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REVIEW

The Rule of Law in Foreign-Related Affairs in Free Trade Zone Construction*

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Abstract

As the forefront of China's reform and opening up in the new era, free trade zones (FTZs) are not only a testing ground for promoting the domestic rule of law but also a pilot zone for aligning with the international rule of law. Over the past decade, China's FTZs have formed a new pattern in which eastern FTZs collaborate with western ones and opening up is implemented across the board in the areas along borders, rivers, and coastal regions. However, they have also given rise to the issue of coordination of multiple interests such as reform and the rule of law, development and risks. XI Jinping Thought on the Rule of Law emphasizes advancing the domestic rule of law and foreign-related rule of law in a coordinated manner. During FTZ construction, efforts should be made to fully explore the compatibility of the foreign-related rule of law with the domestic rule of law and the international rule of law. This entails optimizing the development pattern through coordination between the central and local governments, achieving steady opening up by aligning with international standards, and consolidating institutional innovation through multilateral cooperation. The ultimate goal is to establish FTZs as new heights of opening up characterized by a higher level of openness, a better business environment, and a stronger radiation effect.

Keywords free trade zone (FTZ); rule of law in foreign-related affairs; high-standard opening up; business environment; Chinese modernization

On November 27, 2023, President XI Jinping gave important instructions on the development of the rule of law in foreign-related affairs during the 10th group study session of the Central Committee of the Communist Party of China (CPC). His instructions pointed out the direction of implementing XI Jinping Thought on the Rule of Law that stresses advancing the rule of law in domestic and foreign-related affairs in a coordinated manner. XI Jinping emphasized that "Effective measures and mature experience in high-standard opening up, such as those tested in pilot free trade zones (FTZs), should be timely elevated to legal provisions. In accordance with international standards, we should scale new heights in high-standard opening up with a higher level of openness, a better business environment, and a stronger radiation effect."[1] Once again, the rule of law in the development of pilot FTZs was incorporated into the overall work of the rule of law in foreign-

[1] 习近平在中共中央政治局第十次集体学习时强调　加强涉外法制建设　营造有利法治条件和外部环境 (During the Tenth Group Study Session of the Political Bureau of the Communist Party of China Central Committee, XI Jinping Emphasized Strengthening the Development of the Foreign-Related Legal System and Creating Favorable Legal Conditions and External Environment), 人民日报 (*People's Daily*), Nov. 29, 2023.

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related affairs. The Third Plenary Session of the 20th Central Committee of the CPC further emphasized the need to optimize regional opening up layout, implement the strategy of upgrading FTZs, and encourage pioneering and integrated exploration. Meanwhile, we should strengthen the rule of law in foreign-related affairs and establish mechanisms for taking a holistic approach to prompting legislation, law enforcement, administration of justice, observance of the law, legal services, and the training of legal professionals for foreign-related affairs.[2]

On September 29, 2013, China (Shanghai) Pilot FTZ (Shanghai FTZ) was officially established. As China's first FTZ, Shanghai FTZ has introduced a number of pioneering measures and gained a wealth of replicable and scalable experience by leveraging its policy advantages and institutional innovation environment. Over the past decade, China has established 22 FTZs and creatively set up special economic zones with a higher level of openness, including Hainan Free Trade Port and the Lin-Gang Special Area of Shanghai FTZ. These developments underscore the huge advantage of reforms guided by the rule of law. Given the unique dual function of FTZs in both opening up and domestic reform and their consistency with the requirement for advancing the rule of law in domestic and foreign-related affairs in a coordinated manner, bolstering the rule of law in FTZs requires theoretical reflection and institutional review from the perspective of the rule of law in foreign-related affairs. Such analysis aims to inform future practice of the rule of law and reform trials in FTZs.

I The Positioning of the Development of the Rule of Law in FTZs from the Perspective of the Rule of Law in Foreign-Related Affairs

FTZs are not only an important testing ground for leading domestic reform in the new era, but also a pilot zone for promoting high-standard opening up. Accordingly, the thinking and model of their rule of law are in line with XI Jinping Thought on the Rule of Law that emphasizes advancing the rule of law in domestic and foreign-related affairs in a coordinated manner. Therefore, in the process of building the rule of law in China, it is necessary to position the rule-of-law functions of FTZs from the perspective of the rule of law in foreign-related affairs.

A The Theoretical Orientation of the Concept "the Rule of Law in Foreign-Related Affairs"

The concept of the rule of law in foreign-related affairs, as an important part of XI Jinping Thought on the Rule of Law, is an original theoretical concept proposed by the CPC Central Committee with Comrade XI Jinping at its core based on the evolving trend of the current international situation. To understand such a concept, it is necessary to clear up the background in which the concept was proposed and clearly know the concept's meaning and

[2] 中共中央关于进一步全面深化改革推进中国式现代化的决定 (Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization), 人民日报 (*People's Daily*), Jul. 22, 2024.

its specific orientation.

The report to the 19th CPC National Congress pointed out that "the world is undergoing major developments, transformation, and adjustment, but peace and development remain the call of our day. The trends of global multi-polarity, economic globalization, IT application, and cultural diversity are surging forward; changes in the global governance system and the international order are speeding up; countries are becoming increasingly interconnected and interdependent; relative international forces are becoming more balanced; and peace and development remain irreversible trends."[3] As China increasingly approaches the center of the world stage, the relationship between China and the world is profoundly changing. The interconnection and interaction between China and the international community have become unprecedentedly close. China relies more on the world and participates in more international matters, while the world relies more on China and has a bigger influence on China. In this context, the building of the rule of law in China should not only focus on the domestic rule of law but also attach greater importance to the development of China's rule of law in foreign-related affairs and promote the international rule of law. Accordingly, the concept of the rule of law in foreign-related affairs emerges.

The rule of law in foreign-related affairs is different from the concepts of the domestic rule of law and the international rule of law in the traditional context. Therefore, to understand "making coordinated efforts to promote the rule of law in domestic and foreign-related affairs," it is necessary to exactly know the concept of the rule of law in foreign-related affairs first. The rule of law in foreign-related affairs refers to the fact that a country handles its foreign-related affairs, including legislation, law enforcement, administration of justice, and legal services, based on rule-of-law thinking and approaches. From the perspective of a country, the handling of work related to the rule of law in foreign-related affairs is the country's foreign-related affairs, which need to be handled according to the country's foreign-related laws and regulations. Therefore, such work belongs to the country's own rule-of-law work. The rule of law in foreign-related affairs is an extension and expansion of the domestic rule of law. From a global perspective, the work related to the rule of law in foreign-related affairs deals with the affairs involving different countries (namely, international matters). Its implementation requires referring to the laws and regulations of different countries involved. Moreover, international law may not be ignored. Therefore, such work belongs to the work related to the rule of law between different countries. The rule of law in foreign-related affairs is the expression of the international rule of law from the perspective of a country. Moreover, it is a part of the international rule of law.[4] Bluntly, in theory, the rule of law in foreign-related affairs is a conceptual integration of the domestic rule of law and the international rule of law, playing the role of a bridge and a link between the domestic rule of law and the international rule of law, which are two independent legal systems.

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[3] XI Jinping, 决胜全面建成小康社会　夺取新时代中国特色社会主义伟大胜利——在中国共产党第十九次全国代表大会上的报告 (Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive the Great Success for Socialism with Chinese Characteristics for a New Era—Delivered at the 19th National Congress of the Communist Party of China), 人民日报 (*People's Daily*), Oct. 18, 2017.

[4] See HUANG Jin, 论统筹推进国内法治和涉外法治 (Advancoffing the Rule of Law in Domestic and Foreign-Related Affairs in a Coordinated Manner), 12 中国社会科学 (*Social Sciences in China*), 85–96 (2022).

