

The forum "Great Change & Rule of Law - Foreign-related Dispute Settlement and ODR" was successfully held at Shanghai Jiao Tong University

The social perspective of law The social perspective of law 2023-05-22 01:00

Posted on Shanghai

On the morning of May 5th, the forum "Great Change & Rule of Law - Foreign-related Dispute Settlement and ODR", jointly sponsored by the Institute of Chinese Law and Society of Shanghai Jiao Tong University, the Kaiyuan Law School of Shanghai Jiao Tong University and the School of Foreign-related Rule of Law of East China University of Political Science and Law, was successfully held in Conference Room 15, North 206th Floor, Xuhui Campus of Shanghai Jiao Tong University. This forum is highly in line with the strategic deployment requirements of "coordinating and promoting the rule of law in China and foreign-related law" put forward by General Secretary Xi Jinping in the report of the 20th National Congress of the Communist Party of China, closely focusing on the theme of "handling foreign-related disputes", analyzing ODR and other specific resolution mechanisms in detail, and deeply exploring the path of cultivating foreign-related rule of law talents.

Ji Weidong, Senior Professor of Liberal Arts and Dean of China Institute of Law and Society of Shanghai Jiao Tong University, Cheng Jinhua, Distinguished Professor, Vice Dean of the Graduate School and Vice Dean of the China Institute of Law and Society of Shanghai Jiao Tong University Kaiyuan Law School, Lin Xifen, Professor and Deputy Dean of Shanghai Jiao Tong University Kaiyuan Law School and Vice Dean of China Institute of Law and Society, Yang Li, Professor of Shanghai Jiao Tong University Kaiyuan Law School, Executive Vice President of the Smart Court Research Institute, and Director of the Research Base for the Governance of the Source of Conflicts and Disputes in the People's Court, Associate Professor of the Institute of Oriental Studies, University of Oxford. Matthew S. Erie, Associate Researcher, Center for Law and Society, Professor of East China University of Political Science and Law and Executive Vice Dean of the School of Foreign-related Rule of Law, Shen Wei, Distinguished Professor of Shanghai Jiao Tong University Kaiyuan Law School, Zheng Ge, Professor of Shanghai Jiao Tong University Kaiyuan Law School and Co-Director of the Planning Committee of China Academy of Law and Society, Li Xueyao, Professor of Shanghai Jiao Tong University Kaiyuan Law School and Director of the Law and Cognitive Science Research Center, Xie Jie, Associate Professor of Shanghai Jiao Tong University Kaiyuan Law School and Executive Director of the Securities Crime Research Center, Huang Kaishen, postdoctoral researcher of the Institute of Chinese Law and Society of Shanghai Jiao Tong University, Ma Le, associate professor and deputy dean of the School of Foreign Rule of Law of East China University of Political Science and Law, He Jiong, associate professor of the School of Foreign Rule of Law of East China University of Political

Science and Law, Li Xiaoxi, associate professor of the School of Foreign Rule of Law of East China University of Political Science and Law, and more than 50 teachers and students from the law schools of Shanghai Jiao Tong University, East China University of Political Science and Law, Fudan University and other universities actively participated in the joint forum.



The opening ceremony was presided over by Professor Lin Xifen. He said that the Institute of Chinese Law and Society of Shanghai Jiao Tong University, the Kaiyuan Law School of Shanghai Jiao Tong University, and the School of Foreign-related Rule of Law of East China University of Political Science and Law jointly held such a high-level academic forum for the first time after the epidemic in three years, which is very rare and honored to participate, and he solemnly introduced the participants of this forum and extended a warm welcome to them.



Professor Ji Weidong said in his opening speech that first of all, he warmly welcomed everyone to the joint forum of "Great Change & Rule of Law - Foreign-related Dispute Settlement and ODR", and expressed his best wishes to the strategic partner of the China Academy of Law and Society - the School of Foreign-related Rule of Law of East China University of Political Science and Law, which was recently established, and especially thanked Dean Jing and his colleagues for their in-depth participation in this forum. Professor Erie is not only the bridge and link between the Institute of Oriental Studies and the Research Center for Law and Sociology of Law at the University of Oxford and the Institute of Chinese Law and Society of Shanghai Jiao Tong University, but also serves as the editorial board member of the Asian Journal of Law and Society, an international English journal sponsored by the Institute, and also acts as a bridge and link between the University of Cambridge and the University of Oxford, where the magazine's publishing house is located. Professor Erie loves Chinese culture, not only named himself Chinese Yin Mengxiu and WeChat name Lamb Kebab, but also has been actively engaged in cooperation with domestic academic institutions such as the Institute of Chinese Law and Society of Shanghai Jiao Tong University, so this joint forum first invited Professor Yin Mengxiu to introduce his ongoing research and the international cooperation projects he is responsible for, and introduce and elaborate on the purpose and goal of his attempts to communicate with Chinese scholars. Then, one of the co-organizers of the forum, Professor Leng Leng Ling, Executive Vice Dean of Huazheng's School of Foreign-related Rule of Law, and Shen Wei, Distinguished Professor of the Institute of Chinese Law and Society of Shanghai Jiao Tong University and Kaiyuan Law School, were invited to give keynote speeches, focusing on the frontier issues of foreign-related dispute resolution mechanisms and law enforcement and justice in the context of the construction and internationalization of the rule of law in China. In the roundtable discussion session, Professor Zheng Ge, Professor of Kaiyuan Law School of Shanghai Jiao Tong University and Co-Director of the Planning Committee of the China Academy of Law and Society, served as the moderator, and was honored to invite teachers from Jiaotong University and Hua Zheng to speak

