



RCCL International Symposium on ‘The Rule of Law in Chinese Foreign Affairs’ (30 November 2020)

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On 19 September 2020, China’s Ministry of Commerce formally introduced the Unreliable Entity List regime as an attempt to protect the development interests of China. Laws reshaping the Chinese foreign policy were also passed. In order to promote the rule of law in the Chinese foreign relations and deepen the understanding on how the Chinese government conduct foreign affairs, the Centre for Chinese and Comparative Law (RCCL) of the City University of Hong Kong (CityU) School of Law, in collaboration with the Fudan University Law School and the Chinese Journal of Comparative Law, held an online international symposium on ‘The Rule of Law in Chinese Foreign Affairs’ on 30 November 2020. This Symposium was actually a continuation or follow-up event of a conference previously held by Fudan University earlier this year. Twenty-three scholars from Hong Kong, mainland China and Germany were invited to participate in this closed-door symposium.

The Symposium started with **Prof. Jiangyu WANG**, Director of the RCCL, and **Prof. Congyan CAI**, Professor of the Fudan University Law School and Xiamen University Law School, delivering the opening speeches by introducing the background and purpose of this Symposium and expressing their gratitude to the participating scholars. It was followed by three panel discussions in which 11 papers were presented. During the panel discussions, each of those 11 papers — which were the revised/fine-tuning versions of the original papers presented at the Fudan University Conference — was firstly presented by its author(s). After that, the paper was commented by an assigned commentator who gave further comments and suggestions to the author(s) as to how to further improve the paper.



Prof. Jiangyu Wang (left) and Prof. Congyan Cai (right) delivered the opening speech.

The first panel was titled ‘Extraterritoriality and Immunity in Chinese Law’. Moderated by **Prof. Tao DU** (East China University of Political Science and Law), speakers of this panel shared their views on the issues of extraterritoriality and diplomatic immunity.

Prof. Zhengxin HUO (China University of Political Science and Law) and **Dr. Man YIP** (Singapore Management University) (commented by **Dr. Massiom LANDO**, CityU) started the panel discussion by introducing the current Chinese system of extraterritoriality and compared it with the American model. Suggestions were also made for the future development of extraterritoriality, including that it should be based on multilateralism, instead of unilateralism, and that checks and balances should be put in place.

Dr. Peng WANG (Xi’an Jiaotong University) (commented by **Dr. Mandy Meng FANG**, CityU) then discussed the future transition of the Chinese foreign policy from offering absolute immunity to a more flexible doctrine of immunity based on reciprocity. However, he has also recognised that the unique Chinese model of hybrid government-market relationship may pose a challenge for this transition. Several other features and challenges, including the commercial exception to immunity, and the relationship between State organs, were also discussed.

Lastly, on the role of the executive branch in the application of extraterritorial laws, **Prof. Shiping LIAO** (Beijing Normal University) (commented by **Dr. Stephenson Pok Yin CHOW**, CityU) explained how the limited role of the Chinese judiciary has contributed to the importance of the executive branch in this regard. Also, with reference to recent cases, he observed that there is a ‘fragmented’ approach to enforcement of these laws. Lastly, suggestions on how the executive branch can apply the law in a modest and legitimate way were offered.

The second panel was titled ‘International Law and Domestic Law’. Moderated by **Prof. Shiping LIAO**, the speakers shared their views on the interaction between international law and the domestic law of China.

Starting the panel discussion, **Dr. Yifeng CHEN** (Peking University) (commented by **Prof. Jiangyu WANG**) introduced the relevance of the foreign relations law to domestic affairs nowadays. Although foreign relations, as a self-standing discipline, is originated in America, he proposed some ways for Chinese scholars to approach the subject. Meanwhile, he also expressed

worries that foreign relations may pose dangers to international law in this time of anti-globalisation. Reflecting upon the findings, he questioned the kind of foreign relations between China and the rest of the world that we would like to see.