The rule of law in foreign-related affairs is rooted in the rule of law in domestic affairs and is an important part of building the rule of law in China. Firstly, the concept of the rule of law in foreign-related affairs is an extension of the domestic rule of law. With China's full integration with the world after 40 years' reform and opening up, China's modernization has increasingly been incorporated into the process of world development, and a large number of its domestic affairs need to be handled by virtue of forces in the outside world. The rule of law building in China cannot just focus on the establishment of the domestic rule of law system, because the level of rule of law in all foreign-related affairs related to the outside world directly affects the development of the domestic rule of law. Therefore, the rule of law in foreign-related affairs should go along with the direction and goals of the domestic rule of law and move in the same direction as the domestic rule of law. However, the rule of law in domestic and foreign-related affairs does not belong to a simple overlapping or subordinating relationship but are two aspects and two dimensions under the goal of the rule of law building in China.[5] Therefore, the rule of law in foreign-related affairs is still of particularity, and it cannot be developed by simply using the thinking and methods used for the domestic rule of law. More importantly, it should highlight its connection with the international rule of law.

The rule of law in foreign-related affairs is oriented to the international rule of law and reflects China's responsibility for promoting law-based global governance. Law-based global governance is a general consensus in the international community. However, some Western countries choose to reshape international rules in a way that goes against globalization.[6] Human society needs to seek a fairer and more reasonable rule-of-law program to maintain world peace and development. As an important international power, China is playing an increasingly significant role in the international community. China is more valued by the international community and has taken on the role of a responsible major power. In the process of promoting law-based global governance, the rule of law in foreign-related affairs has become a bridge connecting the domestic rule of law and the international rule of law.[7] On one hand, the rule of law in foreign-related affairs should respect the universal laws of the international rule of law and the system of international law based on the purposes and principles of the Charter of the United Nations (UN Charter for short) and safeguard the development of multilateralism and globalization. On the other hand, China should transform its successful rule of law experience and concepts into institutions and systems and spread them to other countries so as to promote the rule of law in all countries in the world, especially developing countries, in the process of extensive consultation, joint contribution, and shared benefits, and drive the joint efforts for building a community with a shared future for mankind.

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[5] See LIU Renshan, 坚持统筹推进国内法治和涉外法治 (Insisting on Advancing the Domestic and Foreign-Related Rule of Law in a Coordinated Manner), 1荆楚法学 (*Jingchu Law Review*), 19–34 (2021).

[6] See SHEN Wei, 驯服全球化的药方是否适合逆全球化?——再读《驯服全球化：国际法、美国宪法和新的全球秩序》(Is the Way to Tame Globalization Suitable for Reverse Globalization? Re-Reading the Taming Globalization: International Law, the US Constitution and the New Global Order Again), 12 人民论坛・学术前沿 (*Frontiers*), 76–87 (2020).

[7] See HUANG Huikang, 准确把握"涉外法治"概念内涵统筹推进国内法治和涉外法治 (Accurately Grasping the Concept of the Rule of Law in Foreign-Related Affairs to Promote the Domestic and Foreign-Related Rule of Law in a Coordinated Manner), 1 武大国际法评论 (*Wuhan University International Law Review*), 1–20 (2022).

Therefore, the concept of the rule of law in foreign-related affairs covers both the domestic rule of law and the international rule of law, and it is a centralized embodiment of theories of advancing the rule of law in domestic and foreign-related affairs in a coordinated manner. To review the rule of law in FTZs from the perspective of the rule of law in foreign-related affairs, it is necessary to start from the domestic rule of law and the international rule of law respectively and achieve their overall planning and coordination.

B A Testing Ground for Promoting the Domestic Rule of Law

China is a vast unitary country with a large population, where any reform cannot succeed overnight. For such a large country, it always faces structural contradictions in national governance, including the contradiction between the limited total amount of national governance resources and the super-large society's massive demands for national governance, the contradiction between the decision-making uniformity and the effectiveness of local governance, the contradiction between enhancing local overall effect and the interest demands of governments at different levels, and the contradiction between economic development, which requires the state to delegate powers to authorities of lower levels, and political development, which requires centralization of state powers.[8]

At the beginning of the reform and opening up, DENG Xiaoping facilitated the establishment of four special economic zones, namely Shenzhen, Xiamen, Zhuhai, and Shantou Special Economic Zones, to accelerate the market economy reform trials by making a trial in several zones. These special economic zones accumulated useful experience for the establishment of the socialist market economy system in China. The rule of law is an important guarantee for the development of market economy. In the process of making reform trials in special economic zones, relevant rule of law experience was accumulated. On the one hand, the National People's Congress took the lead in granting corresponding flexible legislative powers to special economic zones through authorized legislation and gradually incorporated such powers into the Legislation Law of the People's Republic of China (hereinafter referred to as the Legislation Law), providing a legal basis for local trials in special economic zones.[9] On the other hand, during many reform trials in special economic zones, a set of local legislation that conformed to the laws and requirements of market economy development was made available and gradually incorporated into the unified national legislation, which greatly promoted the development of the market economy.

Since 2012, socialism with Chinese characteristics has entered a new era, and reform and opening up have faced more new challenges. In the face of the market economy reform's continuously deepening practical demands, the CPC Central Committee with Comrade XI Jinping at its core proposed the establishment of FTZs, which was another pioneering move

[8] See ZHENG Zhihang, 超大型国家治理中的地方法治试验及其制度约束 (Local Rule of Law Trials in Super-Large State Governance and Their Institutional Constraints), 1 法学评论 (*Law Review*), 39–50 (2020).

[9] See SONG Fangqing, 论中国经济特区立法的新格局——兼评(立法法)有关经济特区立法的规定 (On the New Pattern of Legislation in Special Economic Zones in China—Comments on the Provisions Concerning the Legislation in Special Economic Zones (in the Legislation Law)), 6 现代法学 (*Modern Law Science*), 126–130 (2000).

based on summarizing the reform experience in special economic zones. In the entire process of reform, XI Jinping, from the height of law-based governance in all fields and deepening reform comprehensively, emphasized promoting development through the coordination of the rule of law and reform. However, in terms of its value pursuit, the existing system, which was built with law as its pillar, needs to maintain its necessary stability. However, to promote reform and opening up, it is inevitable to change the existing legal system. How to coordinate the relationship between the rule of law and reform is an important task for the reform work in the new era.

Based on an analysis of the relationship between reform and the rule of law from the perspective of legal principles, it should be noted that the rule of law is not only characterized by its stability. In many scenarios, the rule of law refers more to its ways, concepts, and pursuit of legal value, rather than just mechanically and rigidly abiding by existing law.[10] From the perspective of historical materialism, law, as the superstructure, is rooted in and subject to the economic base in a specific historical stage. Law has an inherent feature, that is, it is a phased product that lags behind the times. When the superstructure matches the economic base, it can effectively consolidate the economic base and promote the development of productive forces. Reform and opening up are a brand-new undertaking, which goes on and on, with no end. The forward-looking nature of reform and development requires reformers to have the courage to make a trial and see breakthroughs. That is to say, the undertaking should be continuously advanced through practical exploration, and moreover, law, as the superstructure, should actively adapt to new situations, solve new problems, and guide new development. Therefore, when dealing with the relationship between the rule of law and reform, on the one hand, it is necessary to emphasize that reform should be based on law and the direction of reform should be consistent with the value pursuit of the rule of law so as to achieve the consistency between the variability of reform and the stability of the rule of law. On the other hand, importance should be attached to the role of the rule of law in guiding reform, actively and timely transforming the central government's reform policies into national legislation, promoting the in-depth development of reform by virtue of the guidance function of law, and providing a strong legal guarantee for reforms.