freely on China's social transformation, rule of law and order, judicial reform, dispute resolution and the application of artificial intelligence in the legal profession, hoping to take this opportunity to further strengthen exchanges and cooperation between China and other countries in legal education and other aspects. To work together to build a new world order of peace, prosperity and justice.



The keynote speech session was moderated by Professor Yang Li. He said that today's keynote speech mainly focuses on the rule of law involving foreign interests, and the understanding of this theme involves one of the things we do after we go out, and the other is the recognition and enforcement of foreign arbitral awards in China after foreign enterprises come to China. He also looked forward to the keynote speeches of Professor Erie, Professor Calm and Professor Shen Wei.



Professor Erie gave a keynote speech entitled "China and Transnational Data Governance". Drawing on existing research from the China Law and Development Research Program, he discusses how China is becoming a global provider of digital infrastructure and its impact on transnational data governance. He raised four research questions: First, does China's Digital Silk Road have an impact on data governance outside of China? What is the effect of this foreign-related legal power? Second, if such an effect exists, what theory should we preferentially use to explain it? Third, as a legal sociologist, from a methodological point of view, what are the methods of legal sociology research that we should adopt? Fourth, what kind of cooperation has China had with foreign courts, and what role does ODR play in China's transnational data governance in the context of China's growing influence? Professor Erie gave an in-depth explanation of research concepts such as digital infrastructure, transnational data governance, and the digital Silk Road with examples. Around the core concept of data governance, it explains why it is broader than Internet governance, because it treats the Internet as a necessary data exchange infrastructure for data infrastructure, and it involves a wider range of legal norms. It relies on legal regimes such as telecommunications law, corporate law, and compliance, while also involving a reflection on digital authoritarianism in the current discourse of the West. He also explained the EU's idea of trying to become a global data regulator in the context of the Brussels effect. He mentioned that Bradford pointed out some factors of the

Brussels effect: first, the huge size of the market, second, it has a certain regulatory ability, third, there are very strict standards, fourth, inelastic goals, and fifth, indivisibility. These features are strongly relevant to GDPR legislation. The U.S. takes a completely different model for data governance practices, sometimes referred to as a multistakeholder approach. And the digital Silk Road that China is building, which will bring tech companies to operate in third countries, has its own unique appeal. The positive impacts include: first, foreign governments emulating China's approach to data governance and establishing cyber sovereignty and data sovereignty; Second, Chinese enterprises have played an important role in the formulation of digital technology standards such as 5G and 6G, not only providing technical and industrial standards, but also exporting the concept of digital development; Third, Chinese companies provide digital infrastructure and platforms in host countries along the Digital Silk Road. Therefore, the key driver of the Beijing effect is the balance between the driving force from China and the pull from the local market. Professor Erie has innovatively presented vivid examples of Chinese legal transplantation in Cambodia, Vietnam, Uzbekistan, South Africa and Pakistan, some of which have succeeded and some have failed, but studying these cases helps to show China's relationship with other infrastructure providers in terms of data governance, how China's influence is strengthening with the development of the Digital Silk Road, and Chinese companies are adapting to a very challenging regulatory environment. Finally, Professor Erie concluded that China's Digital Silk Road is an emerging form of infrastructure data governance enabled by specific technologies, which enhances China's ability to use network interdependence, affecting the digital development and domestic data governance of various countries. At the same time, I also hope to gain an in-depth understanding of the role of ODR in China's transnational data governance and its construction in China and abroad, and how ODR centers jointly established outside China are linked to multilateral platforms (such as RCEP, CPTPP, DEPA), as well as the application of law, the establishment of procedural rules, challenges and opportunities, and many other issues.