Prof. Congyan CAI and **Ms Yifei WANG** (Xiamen University) (commented by **Dr. Fozia Nazir LONE**, CityU) then discussed transparency as the most important value in the Chinese rule of law. They noted that China is facing both internal and external pressures for more transparency in foreign affairs. On the internal aspect, for example, they observed that, even with the freedom of information regulations in place, transparency is still not improved. The speakers concluded that China has to develop a stronger legal framework for transparency in foreign affairs.

On the other hand, **Dr. Yang LIU** (Renmin University of China) (commented by **Dr. Peter Shucheng WANG**, CityU) examined the history of the Chinese foreign relations dating back to the Republic of China (ROC) era. The main subject under review was Article 141 of the Constitution of the ROC (1946), and he discussed the drafting history of and the rationale behind this article. He opined that, although the current Constitution of the People's Republic of China has no equivalent provision, this history may shed lights on how the People's Republic of China should conduct its foreign affairs.

Last presenter of the second panel was **Dr. Chaoyi JIANG** (Fudan University) (commented by **Prof. Jiangyu WANG**) who shared her views on the gaps between the law and practice in the making of treaties. Differences between the configurations of the American and Chinese foreign relations laws were examined, and some gaps and mismatch of powers between the State Council and the National People's Congress were observed. Nevertheless, she considered that inter-branch accountability is still practised through self-constraint and internal coordination.

The final panel was titled 'The Rule of Law and China's Foreign Policy'. The speakers discussed how the rule of law could be reflected by the Chinese foreign policy under the moderation of **Prof. Congyan CAI**.

Focusing on the new Chinese Civil Code, **Prof. Tao DU** and **Dr. Xiuyan FEI** (East China University of Political Science and Law) (commented by **Prof. Qiao LIU**, CityU) analysed the contents of the new Chinese Civil Code in three aspects: contents reflecting China's special conditions (including the socialist values of the political system and the socialist market), contents with international characteristics (the chapter on personality rights and contracts), and contents on national and international concerns (the right of habitation and technology contracts). On these footings, the speakers considered the possible impacts of the new Chinese Civil Code, domestically and globally.

Prof. Björn AHL (University of Cologne) (commented by **Prof. Michael TSIMPLIS**, CityU) then discussed the relationship between China and the global constitutionalism. He firstly discussed the implications of China's Fourth Plenum decision that requires the extension of the Chinese rule-of-law-based governance model to foreign relations, and offered insights on how the Chinese scholars viewed global constitutionalism. Finally, he considered whether elements of

global constitutionalism has reappeared under the guise of the Chinese concept of community of common destiny.