Under the guidance of the concept of being driven by both the rule of law and reform and attaching importance to both of them, the rule of law reform in China's FTZs has become an important achievement in the efforts for building the rule of law in China in the new era and promoted the development of the domestic rule of law since the establishment of the Shanghai FTZ in 2013. This is mainly reflected in the following aspects: (1) the experimental model of local legislation authorized by the central government provides a legal basis for the reform trials in FTZs. As the Shanghai FTZ was just established in 2013, the Standing Committee of the National People's Congress authorized the State Council to temporarily adjust relevant provisions on administrative examination and approval in the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, the Law of

[10] See CHEN Jinzhao, "法治改革观" 及其意义——十八大以来法治思维的重大变化 (The Views on the Rule of Law Reform and Their Significance—Major Changes in Rule of Law Thinking since the 18th CPC National Congress), 6法学评论 (*Law Review*), 1–11 (2014).

the People's Republic of China on Chinese-Foreign Equity Joint Ventures, and the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (hereinafter referred to as the Three Laws) in the Shanghai FTZ. Subsequently, the same model was adopted to grant powers to FTZs in Guangdong and Tianjin, aiming to loosen constraints and move forward the reform. (2) The innovativeness of the rule of law system in FTZs was highlighted, and the main difficulties in the market economy reform in the new era were faced directly. On the premise of legislation authorized by the central government, FTZs need to create new rules in the sectors where the application of national laws has been suspended, and such rules should highlight innovativeness in terms of rule-making, regulatory models, and operating mechanisms. In the process of rule innovation, the key lies in focusing on the main difficulties faced by the market economy reform in the new era, aiming to meet market economy development needs and achieve the role of the rule of law in guaranteeing and promoting the reform.[11] (3) It was emphasized that the rule of law model in FTZs was replicable and scalable, and experience in uniform legislation in the country was gained. Although FTZs were established in local areas, they still need to serve the overall development strategy of the country. Therefore, all the reform trials made in FTZs emphasized that such trials should be replicable and spreadable. Thereby such a trial can provide experience for the development of the rule of law in China. Take the Shanghai FTZ as an example. After the Standing Committee of the National People's Congress authorized the suspension of the implementation of some provisions in the Three Laws in 2013, the Shanghai FTZ attempted to establish a new foreign investment review model with "pre-access national treatment + a negative list." After nearly six years of repeated practice, the Foreign Investment Law of the People's Republic of China (hereinafter referred to as the Foreign Investment Law) was finally promulgated. It changed China's foreign investment law system and highlighted the replicability and scalability of the Shanghai FTZ model.

C A Leading Area for Aligning with International Rule of Law

In addition to accelerating the pace of market economy reform in the new era, the establishment of FTZs shoulders the important mission of leading high-standard opening up. In the past decade, FTZ construction has always aimed at aligning with international economic and trade rules and facilitating institutional opening up, showing the foreign-related nature of the development of the rule of law in FTZs and emphasizing its integration with the international rule of law.

Based on the world's complex situation, the CPC Central Committee with Comrade XI Jinping at its core pointed out that while addressing external risks and getting ready to withstand high winds, choppy waters, and even dangerous storms, greater emphasis should be placed on pushing forward with opening up at a higher level, committing ourselves to openness to meet development challenges, fostering synergy for cooperation, building the momentum of innovation, delivering benefits to all, steadily advancing

[11] See SHEN Guoming, 法治创新：建设上海自贸区的基础要求 (Innovation in the Rule of Law: Basic Requirements for Building Shanghai FTZ), 6 东方法学 (*Oriental Law*), 124–129 (2013).

economic globalization, enhancing every country's dynamism of growth, and providing all nations with greater and fairer access to the fruits of development.[12] However, how to effectively balance the risks and benefits arising from opening up is always an issue that needs to be considered. FTZs precisely provide a solution for this issue. They can either address risks by zoning and taking such measures as "no control for goods to and from foreign countries and taking management measures for goods to and from the hinterland" or integrate more deeply with the international market to facilitate the convenient entry of various economic factors, such as capital, technology, and talent, and promote high-quality development. The rule of law goes hand in hand with opening up. As opening up takes one step forward, the rule of law in foreign-related affairs must follow the step of opening up. Since the 18th CPC National Congress, XI Jinping has attached great importance to the rule of law in foreign-related affairs. XI Jinping clearly pointed out that "strengthening the rule of law in foreign-related affairs serves the long-term need for building a great country and moving toward national rejuvenation on all fronts through Chinese modernization, and it is very important in promoting high-standard opening up and addressing external risks and challenges."[13] This requirement precisely tallies with the positioning of FTZs in the opening up and has been reflected in the process of the development of the rule of law in FTZs.

The goal of opening up FTZs lies in how to introduce and retain various economic factors. This has raised a requirement for the development of the rule of law in FTZs, that is, to accelerate the improvement of foreign-related legal rules. First of all, the rules of FTZs have referred to a number of high-standard international economic and trade rules to promote the facilitation of trade, investment, and finance. In the face of the reality that various new economic and trade rule systems dominated by some Western countries are keeping raising their standards, FTZs have taken the lead in suspending the implementation of existing laws and carrying out reforms in line with relevant rules, intending to break the "decoupling" implemented by several countries with the opening up of a higher level, which is mainly reflected in the fields of investment, trade, and finance. In the field of investment, a pre-access national treatment plus negative list management system for foreign investments and a foreign investment filing management system were established to promote the reform of foreign investment mechanisms. Eventually, the Foreign Investment Law was promulgated, and such a system was replicated and scaled up nationwide in legal form. The intensity of opening up in key and emerging fields was increased. Filing systems, including the enterprise standard filing management system, were innovated to support and encourage the liberalization and facilitation of foreign investment and further attract foreign investment. In the field of trade, the Shanghai FTZ has carried out an all-round reform of former regulatory systems and implemented a system of "free flow of goods within the zone where control measures for goods to and from foreign countries are canceled gradually and completely and safe and efficient management measures are taken for goods to and from the hinterland."

[12] 习近平在第五届中国国际进口博览会开幕式上发表致辞 (XI Jinping Delivered a Speech at the Opening Ceremony of the Fifth China International Import Expo), 人民日报 (*People's Daily*), Nov. 5, 2022.
[13] See XI, fn. 1.

Meanwhile, special tax policies were implemented. The "single window" system for international trade was put into practice to facilitate the entire process of trade and investment. Moreover, reforms of commercial registration systems, such as "separating permits from the business license," were carried out to further promote the opening up in the service and manufacturing industries. In the field of finance, FTZs facilitated the establishment of a free trade account accounting system with integrated domestic and foreign currencies. They took the lead in introducing a system for overseas traders to participate in futures trading and a cross-border financial management system to enhance the activity and the flow of resources in the financial market.[14]

Secondly, a first-class market-oriented, law-based and internationalized business environment was built to safeguard the legitimate rights and interests of domestic and foreign business entities. In addition to attracting more resources to enter FTZs, FTZs need to meet the demands of overseas business entities and make them willing to do business in FTZs. Accordingly, they need to build a law-based business environment. Since the establishment of FTZs, the system of administrative management has been continuously reformed, and a service-oriented government has been built under the leadership of the State Council and the cooperation of local governments. By changing pre-approval into operational and post-operational oversight and continuously enhancing the transparency of administrative law enforcement, administration was streamlined and powers were delegated to lower levels to facilitate commercial transactions.[15] Meanwhile, under the impetus of the Supreme People's Court, courts at all levels have safeguarded the legitimate rights and interests of overseas business entities by means of judicial interpretations and guiding cases, and they keep enhancing the fairness and efficiency in the resolution of commercial disputes. Besides, the Shanghai FTZ and other FTZs kept developing non-litigation dispute resolution mechanisms such as arbitration and mediation. They actively attracted overseas dispute resolution institutions to enter FTZs for business development and provided them with corresponding supporting mechanisms.[16]

II Review of the Development of the Rule of Law in FTZs from the Perspective of the Rule of Law in Foreign-Related Affairs

Due to the functions of FTZs in both domestic reform and opening up, they need to satisfy the requirement of advancing the rule of law in domestic and foreign-related affairs in a coordinated manner in the development of the rule of law. With the continuous evolution of the changes of a magnitude not seen in a century and the constant changes in the situation of reform and opening up in the new era, it is necessary to review and reflect on the issues

[14] See LIU Xiaohong, 法治引领改革开放促进发展——上海自贸区法治建设十周年回顾与展望 (The Rule of Law Leads the Reform and Opening Up and Promotes Development—Review and Outlook of 10 Years' Development of the Rule of Law in Shanghai FTZ), 44 民主与法制周刊 (*Democracy and Legal System Weekly*), 50–53 (2023).