Professor Yang Li thanked Professor Erie for his wonderful speech. At the same time, Professor Jing's mention of the online dispute resolution in Kangmei Pharmaceutical's securities fraud case, and Professor Zheng Ge's rich online dispute resolution practice in the China International Commercial Court and arbitration commissions all over the world during the epidemic have all responded to Professor Erie's questions in a timely manner.



Professor Calm gave a keynote speech entitled "Enforcement Cooperation in Cross-border Listings". Taking the popular Luckin Coffee as an example, Professor Calm introduced the case of Luckin Coffee, which triggered a new round of Chinese concept stock crisis, and analyzed the once deadlocked situation in Sino-US cross-border audit supervision cooperation reflected in the Luckin case, as well as the new progress made in Sino-US cross-border audit supervision cooperation between China and the United States in the past two years after decades of negotiations. On April 2022, 4, the CSRC, together with the Ministry of Finance, the State Administration of State Secrets and the National Archives Administration, issued the Provisions on Strengthening the Management of Confidentiality and Archives Related to the Overseas Issuance and Listing of Securities, further protecting the legal system for cross-border joint auditing, which has attracted much attention from the market. The amendments to the Provisions will provide clearer guidance on the confidentiality and file management work involved in overseas listings, and facilitate relevant market entities to efficiently carry out overseas issuance and listing activities in accordance with laws and regulations. It will guide enterprises to properly manage confidential and sensitive information, and fulfill the main responsibility of maintaining national information security; It will also help relevant regulatory authorities and overseas regulators to carry out cross-border regulatory cooperation activities, including joint inspections, safely and efficiently, and jointly safeguard the rights and interests of

global investors. On December 2, 2022, the Public Company Accounting Oversight Board (PCAOB) and the China Securities Regulatory Commission (CSRC) jointly announced historic progress in cross-border audit enforcement. Based on this, Professor Calm summarized the trend of the deadlock in law enforcement cooperation in cross-border listings between China and the United States: most likely, China and the United States reached a new cooperation framework agreement acceptable to both sides, giving US law enforcers more enforcement powers; At the same time, another feasible approach is to implement financing schemes for different Chinese concept stock enterprises according to the nature of the industry; The collective delisting of Chinese concept stocks three years after the Foreign Companies Accountability Act came into force is unlikely.



Professor Shen Wei delivered a keynote speech entitled "Recognition and Enforcement of Foreign Arbitral Awards in China". Professor Shen Wei's research report mainly includes several parts, such as proposing research questions, completing research design, data collection and analysis, discussion of results, and drawing research conclusions. Based on an empirical study of 1995 approvals of the Supreme People's Court from 2015 to 98 on the initial rulings of lower courts not to enforce foreign or foreign-related arbitral awards, the presentation provided a new perspective for understanding the internal reporting system for recognition and enforcement in foreign-related arbitral awards from the background and original intention of establishing an internal reporting system, the evolution of the internal reporting system, the factors affecting the overturning of the initial ruling of lower courts, and the relationship between the overturning rate and local protectionism. It concludes that local protectionism is exaggerated as a factor influencing China's non-enforcement of foreign arbitral awards, and that internal reporting systems can effectively curb local protectionism. Finally, looking ahead, Professor Shen Wei talked about the rise of alternative justice and its impact on global business actors: first, changes in regulations can guide the choice of business operators;

Second, the perception of access to justice through alternative dispute resolution mechanisms affects the willingness of commercial parties to arbitrate, litigate or settle; Third, further evaluation is needed to understand a more detailed response of the parties to the shift from litigation to alternative dispute resolution mechanisms, i.e. what is the appropriate amount of policy incentives; Fourth, the value of empirical research, that is, policy implications for China's judicial reform.



After the keynote speech, we will enter the roundtable discussion chaired by Professor Zheng Ge.



Professor Cheng Jinhua said that after listening to the reports of several professors, four points of inspiration were generated. The first is the great transformation of Katrani, which is in the context of a great transformation from the industrial era to the information age to the digital society, ODR is on the one hand an update and replacement of the traditional dispute resolution method, but more importantly, it is actually an inevitable response to digital life and digital disputes formed by digital life. The second is the Great Divergence, in the context of the digitalization of the aforementioned governance, although the digitization of our lives and the digitalization of disputes is inevitable and very open, but because of the rise of nationalism, our governance methods have become more closed, in fact, different countries or different plates of political bodies have adopted different paths to deal with this problem. The third can be called the great retreat, the country we formed in the industrialization era in the past three to five hundred years, the legal system centered on the nation-state and the corresponding international rules, in the face of such an era of digital transformation, there are problems, resulting in now we are actually facing digital governance, cross-border transmission of global data, cross-border disputes have not formed a set of effective governance. For example, the development of the metaverse has led to a decrease in the scarcity of land and space, which means that the property value of land and a set of governance rules related to it are changing, but because there is currently no way to effectively deal with it, everyone is constantly moving towards conservatism. Professor Cheng Jinhua hopes that one day we or our scholars can truly embrace the big change and make efforts to change some research gaps. Professor Zheng Ge talked about Matthew's other article Legal Systems Inside Out, which is actually talking about many of the issues that Professor Jinhua just talked about.



