民主而透明的国际立法程序和严格而有效的国际法监督机制。所有这些，又是在国际社会上有效展开法律外交的基础和保证。

对于什么是“国际社会”有着不同的解释，有时常与“国际共同体”相混淆；现在一般认为，是指世界政治、经济的各行为主体为实现各自的利益、在频繁互动中所构成的一个整体，但其本质特征，应是罗马法谚所说的：“哪里有法，哪里就有社会”。显然，“法治”才是法律外交与国际法治的核心。

在国际社会中，各主权最大利益的扩展是无限的，而人类所共处

the international rule of law represent the core elements of its practical system. It can be stated that legal diplomacy, grounded in international law, advances the concept of the international rule of law and contributes to the orderly and sustainable development of the international community. Conversely, the extensive practice of legal diplomacy continuously enriches and refines the evolution of the international legal system.

Specifically, in terms of the entities responsible for implementation, just as states constitute the primary subjects of international law, the principal advocates and enforcers of the international rule of law are predominantly states and international organizations. However, the participants involved in legal diplomacy exhibit a diverse range, encompassing governmental agencies such as ministries of foreign affairs, legislative bodies (e.g., national parliaments or people's congresses), judicial authorities, law schools, research institutes, bar associations, as well as legal experts and scholars.

In fact, the concept of “law” within the framework of the international rule of law should be understood as referring specifically to “good international law”—that is, international norms that are expected to be followed must be of high quality, embodying appropriate value objectives such as humanism, harmonious coexistence, and sustainable development, while also possessing a formal legal structure characterized by rigorous logic and a comprehensive system. The term “governance” in this context denotes democratic and transparent international legislative procedures, as well as stringent and effective mechanisms for the supervision of international law. These elements collectively constitute the foundation and guarantee for the effective implementation of legal diplomacy within the international community.

There exist multiple interpretations regarding the definition of the “international community,” which is frequently conflated with the concept of “international society.” At present, it is widely accepted that the term refers to a collective entity formed through continuous interactions among various political and economic actors on the global stage, aiming to pursue their respective interests. Nevertheless, its fundamental characteristic can be aptly captured by the Roman legal maxim: “Ubi societas, ibi jus” (“Where there is society, there is law”). This underscores that the principle of “rule of law” constitutes the core of both legal diplomacy and the international rule of law.

Within the international community, the pursuit of maximum national interests by sovereign states is inherently expansive, whereas the natural

的地球上的资源是有限的，为避免这种冲突重回丛林状态，以有效的法律外交进行国际斡旋和以严谨的国际法治进行法律制约，就至关重要。

作为国际社会中不断发展壮大的新兴大国，中国须不失时机地把握好法律外交与国际法治两个方面，并将其有效地统一起来，从而在当今世界百年未有之大变局中，发挥其独特的巨大作用。

resources shared by humanity remain finite. To prevent such tensions from devolving into a “law of the jungle” scenario, it is essential to engage in effective legal diplomacy as a means of international mediation, and to establish binding legal constraints through a robust framework of international rule of law.

As an emerging major power that continues to develop and expand its influence within the international community, China must proactively seize this strategic opportunity to effectively integrate legal diplomacy with the principles of international rule of law, thereby playing a distinctive and significant role in the current global landscape, which is undergoing profound transformations unprecedented in a century.