[15] See GONG Baihua, 国际化和法治化视野下的上海自贸区营商环境建设 (The Building of the Business Environment in Shanghai FTZ from the Perspective of Internationalization and the Rule of Law), 1 学术月刊 (*Academic Monthly*), 38–44 (2014).

[16] See LIU Xiaohong & FENG Shuo, 制度型开放背景下境外仲裁机构内地仲裁的改革因应 (Responses to the Reform of Arbitration in Chinese Mainland by Overseas Arbitration Institutions in the Context of Institutional Opening Up), 3 法学评论 (*Law Review*), 125–138 (2020).

related to the development of the rule of law in FTZs from the perspective of the rule of law in foreign-related affairs.

A The Overall Pattern of FTZ Construction

The rule of law is an integral part of FTZ construction. The review of the development of the rule of law in FTZs needs to start from the overall pattern of the current FTZ construction in China. Since the establishment of the Shanghai FTZ in 2013, the central government has uniformly arranged the layout of FTZs and adopted a gradient development strategy. As a result, a new pattern in which eastern FTZs collaborate with western ones and opening up is implemented across the board in the areas along borders, rivers, and coastal regions has shaped up. Looking back on the process of FTZ construction, the FTZ construction in China has shown the following characteristics:

(1) A model combining the central government's deployment with local exploration has shaped up to stimulate an interactive pattern of FTZ rule competition. For a unitary super-large country like China, the contradiction between the uniformity of the central government's decisions and the effectiveness of local governance is a problem that needs to be solved constantly in the process of reform and opening up. In the early days of reform and opening up, DENG Xiaoping proposed the reform strategy that was characterized by crossing the river by feeling the stones and required special economic zones, such as the Shenzhen and Zhuhai Special Economic Zones, to take the lead in making a trial. This model, which was implemented locally first and then throughout the country, was a choice that had to be made under the state of fundamental changes in the economic system in the early stage of the transformation from the planned economy to the socialist market economy. However, as the market economy system becomes increasingly mature today, relatively rich reform experience enables local reform explorations to be able to be combined with the top-level design of the central government, maximizing the coordination between the central and local governments in the process of reform.

Looking back to the history of the past 40 years, the model of promoting national development through local reforms and selecting reform plans through regional competition has become a beneficial experience gained during the reform and opening up.[17] Although FTZs adopted a model combining the central government's top-level design with local government's practical exploration, in terms of actual results, such a model has stimulated the competition among FTZs. So far all FTZs have been established separately in some provinces. Except for FTZs in municipalities directly under the central government and Hainan Province, other FTZs are basically composed of three relatively independent FTZ areas, and these areas are all located in provincial capitals, municipalities with independent planning status, or prefecture-level cities within some provinces, with an area of about 120 square kilometers. The jurisdictional design and distribution of such FTZs can encourage local competition within the provinces and competition among different cities within the provinces, thereby effectively resolving the contradiction between enhancing local overall

[17] See ZHANG Wuchang, 中国的经济制度(第2版) (*China's Economic System) (2nd Edition)*), 中信出版社 (CITIC Press), at 166–170 (2017).

effect and the interest demands of governments at different levels.[18]

(2) A layout with distinct characteristics that is fit for gradient progression has shaped up to strengthen the strategic positioning that FTZs serve the country. As more FTZs were established, competition became fiercer. The institutional arrangements of each FTZ increasingly need to highlight its own advantages and be based on its practical needs so as to obtain the biggest reform benefit in differentiated competition. From the perspective of the central government, the main reason for establishing FTZs in relevant regions is that these regions are unique in terms of location and demand. For instance, the establishment of the Fujian FTZ is largely aimed at further promoting the economic and trade exchanges between both sides of the Taiwan Strait, deepening the economic ties between both sides of the Taiwan Strait, and promoting people-to-people exchanges through more convenient trade exchanges and capital flows. The establishment of the Shandong FTZ aims to continue deepening the regional economic cooperation among China, Japan, and the Republic of Korea and strengthen the economic and trade exchanges in Northeast Asia. Because of such distinctive layout and development, FTZs in various regions have proactively aligned with national strategies such as "integrated development of the Yangtze River Delta," "construction of the Guangdong-Hong Kong-Macao Greater Bay Area," and "coordinated development of the Beijing-Tianjin-Hebei Region."

However, after more and more FTZs were established, they covered a large area and their economic volume increased. As a result, their reform advantages were somehow weakened compared to 2013, when the Shanghai FTZ was just established. Moreover, their flexibility decreased. Especially in the face of the changing external situations, FTZs had to open up and reform at a higher level. Therefore, the State Council successively decided to establish Lin-gang Special Area of the Shanghai FTZ in 2019 and Hainan Free Trade Port in 2020, aiming to carry out reforms in accordance with the highest international standards by virtue of Shanghai's more mature experience in FTZ reform and Hainan's geographical location advantages. Their establishment highlighted the gradient construction of FTZs, becoming an important symbol of the deepening of China's FTZ construction.

(3) An orientation focusing on seeking development and preventing risks came into being to ensure that FTZs uphold fundamental principles and break new ground in their reform and opening up. As an important decision for the reform and opening up in the new era, FTZs are a crucial step to promote high-quality development. However, how to effectively prevent and address possible risks in the process of continuous reform and opening up is an issue that needs attention. Undoubtedly, reform faces risks. This is determined by the nature of reform and the environment in which reform is carried out. As early as the beginning of the reform and opening up, DENG Xiaoping emphasized that reform faces risks but it must be done. Opportunities and risks coexist. The key is how to strengthen institutional design and prevent and address risks in the process of seeking development.[19] Therefore, from the initial reform attempt in the Shanghai FTZ

[18] See ZHENG Shaohua, 论中国自贸试验区法治的性质 (On the Nature of the Rule of Law in China's Pilot FTZs), 5 东方法学 (*Oriental Law*), 40–48 (2023).

[19] See YU Bo & YUAN Chuming, 邓小平的改革风险观及其时代价值 (DENG Xiaoping's Views on Reform Risks and Their Contemporary Value), 7 江西社会科学 (*Jiangxi Social Sciences*), 35–41 (2017).

to the continuous reform deepening in the Lin-Gang Special Area of the Shanghai FTZ and the Hainan Free Trade Port, the overall plans of all FTZs strengthened institutional innovation and the degree of opening and emphasized the prevention and control of systemic risks, hoping to identify and even predict risks in the process of reform and achieve coordination between the reform and its risks.

In the process of promoting FTZs' development and preventing their risks, proper institutional design is particularly crucial, which requires upholding fundamental principles and breaking new ground in institutional arrangements. The key to upholding fundamental principles lies in fully understanding the central government's goals and purposes of establishing FTZs. To advance reforms steadily, it is not allowed to break the state's fundamental interest and security bottom line. Therefore, institutional design needs to be based on maintaining the state's overall stability and security. To promote development, it is necessary to enhance the innovation in specific systems and rules. For this reason, the central government has suspended the implementation of some legal provisions in FTZs to create space for further reform and opening up and make FTZs better align with prevailing international rules and standards. However, in terms of the relationship between them, innovative institutional reform should still be carried out on the basis of upholding fundamental principles. Only in this way can the optimal allocation between development benefits and reform risks be achieved.

B Issues Regarding the Development of the Rule of Law in FTZs

The rule of law is an important integral part of FTZ construction. How to develop FTZs under the guidance of the rule of law is always an issue that needs attention. Many accomplishments were achieved in the development of the rule of law in FTZs in the past decade, demonstrating its important role in advancing the rule of law in domestic and foreign-related affairs in a coordinated manner. However, due to the changes in the domestic reform demands and the external environment in terms of FTZ construction, certain problems have emerged. In particular, how the development of the rule of law in FTZs should provide rule-of-law support for the above three aspects is still a problem to be solved at present.