Professor Li Xueyao mainly focused on the theme of data regulation and great changes, and opened a discussion on artificial intelligence legislation and supervision. He compared the EU's AI legislation and China's April 4 Measures for the Administration of Generative AI Services (Draft for Comments), and focused on four themes. First, the legislative necessity of generative AI regulation and its positioning, because if the undesirable consequences are discovered too late, technology often has entered the economic and social structure, regulation is difficult, so regulatory thinking is undergoing positive changes. Second, regarding the compliance requirements of data and generated content, first, accuracy and authenticity, reflected in the fact that most people believe that the authenticity of data and generated content cannot be guaranteed; The second is morality, which mainly focuses on the concerns about uncertain regulation arising from the uncertainty of the connotation of ethics; Third, intellectual property compliance, there are many and more scholars in our country who may think that there may be a lot of room for easing in intellectual property

compliance. Third, there are two opposing views on whether the content generated by the service provider is a product and whether it needs to bear product liability under tort law. Fourth, whether regulatory measures need to be taken to deal with the problem of overdependence or addiction that deep artificial intelligence may cause, regulators believe that there is a strong tendency to supervise, but academia and industry generally believe that deep artificial intelligence and online games are different, more like mobile phones are a productive tool.



In view of the theme of this forum, Professor Xie Jie first talked about the enforcement of Hong Kong arbitral awards in the mainland, although there are special arrangements, in practice, they face different local courts' inconsistent procedural regulations on enforcement, and enforcement is relatively delayed in some regions. Secondly, with regard to the competition in China's foreign-related dispute resolution infrastructure and system, if we can do a better job in infrastructure construction, arbitration institution construction, or personnel training, China will have greater advantages. Third, the use of network to resolve social disputes has achieved great development in the past two years, especially during the epidemic, but the problem in practice is reflected in the link of evidence cross-examination, and it is difficult to find out the authenticity of statements in the network. Finally, some recent developments in the regulation of cross-border securities and futures, focusing on the position of China's securities regulators on futures and derivatives law and securities law, as well as defining cross-border delivery and other behaviors to clarify its regulatory boundaries, are very worthy of study both academically and practically. Professor Zheng Ge expanded on the selection of arbitration institutions to list examples in practice, and pointed out that when we talk about ODR, it has actually departed from the bureaucratic structure of the authoritative organization of the state and has become the result of a party making a choice out of trust.



Postdoc Huang Kaishen further proposed that first, the concept of "foreign-related" in the rule of law involving foreign affairs has a long history and is rich in Asian characteristics. In the case of China, the relevant laws usually have foreign-related clauses, which are more favorable to non-Chinese parties, mainly based on the results of negotiations and the consideration of attracting foreign investment. Second, after the implementation of the Belt and Road Initiative and the concept of foreign-related rule of law, there has actually been a clear reversal, from the original possible differential treatment to the consideration of national interests and local interests. In the scope of international dispute resolution, there are two trends, one is the localization of the standardization of this type of business, and the other is the internalization of dispute resolution. Third, combined with years of experience in arbitration practice, the above-mentioned trend of localization and localization of international dispute resolution reflects certain industry considerations. Fourth, when discussing foreign-related rule of law on the basis of localization, from the perspective of the interests of both parties, the choice of applicable law should not be limited to Chinese law. Fifth, in terms of the degree of influence of foreign-related rule of law, taking the International Commercial Court of the International Court of Justice in Singapore as an example, its one-stop service brings convenience, and there is also the challenge of preferring acquaintance services in international commercial cases, which should also be paid attention to.



Associate Professor Ma Le talked about three relationships on foreign-related rule of law education, the first is foreign-related rule of law and foreign-related law, because foreign-related rule of law is actually a very grand concept, and it is difficult to grasp its own connotation. Then, for talent training, research institutions need talents who can participate in corporate governance. The second is the handling of foreign-related rule of law and foreign-related disputes, the latter is only a very small plate in the overall context of foreign-related rule of law, and it is very technical, and attention should be paid to how it is linked to foreign-related rule of law. Third, he expressed his great admiration for Professor Erie's research on Chinese law itself, and believed that his research on the soft effects of Chinese law actually implicitly coincided with an effect that we want to achieve in the process of foreign-related rule of law work.