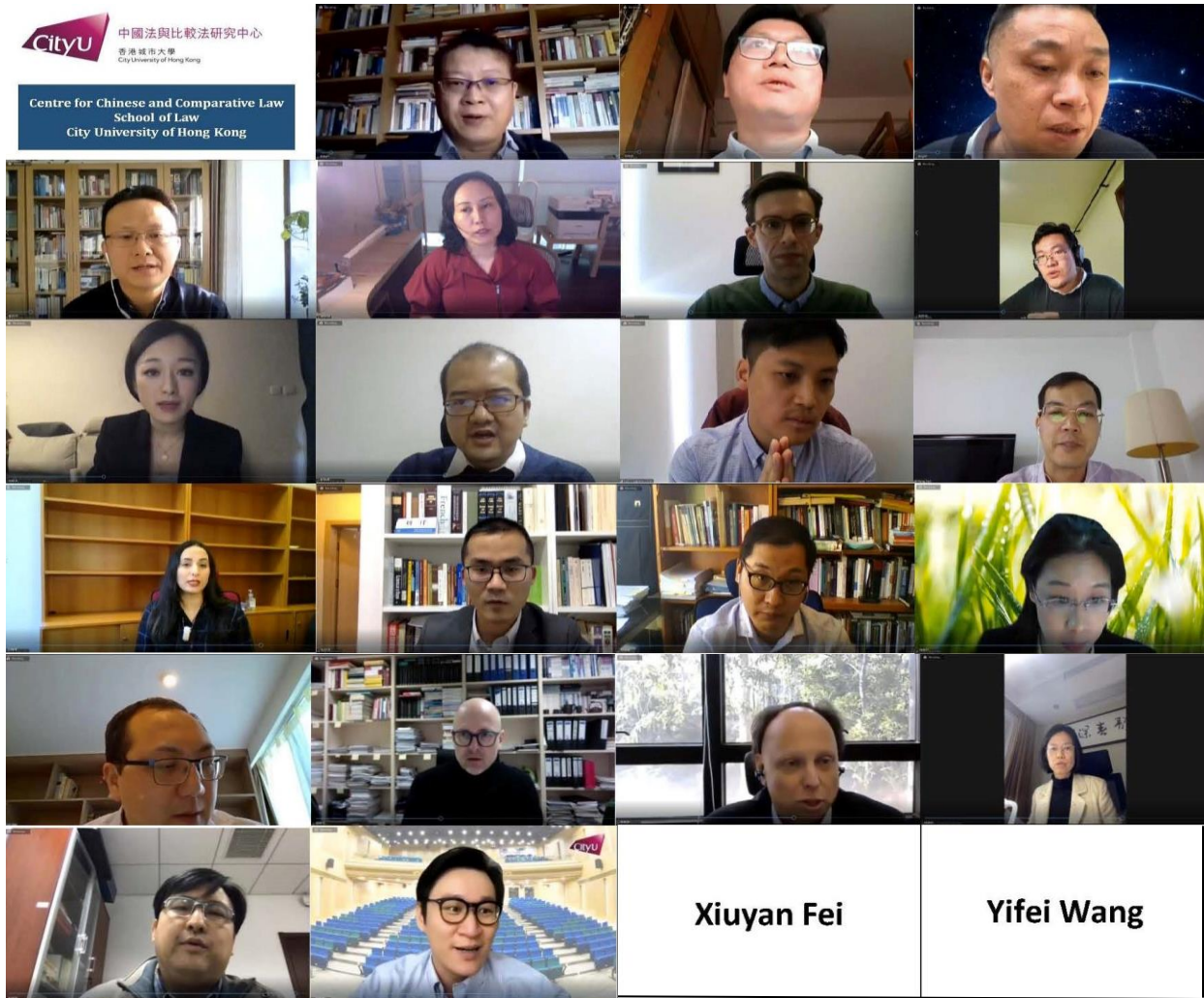
On the issue of unilateral sanctions, **Dr. Wenjie YU** (Southeast University) (commented by **Prof. Jianyu WANG**) discussed how China can implement unilateral sanctions while adhering to the rule of law. She firstly noted that China generally refrains from imposing such sanctions without authorisation of the United Nations or international law, and then followed by an analysis of the legal basis for such sanctions. Lastly, she considered that, since unilateral sanctions are, in essence, political tools, limits of law and domestic jurisdiction should be introduced to build a unilateral sanction scheme with the value of the rule of law.

Finally, **Dr. Xinyu LENG** (China University of Political Science and Law) (commented by **Dr. Tianxiang HE**, CityU) discussed China's Law of Defence Mobilization. He started with the analysis of the latest amendment to the Law, which introduced a new triggering condition of 'interest of national development'. He then considered the possible results of imposing national defence obligations on citizens during war time, and its relationship with the concept of 'direct participation in hostilities' under international humanitarian law. Finally, he discussed how property rights may be limited by the military under the Law, and its implications on the relevant constitutional rights.

The symposium ended with the closing speeches by **Prof. Jiangyu WANG** and **Prof. Congyan CAI**, who thanked the efforts made by the participating scholars. They also invited the authors of the 11 papers presented at the Symposium to take into consideration the valuable comments provided by the commentators during the Symposium to fine-tune their papers, and then submit their finalized papers for inclusion in a special issue of the Chinese Journal of Comparative Law which is expected to be published in March 2021.



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Speakers and commentators of the Symposium