The stability of the rule of law and the innovativeness of reform are the first problems faced in the process of the development of the rule of law in FTZs. For this reason, as the Shanghai FTZ was just established in 2013, the Standing Committee of the National People's Congress suspended the implementation of some provisions of the Three Laws by means of authorized decision and allowed the FTZ to make law independently, providing a corresponding legal basis for the institutional innovation in FTZs. Afterwards, the Standing Committee of the National People's Congress decided respectively in 2015, 2019, 2020, and 2021 to grant corresponding legislative powers to FTZs, including those in Tianjin, Guangdong, and Fujian. However, although the above-mentioned decisions have solved the problem of legislative powers of FTZs, such single authorization itself is temporary to some extent. Moreover, because such FTZ rules are experimental and temporary, some problems, such as whether relevant institutional innovation can be further implemented and how to handle the failure of innovation, need to be solved. Therefore, the revision of the Legislation Law of 2015 provides

an additional provision that "the National People's Congress and its Standing Committee may, in accordance with the needs of reform and development, decide to authorize the temporary adjustment or temporary suspension of the application of certain legal provisions in some localities in a certain period of time for specific matters in administrative management and other fields." However, this provision only solved the problem of the application of old law in FTZs but failed to specify the future of the "new law" enacted by FTZs. For this reason, the amendment to the Legislation Law of 2023 clearly stipulates that "where the items for which certain legal provisions were temporarily adjusted or temporarily suspended are proven feasible in practice, the National People's Congress and its Standing Committee shall promptly amend relevant laws; where the conditions for amending such law are immature, the period of authorization may be extended or the implementation of relevant legal provisions may be resumed."[20]

From the perspective of the domestic rule of law, the authorized legislation and rule innovation in FTZs have already had legislative basis, which promoted the coordination between the rule of law and reform. However, due to the mutual competition arising from the emergence of more FTZs, the following problems still need to be solved urgently: (1) In terms of the allocation of legislative powers between the central and local governments, the current model of authorization decided by the National People's Congress is mainly a model of "package" authorization, that is, the implementation of certain laws is suspended in FTZs, which are allowed to conduct institutional exploration. To balance the equality of legislative powers among various FTZs, such provision often covers multiple or even all FTZs, without giving much consideration to the particularity and strategic positioning of each FTZ. As a result, each FTZ makes law on the same matters respectively, not only intensifying the conflicts of law among different FTZs but also resulting in vicious competition or mutual replication of rules that emerge based on selfish departmentalism in different regions. Accordingly, the scientific nature and innovativeness of legislation were not truly reflected.[21] (2) Although the central government's model of "package" authorization has delegated powers to lower levels, such principle-based regulation has not truly defined the boundary of FTZ legislation. The creation of many innovative rules still requires negotiations or even games between local and central governments or even intensifies the contradiction between the central government's efforts to take back powers to maintain a unified legal system and local governments' struggle for powers for the purpose of institutional innovation. It is possible that if the central government takes back too many powers, the independent innovation in FTZs will be restricted, or if too many powers are granted to local governments, the unified legal system may be broken, thereby giving rise to some legal problems. Therefore, how to scientifically define the boundary of the central and local governments' legislative powers and carry out differentiated competition based on the positioning of different FTZs so as to truly achieve the coordination between the central government's deployment and local governments'

[20] See TONG Weidong, 新《立法法》的时代背景与内容解读 (An Analysis of the Historical Background and Contents of the New Legislation Law), 2 中国法律评论 (*China Legal Review*), 192–203 (2023).

[21] See ZHOU Shangjun, 地方法治竞争范式及其制度约束 (The Paradigm of Local Rule of Law Competition and Its Institutional Constraints), 3中国法学 (*China Legal Science*), 87–101 (2017).

exploration and make FTZs show distinct characteristics and be fit for gradient progression is a question that should be answered in the development of the rule of law in FTZs.

From the perspective of the rule of law in foreign-related affairs, it is a key task for FTZs to push forward with institutional opening up of a higher level in accordance with prevailing international rules, and the rule of law is an important way to balance the efforts to seek development and prevent risks. The reforms carried out by FTZs in accordance with prevailing international rules have played the role of the rule of law in foreign-related affairs as a bridge to connect the domestic rule of law and international rule of law and have achieved a transformation from the "treaty-driven legal system/rule of law development model" at the beginning of China's accession to the WTO to the "autonomously-driven legal system/rule of law development model."[22] However, either the passive aligning of the former or the active aligning of the latter emphasizes the integration of the domestic legal system with the international legal system. In the theory of international law, if a country signs a certain treaty, it means that the country assigns part of its sovereignty based on the interests from cooperation and development, allowing its own legal system to be reshaped by the international legal system. However, it is undeniable that the evolution of modern international law theories and systems is strongly characterized by Western centrism.[23] In the context that the international pattern shows the obvious trend of "the East is rising and the West is declining," the "containment" and "decoupling" measures against China taken by some Western countries have made China face an unoptimistic external situation. At this time, the proactive opening up of FTZs faces the same risk as the one faced by China at the beginning of the reform and opening up. For this reason, in the past decade, the overall plan for the establishment of each FTZ emphasized the controllability of risks, hoping to address risks through the rule of law. Generally speaking, FTZs have basically controlled the potential risks in major fields and ensured orderly and stable opening up in the process of continuous opening up.

However, in the process of building a system of the rule of law in foreign-related affairs in FTZs based on risk prevention and control, the efforts to align with prevailing international rules and seek development are still slightly insufficient, which has become an urgent problem to be solved in the next step of the development of the rule of law in foreign-related affairs. (1) The orientation of aligning with prevailing international rules needs to be defined clearly. At present, the multilateral in system the international economic and trade field that was dominated by the WTO in the past is changing toward the small multilateral model created by different camps. Many agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP), and the Digital Economy Partnership Agreement (DEPA), have fragmented the system of international economic and trade rules.[24] There are games of different camps

[22] See CHEN Liqiang and TU Xinquan, 中国涉外经贸法治建构论——以中国入世与上海自贸区为视角 (On the Development of the Rule of Law in Foreign-Related Trade and Economy in China—From the Perspective of China's Accession to the WTO and Shanghai FTZ, 3 国际贸易问题 (*Journal of International Trade*), 168–176 (2015).

[23] See TAO Nanying, 论国际法治研究的西方中心主义视角与中国视角 (On the Western Centrist Perspective and the Chinese Perspective in the Studies of International Rule of Law), 3 法制与社会发展 (*Law and Social Development*), 188–206 (2020).

[24] See SHEN Wei & HU Yaohui, 美式小多边主义与美国重塑全球经贸体系 (American Small Multilateralism and the United States' Reshaping of the Global Economic and Trade System), 1 国际论坛 (*International Forum*), 3–24 (2022).

between relevant rules. It is necessary to consider the question, "What is the goal of FTZs in the process of aligning with prevailing international rules?" which involves not only the feasibility of the current alignment but also the overall plan for China's participation in the system of international rules in the next step. (2) The autonomy in aligning with prevailing international rules is not strong. Foreign-related work is within the jurisdiction of the central government. Especially after the implementation of the Law on Foreign Relations of the People's Republic of China, the central uniformity of related work has been further intensified. FTZs' alignment with prevailing international rules belongs to foreign-related work in nature. It is hard for local governments to decide how to align with prevailing international rules and to what extent prevailing international rules should be aligned with. In a certain sense, the problem of unclear separation of powers between the central and local governments has weakened local governments' autonomy to align with prevailing international rules. (3) The foreign-related work in FTZs is poorly coordinated. Aligning with prevailing international rules not only involves the rule-making at the legislative level but also law enforcement and administration of justice and other aspects. However, in actual operation, multiple departments, including courts, customs and immigration inspection authorities, sometimes cannot act in concert, and as a result, the cooperativity of foreign-related work is affected.

C The Prospect of the Development of the Rule of Law in FTZs

From the perspective of advancing the rule of law in domestic and foreign-related affairs in a coordinated manner, it is necessary to make clear the problems in the current development of the rule of law in FTZs. It is even more necessary to determine specific goals based on the actualities in the current development of the rule of law in FTZs and drive the development of the rule of law in FTZs to a higher level. On September 26, 2023, XI Jinping emphasized in his important instructions on FTZ construction that "it is necessary to implement the strategy of improving FTZs on the basis of comprehensively summarizing the 10-year experience of their development and become a pioneer to forge ahead and overcome difficulties, explore in a wider field and at a deeper level, and strive to build higher-level FTZs. To enable FTZs to better play an exemplary role, it is essential for them to uphold overall Party leadership, pursue high-standard opening up as the guidance and institutional innovation as the core, coordinate development and security, align domestic rules with international economic and trade rules by high standards, further promote institutional opening up, strengthen overall planning and system integration of reform, and promote innovative development of the entire industrial chain."[25] This raised requirements for the next step of the development of the rule of law in FTZs.