Associate Professor He Jiong talked about the construction of the School of Foreign-related Rule of Law of East China University of Political Science and Law for two main purposes, one is to cultivate excellent foreign-related rule of law talents, and a lot of work is currently underway; Second, the promotion of scientific research related to foreign-related rule of law, especially cross-border intellectual property dispute resolution, has a strong regional nature, so when facing cross-border issues in the field of intellectual property law, whether it is confirmation of rights, or when disputes arise, there should be a certain space, instead of the original dogmatic, no longer limited to the regionality of intellectual property rights, no longer limited to Chinese law, this is a trend in the current development. Professor Calm also added relevant examples to illustrate that under the current trend, China encourages joint ventures between Chinese and foreign law firms, and it is necessary to promote it positively as a typical case in Shanghai, which shows China's determination to develop foreign-related rule of law.



Noting that more and more foreign students were coming to Chinese mainland for study and exchange as early as before the outbreak of the epidemic in 2019, and more and more Chinese students were studying abroad, and firmly believed that more applications would be received after full liberalization, he asked Professor Erie what are the key factors to consider when teaching the international rule of law. Professor Erie responded with the idea of the international rule of law.



In the free question and exchange session, students from East China University of Political Science and Law, Shanghai Jiao Tong University and Fudan University Law School had a lively discussion on EU data legislation, whether social media should be regulated by the Cybersecurity Law as a key information operator, and how to solve technical compliance from the perspective of corporate governance.

Finally, Professor Ji Weidong made a concluding speech. He expressed his gratitude to Professor Erie, who likes lamb skewers, for bringing a sumptuous academic "Zibo BBQ". At the same time, today's discussion is very rich in content, covering a very wide range of topics, focusing on two major issues. The first is cross-border governance, and Professor Erie's report paints a landscape of Chinese-style cross-border governance, including digital infrastructure construction, cross-border transactions of data, networked governance, and AI plus summary trials. By the way, the great changes in this forum refer to the great transformation since the 2008 world economic crisis. The most important changes can be summarized by 753, 7 is that it has been 2016 years since the start of the Sino-US trade war in 7, 5 is that China gave birth to panoramic open-view devices such as the National Supervision Commission through constitutional amendments 5 years ago, 3 is the three-year long epidemic. The pattern shaped by such changes in the past 7, 5 and 3 years has actually led

to a conflict between two foreign-related views on the rule of law. It also means two universal conflicts, which bring a series of very important changes. This is an important takeaway from the discussion of cross-border governance. The second major issue focused on in this forum was cross-border law enforcement, which was revealed by Professor Calm and Professor Shen Wei with their keynote speeches respectively. Generally speaking, cross-border enforcement manifests itself in three approaches or approaches. The first is the long-arm jurisdiction of the domestic law approach; The second is cross-border enforcement cooperation of arbitral awards on the international law approach, based on the New York Convention; The third is joint audit with a consultative approach. If the joint audit between China and the United States in the case analyzed by Professor Calm does not materialize, another option may also occur, that is, China will turn to countermeasures, such as Chinese-style long-arm jurisdiction, which may follow. Cross-border enforcement is also likely to present a completely different landscape. Through Professor Shen Wei's empirical analysis of arbitration, we can also see the wide application of arbitration in China, which is very rare in other countries. At the same time, it should also be pointed out that the arbitration institutions in Shanghai are plural and fiercely competitive, and under such a multi-layered and diverse dispute resolution mechanism, it is worth paying attention to how foreign-related enforcement evolves, and I am very much looking forward to Professor Erie's relevant research results. Finally, Professor Ji Weidong once again expressed his heartfelt thanks to the speakers, panelists, all teachers and students who participated in this forum, and the staff who assisted in preparing this joint forum.

After the successful conclusion of the joint forum, some participants also took a group photo and had a meal.



About the Institute of Chinese Law and Society of Shanghai Jiao Tong University

The Institute of Chinese Law and Society (CISLS) is a substantive university-level interdisciplinary research platform established by Kaiyuan Law School. It aims to explore the deep mysteries of the change of Chinese order and system, and investigates the governance methods of ultra-large-scale society, networked society, risk society and data-driven society with the help of empirical science and cognitive science, so as to provide an objective and reliable basis for correctly understanding, understanding and explaining Chinese phenomena and correctly answering universal problems in the world.

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