

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

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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

In general, “legal diplomacy” refers to diplomatic activities that employ a rule-of-law mindset and utilize legal means and procedures to handle foreign relations and international affairs.

“International rule of law” denotes the pursuit and promotion of the principles of the rule of law in the international community, aiming to construct and adjust a reasonable and just international order based on legal norms.

Clearly, “legal diplomacy” and “international rule of law” share significant overlap, yet they also differ.

Both possess certain properties, such as multilateralism—whether it is legal diplomacy or international rule of law, both require the participation of multiple countries, regions, or international organizations to maximize common interests by formulating and adhering to shared legal rules; cooperativeness—driven by a strong spirit of cooperation, seeking common ground while reserving differences, and prioritizing the overall interest to achieve mutual benefits; equality—ensuring that all parties have an equal opportunity to express their views and safeguard their rights, thereby achieving truly fair outcomes; and globality—transcending the narrow perspective of domestic systems, basing the expectations and practices of the rule of law on the common interests of humanity, and aiming to promote peace and prosperity worldwide.

Specifically, the basic principles of international rule of law constitute an important part of the theoretical framework of legal diplomacy, while the implementation and enforcement of international rule of law form the core of the practical framework of legal diplomacy. It can be said that legal diplomacy promotes the concept of international

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

rule of law based on international law, fostering an orderly and positive development of the international community. Conversely, the extensive practice of legal diplomacy continually enriches and refines the formation of the international legal system.

Regarding the executing entities, just as states are the sole subjects of international law, the advocates and enforcers of international rule of law are primarily states and international organizations. In contrast, the subjects of legal diplomacy are diverse, including ministries such as the Ministry of Foreign Affairs, parliaments (National People's Congress), judicial departments, law schools, research institutions, bar associations, and legal experts and scholars.

In fact, the “law” in international rule of law should specifically refer to “international good law,” meaning that the international norms expected to be followed are good norms that possess appropriate value objectives, such as conforming to humanism, harmonious coexistence, and sustainable development, while also having a rigorous legal form—logical coherence and a comprehensive system. The “governance” in international rule of law refers to its democratic and transparent international legislative procedures and strict and effective international legal supervision mechanisms. All these serve as the foundation and guarantee for effectively conducting legal diplomacy in the international community.

There are different interpretations of what constitutes the “international community,” often confused with the “international community of states.” Currently, it is generally believed that the international community refers to an integrated whole formed by various political and economic actors in the world who pursue their respective interests through frequent interactions. However, its essential characteristic is as the Roman legal maxim states: “Where there is society, there is law.” Clearly, “the rule of law” is the core of both legal diplomacy and international rule of law.

In the international community, the expansion of the maximum interests of each sovereign state is unlimited, while the resources on the Earth we share are finite. To avoid reverting to a state of nature marked by conflict, it is crucial to employ effective legal diplomacy for international mediation and rigorous international rule of law for legal constraints.

As an emerging major power continuously growing and strengthening in the international community, China must seize the

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。

opportunity to effectively harmonize legal diplomacy and international rule of law, thereby playing a unique and significant role in the profound transformations unfolding in the world today.