First of all, openness and innovation are the overall requirements for the development of the rule of law in FTZs. The report of the 20th CPC National Congress regards advancing high-

[25] 习近平就深入推进自由贸易试验区建设作出重要指示强调　勇做开拓进取攻坚克难先锋　努力建设更高水平自贸试验区 (XI Jinping Made Important Instruction on Further Promoting the Development of Pilot FTZs, Emphasizing the Need to Be a Pioneer to Forge Ahead and Overcome Difficulties and to Strive to Build Higher-Level Pilot FTZs), 人民日报 (*People's Daily*), Sep. 27, 2023.

standard opening up as a key link in advancing the new development pattern and promoting the high-quality development. It stressed the need to accelerate the construction of the Hainan Free Trade Port, implement the strategy of upgrading pilot FTZs, and expand the global-oriented high-standard FTZ network. The key to advancing high-standard opening up lies in steadily expanding institutional opening up in terms of rules, regulations, management, and standards, which directly aims at the development of the rule of law in FTZs, especially the rule of law in foreign-related affairs. XI Jinping emphasized that "the rule of law goes hand in hand with development. As opening up takes one step forward, the rule of law in foreign-related affairs must follow the step of opening up."[26] Efforts should be made to advance high-standard opening up on the basis of the rule of law, push forward with the development of the rule of law in foreign-related affairs in the process of expanding opening up, and keep consolidating the rule-of-law foundation of high-standard opening up. Therefore, in the process of advancing opening up, efforts should be made to continue following the step of prevailing international rules that meet China's actual needs and national development strategies, align with such rules as soon as possible, and promote the integration of the rule of law in foreign-related affairs with international rule of law.[27]

Innovation is an important orientation that was emphasized as FTZs were just established. In the past decade, FTZs have carried out a series of reforms around institutional innovation. "Institutions are more important than technology." Good institutional arrangements are more conducive to promoting technological innovation, organizational innovation, and model innovation and can provide better legal guarantees for innovation achievements. Therefore, efforts should be made to keep advancing institutional innovation based on the concept of innovative development. In this regard, FTZs should carry out innovations from the perspective of multi-level legislation, including national legislation, local legislation, and administrative regulations. In the process of the operation of the rule of law, such as law enforcement and administration of justice, the dynamic balance between the rule of law and innovation should be kept to achieve the unity of the operability and stability of institutional innovation.[28]

Secondly, development and security are the value orientation of the development of the rule of law in FTZs. The statement made by DENG Xiaoping in the 1990s that "development is the absolute principle" indicates the purpose of reform and opening up. The FTZ construction in the new era is a key measure for seeking development. Development is closely related to law and has triggered long-term discussions in the theoretical circles. For instance, the modernization theory, based on social evolutionism, holds that developing countries in the Third World must introduce and transplant the legal systems and concepts of Western developed countries in order to realize modernization of law. The critical modernization theory disapproves of law transplantation and demands that developing countries in the Third World should follow an independent path of legal and social development according to their

[26] See XI, fn. 1.

[27] See LIU Xiaohong, 推进高水平对外开放的法治维度 (The Rule of Law Dimension of Promoting High-Level Opening Up), 4 政治与法律 *(Political Science and Law)*, 2–18 (2023).

[28] See ZHANG Shouwen, 论在法治轨道上推动经济发展 (On Promoting Economic Development in Line with the Rule of Law), 3 法学论坛 (*Legal Forum*), 18–29 (2024).

own actual conditions. The pluralism theory advocates analyzing specific issues from multiple perspectives and different levels so as to put forward policy suggestions that are of both practical operational significance and theoretical value.[29] Since the reform and opening up, China has adopted a lot of mature legal systems of the West in the process of being geared to international standards. Especially, large-scale legal reforms were carried out during China's accession to the WTO. Such reform promoted rapid economic take-off and became useful experience for the development of the rule of law in FTZs. However, such law transplantation does not mean copying Western laws mechanically. Instead, Western laws were absorbed based on China's development needs and actual conditions, aiming to ensure the security of development.

Development goes hand in hand with opening up, but opening up can trigger risks and thereby affect security. The intervention of external forces may lead to social changes in the country. The reform of domestic systems is more likely to impact the interests of inherent interest groups and give rise to unrest. In the past 40 years, China was committed to preventing the above two risks when building the rule of law system. As the external environment became more complex under the great changes of a magnitude not seen in a century and domestic reform entered the deep-water zone, the development of the rule of law in FTZs needs to ensure security while seeking development.

Finally, overall planning and system integration are the method guidance for the development of the rule of law in FTZs. As more FTZs were established and the relationship between the rule of law and reform was made increasingly clear, the development of the rule of law in FTZs is no longer an experimental reform relying on single-point breakthroughs. On the contrary, it has increasingly become a regular project that covers a large area. Therefore, in the next round of reforms in FTZs, the central government will pay more attention to making overall plans from a macroscopic and overall perspective, and it is more necessary for the development of the rule of law to emphasize the central government's overall planning. On the one hand, to achieve the central and local governments' coordination in terms of the legislation of FTZs, it is necessary not only to insist on creating rule of law space for innovations in FTZs through the unified authorization model but also to grant refined authorization in combination with the particularities of different FTZs. On the other hand, it is necessary to strengthen the combination of law enforcement with administration of justice at different levels. On the premise of maintaining the central government's unified law enforcement and administration of justice, local governments should have the flexibility and autonomy to carry out reforms.[30]

While the central government is responsible for making overall plans, system integration places more emphasis on improving the rule of law system. In the experimental reform relying on single-point breakthrough, institutions have been innovated, but their fragmentation tendency is obvious. As a result, there is no corresponding system

[29] See YAO Jianzong, 法律与发展研究的理论倾向 (Theoretical Tendencies in Law and Development Studies), 1 南京大学法律评论 (*Nanjing University Law Journal*), 7–21 (1999).

[30] See LIU Jingkun, 涉外法治工作战略布局探析 (An Analysis of the Strategic Layout in the Rule of Law in Foreign-Related Affairs), 3上海政法学院学报(法治论丛)(*Journal of Shanghai University of Political Science and Law (The Rule of Law Forum)*), 58–72 (2024).

guarantee for the reform and innovation in a single field, and problems emerge in their actual operation.[31] Therefore, in the following development of the rule of law in FTZs, it is necessary to ensure that the rule-of-law activities of a single FTZ are under the general principles of law-based governance in all fields by effectively applying the central government's legislative authorization and the filing mechanism or adopting a specific negative list model so as to prevent exceeding legislative powers and the homogenization or vicious competition among FTZs. Furthermore, in the process of the development of the rule of law in FTZs, efforts should be made to facilitate the formation of a rule of law system that is fit for each FTZ's own development conditions, achieve mutual coordination among legislation, law enforcement, and administration of justice, maintain integrated reforms, and create more reform benefits.

III The Path to Develop the Rule of Law in FTZs from the Perspective of the Rule of Law in Foreign-Related Affairs

From the perspective of the rule of law in foreign-related affairs, the development of the rule of law in FTZs needs to further create a new situation in the development of the rule of law through the collaboration between the central and local governments, compliance with international standards, and pluralistic coordination based on FTZs' positioning in terms of advancing the rule of law in domestic and foreign-related affairs in a coordinated manner as well as their current problems and expectable prospects.

A Optimize the Development Pattern of FTZs through the Collaboration between the Central and Local Governments

How to balance the legislative, administrative, and judicial powers between the central and local governments and enhance their cooperativity under the unitary system in China is directly related to the level of the rule of law in FTZs. However, with the establishment of more FTZs, it is possible that the competition and trials among FTZs will affect the state's uniform legislation. Therefore, it is necessary to strengthen the rule of law collaboration between the central and local governments from the following aspects.

Firstly, efforts should be made to enhance the central government's refined authorization, list out a clear list of powers, give full play to various local legislative powers, and balance the differences and experimental nature of the legislation in each FTZ. Article 16 of the *Legislation Law* allows the National People's Congress and its Standing Committee to decide to authorize the temporary adjustment or temporary suspension of the application of certain legal provisions within the prescribed time limit and scope for specific matters in accordance with the needs of reform and development. Practice has proved that it is feasible to temporarily adjust or temporarily suspend the application of some legal provisions, and the National People's Congress and its Standing Committee may promptly amend relevant laws. Although this article provides guidance for the legislation of FTZs,

[31] See WANG Yunpeng, 论法治改革观下自贸区地方立法的完善 (On the Improvement of Local Legislation in FTZs from the Perspective of Rule of Law Reform), 3 经贸法律评论 (*Business and Economic Law Review*), 54–69 (2022).

in current practice, the decisions of the National People's Congress and its Standing Committee are often package authorizations for all or several FTZs, which fail to highlight the characteristics of different FTZs. Therefore, a legislative communication mechanism between each FTZ and the National People's Congress should be established to clearly know the reform demands of different FTZs and grant targeted authorization under the overall planning by the National People's Congress. In the process of authorization, the scope of authorization should be further detailed so as to give guidance for the legislation of FTZs on the basis of clearly defining specific legal provisions whose implementation will be suspended and ensure that the legislation of FTZs is consistent with the central government's legislative principles and policy orientations.[32] In addition to the special legislation authorization from the National People's Congress, the Legislation Law granted corresponding flexible legislative powers to special economic zones, Hainan Free Trade Port and Pudong New Area. However, several FTZs, including those in Shanghai and Hainan, overlap with relevant special economic zones. Therefore, importance should be attached to how to coordinate local flexible legislation and special legislation of FTZs and give full play to the additive effect of various local legislative powers. Meanwhile, because FTZs have a strong foreign-related attribute but foreign-related legislation is often under the jurisdiction of the central government, it is more necessary to emphasize the legislative collaboration between the central and local governments and ensure uniformity with the central government in the system of the rule of law in foreign-related affairs in the legislative authorization and trials in relevant foreign-related fields.[33]

Secondly, efforts should be made to promote the institutionalization and standardization of the mechanism of collaboration between the central and local governments in terms of administrative management in FTZs and to enhance the communication and coordination at different levels in line with the central government's policy orientations. The development of the rule of law in FTZs relies on the transformation of government functions. Especially under the condition that the implementation of superior laws has been suspended and a large number of experimental reforms need to be carried out, any major reform is not an adjustment of the interests in a single local area but concerns the region and the overall situation and cannot be completed by local governments alone. Therefore, in many countries, management institutions are set up at the central government level to fully ensure the unified and convenient operation of FTZs.[34] At present, although the State Council is responsible for the administrative management of FTZs in China, a large number of matters are still undertaken by local governments. However, the administrative management in such fields as customs, taxation, and finance involved in FTZs is often directly implemented by the central government. Therefore, in the process of promoting the reform, multiple departments in the central and local

[32] See LI Shaowen. 中央和地方关系视角下地方立法权扩容的治理效能 (The Governance Efficiency of Expanding Local Legislative Powers from the Perspective of the Relationship between the Central and Local Governments), 2 法学论坛 (*Legal Forum*), 131–139 (2024).

[33] See FENG Shuo, 公司国籍认定标准的制度演进与中国的法律调适 (The Institutional Evolution of Corporate Nationality Determination Standards and the Law Adaptation in China), 5 法商研究 (*Studies in Law and Business*), 33–46 (2023).

[34] See ZHOU Hanmin, 我国四大自贸区的共性分析、战略定位和政策建议 (Commonality Analysis, Strategic Positioning and Policy Suggestions Regarding China's Four Major FTZs), 4 国际商务研究 (*International Business Research*), 36–46 (2015).

governments need to communicate with each other. From the perspective of the rule of law, administrative management of either domestic affairs or foreign-related affairs should be institutionalized and standardized in line with the rule of law. Accordingly, separate legislation on governmental management of issues related to FTZs should be taken into consideration to clarify the mechanism and procedures of coordination between different departments and levels of governments so as to further strengthen the transformation of government functions.

Finally, on the premise of maintaining the uniformity of judgments, the forward-looking nature and particularity of judicial adjudications in FTZs should be highlighted by virtue of judicial interpretations, guiding cases, and other judicial tools. Judicial power is a typical power of the central government. The core goal of the rule of law is to ensure the uniformity of judicial adjudication work nationwide. However, as reforms of higher degree and opening up of higher level are carried out in FTZs, the disputes faced by FTZs are different from traditional ones. Many emerging issues will face an absence of law. In this case, courts at all levels need to give proper interpretations and handle these issues based on the Constitution and legal provisions on the premise of fully understanding the policy intentions of the central government. In the past decade, the Supreme People's Court has successively issued a number of judicial interpretations or documents to guarantee FTZ construction and announced a series of typical cases and good measures involving the guarantee of FTZ construction. Some local courts have established FTZ courts to promote the centralized jurisdiction of relevant cases. In the future, the forward-looking nature and experimental nature of judicial adjudication in FTZs should be further highlighted. Especially, more trials should be made for the handling of foreign-related cases. On the one hand, efforts should be made to continue expanding the determination and jurisdiction of foreign-related cases by following the model of determining "three specific" foreign-related factors and keeping enhancing the internationalized and professionalized capabilities of adjudicators. On the other hand, it is necessary to improve the judicial adjudication systems (such as the jurisdiction agreed upon by the parties in accordance with the law and the application of foreign laws chosen by the parties) in foreign-related civil legal relations, equally protect the legitimate rights and interests of both Chinese and foreign parties, respect the parties' autonomy of will, and adopt a more open model of application of law to resolve disputes.

B Promote the Steady Opening Up in FTZs in Line with International Standards

Advancing high-standard opening up to build an institutional opening up system is the long-term orientation that FTZs should follow. The key to being in line with international standards lies in the alignment of FTZ rules with prevailing international rules, aiming to ensure the free flow of various economic factors, and keeping promoting the facilitation of trade, investment, and other affairs. Meanwhile, FTZs' efforts to be in line with international rules are an exploration of experience in the renewal of relevant legal systems in China, aiming to find gaps, make up for shortcomings, and update rules. Therefore, in order to be geared to international rules, FTZs should make efforts from two dimensions, i.e., aligning with external rules and updating internal rules, to enhance the role of the rule

of law in foreign-related affairs in connecting the domestic rule of law and the international rule of law.

From the perspective of aligning FTZ rules with prevailing international rules, the goal of aligning rules should be made clear first. At present, under the intervention of some Western countries, the system of multilateral economic and trade rules represented by the WTO is in trouble, and many new small systems of multilateral economic and trade rules have taken shape gradually. Therefore, when aligning with international rules, FTZs should grasp the development direction of international economic and trade rules and identify them. In the face of the fact that some Western countries repeatedly emphasize the rule-oriented international order and regard China as a rule "breaker," China needs not only to stress the importance of the purposes and principles of the UN Charter[35] but also to take measures to avoid some Western countries' trap of politicizing international economic and trade rules, view the renewal of international economic and trade rules dialectically, and align rules from the perspective of economic development based on China's actual development needs.

Such new international economic and trade rules as the RCEP, CPTPP, and DEPA are all international rules that are increasingly accepted by the international community and have already been recognized by China. The RCEP, as a multilateral economic and trade treaty that China has entered into, has actually taken effect nationwide. Preparations were already made in FTZ construction in order to adapt to the treaty in the past decade. Therefore, the focus should be placed on the CPTPP and DEPA. According to the spokesperson for China's Ministry of Commerce, China officially applied for accession to the CPTPP and DEPA in September and November 2021, respectively. Regarding the CPTPP, China has analyzed, studied, and assessed all the provisions of the agreement in depth and comprehensively, sorted out reform measures to be taken and laws and regulations to be revised, and proactively made a trial in FTZs where conditions permit and in the Hainan Free Trade Port. Regarding the DEPA, on August 18, 2022, the member states of the DEPA established the China Accession Working Team and started the negotiations in all fields. At present, China is communicating in depth with the member states about relevant DEPA issues. Both parties have completed two ministerial-level meetings, three meetings of chief negotiators, and three technical consultations. Meanwhile, many places in China are proactively aligning with the DEPA and exploring practical cooperation in relevant fields together with the member states.[36] Therefore, the following local legislation of FTZs should focus on aligning with the above two economic and trade rules and complete initial institutional adaptation so as to promote high-standard opening up.

In the process of aligning with specific rules, the legislative function of FTZs should be brought into full play. For such fields as trade, finance, and investment, the strategy of "suspending the implementation of some laws" should continue, and priority should

[35] See CAI Congyan, 论"以国际法为基础的国际秩序" (On the International Order Based on International Law), 1 中国社会科学 (*Social Sciences in China*), 24–43 (2023).

[36] 商务部:《积极推进加入CPTPP和DEPA、老字号"有进有出"动态管理……商务部回应近期经贸热点》(The Ministry of Commerce: Actively Promoting the Accession to the CPTPP and DEPA, Dynamic Management on the Registration and Deregistration of Time-Honored Brands ... the Ministry of Commerce Responded to Recent Economic and Trade Hotspots), available at website of the State Council of the People's Republic of China.

be given to making FTZ rules. For some sensitive fields where it is not advisable to suspend the implementation of specific laws, superior laws may be moderately adapted in specific regions such as the Shanghai FTZ, the Lin-Gang Special Area, and the Hainan Free Trade Port by formulating Pudong New Area laws and regulations and Free Trade Port laws and regulations, aiming to highlight the pioneering and experimental advantages of relevant special economic zones and reflect the characteristics of gradient alignment with international rules. In addition to aligning with the aforementioned international treaty rules, relevant legislation should pay more attention to some internationally accepted indicators. For example, although the business environment assessment indicators advocated by the World Bank are not binding international treaties, they have been widely recognized and accepted by the international community in the long-term practice. Therefore, during the legislation related to FTZs, a trial on specific indicators should be made first in FTZs to facilitate the building of a law-based, market-oriented and internationalized business environment. Especially for the Shanghai FTZ, the new round of business environment assessment will take Shanghai as a model city. The formulation of relevant rules in Shanghai is more related to the level of business environment in Chinese mainland. Therefore, the first step is to accelerate the legislation in the Shanghai FTZ by focusing on new indicators so as to satisfy the World Bank's assessment requirements and promote the pioneering trials in the Shanghai FTZ.[37]

At the legislative level, FTZs should align with relevant international rules. Besides, more attention should be paid to the establishment and improvement of relevant administrative and judicial supporting mechanisms. On the one hand, the model of law-based and standardized administrative management should continue. Further efforts should be made to transform government functions, strengthen streamlining administration and delegating powers to lower levels, and reform administrative management mechanisms in different fields. In such fields as trade and investment, where relatively systematic and unified systems are already available, the negative list model should continue, and the list should be continuously reduced so as to keep facilitating trade and investment. For finance and other fields with higher reform demands or emerging fields like the digital economy, it is even more necessary to strengthen legislation exploration in foreign-related fields, key fields, and emerging fields, implement pilot projects in regions with a stronger opening up orientation, such as the Lin-Gang Special Area of the Shanghai FTZ and the Hainan Free Trade Port, based on objective needs, and explore and accumulate experience by adopting the model of "regulatory sandbox" and other models. On the other hand, attention should be paid to the intra-territory application of relevant international rules. The institutional resilience of relevant rules should be reviewed by judicial means, and potential problems should be identified in advance. Meanwhile, since many disputes faced by FTZs are often emerging issues, attempts should be made to incorporate international soft law in relevant fields into the scope of legal interpretations and applicable references in specific judicial

[37] See LUO Peixin, 世界银行新旧营商环境评估规则及方法比较——兼论优化营商环境的道与术 (A Comparison of the World Bank's New and Old Business Environment Assessment Rules and Methods—Discussing about the Way and Art of Optimizing the Business Environment), 4 东方法学 (*Oriental Law*), 100–112 (2023).

discretion under the condition that there is no sufficient support from superior laws, because soft laws often represent the latest consensus of the international community and are likely to be transformed into hard laws such as international treaties, although they do not have a mandatory binding force. Introducing soft laws into the judicial activities in FTZs can not only demonstrate the internationalized and professionalized foreign-related adjudications in China but also contribute to gaining the trust of domestic and foreign parties.

C Consolidate the Institutional Innovation in FTZs through Multi-Party Cooperation

The key to FTZ construction lies in institutional innovation. As a national strategy, institutional innovation in FTZs needs to be consolidated through multi-party cooperation. In particular, because the rule of law in foreign-related affairs is a systematic project with wide coverage and strong interactivity, it is necessary to consider the overall balance between domestic and international situations and between development and security, adhere to forward-looking thinking, overall planning, strategic layout, and holistic advancement, strengthen top-level design, and promote foreign-related legislation, law enforcement, administration of justice, law compliance, and legal services in an integrated manner to form a pattern of massive collaboration in the rule of law in foreign-related affairs.

First of all, strengthening the cooperation among various FTZs is conducive to consolidating the frontline of institutional innovation in FTZs. Starting from the Shanghai FTZ, the central government has strategically made systematic arrangements and overall plans, aiming to make FTZs form a large area and build a frontline of institutional innovation. So far 22 FTZs have been established to form an overall pattern that runs from north to south and expands along coastal regions. Moreover, through the establishment of the Xinjiang FTZ and the Yunnan FTZ, efforts have been made to explore an innovative new pattern of opening up along the border. However, just because of the extensive distribution of FTZs, FTZs start competitive institutional innovations to enhance their competitiveness. Although such competition can stimulate FTZs enthusiasm for reform, to some extent, it has resulted in vicious competitions at different places based on selfish departmentalism as well as internal consumption and shortage of resources.

Therefore, attention should be paid to the cooperation and coordination among different FTZs, and such cooperation and coordination should be strengthened. On the one hand, in terms of institutional innovation, it is necessary to emphasize differentiated innovation based on the positioning and characteristics of different FTZs and focus on their key areas to carry out institutional design. For instance, the Shanghai FTZ, as the oldest FTZ, has already demonstrated its advantages in such fields as international trade, finance, and shipping in FTZ construction by relying on its location in Shanghai. Although many institutional innovations of the Shanghai FTZ are replicable and scalable, they cannot be directly used for other FTZs because other FTZs do not have the same development advantages as Shanghai. Even if other FTZs continue the innovation in relevant fields, they are unlikely to truly bear comparison with the Shanghai FTZ and may even lose their own characteristics. Therefore, these FTZs

should determine their comparative advantages in development and carry out innovations in key fields according to their geographical advantages and development goals.[38] On the other hand, in the process of differentiated innovation, opportunities should be provided for cooperation among different FTZs. The utilization of economic resources is interrelated, and the innovations of different FTZs in their respective fields require the support of other FTZs. For instance, the Shanghai FTZ's institutional innovation in the financial sector has enhanced the convenience in the financial sector. Moreover, this has provided financial support for other FTZs in Xinjiang and Yunnan to boost border trade. Introducing the Shanghai FTZ's financial services into relevant FTZs will be conducive to its own development. Such innovation has created mutual benefits and win-win results.

Secondly, efforts should be made to strengthen the cooperation between FTZs and other regions and enable FTZs to proactively integrate into national development strategies. Since institutional innovations in FTZs enjoy the advantages of making a trial first and are required to be replicable and scalable, relevant institutional innovation needs to take into account the feasibility of being replicated by other regions. Meanwhile, as a point of institutional innovation, FTZs need to integrate into national development strategies such as "integrated development of the Yangtze River Delta" and "Guangdong-Hong Kong-Macao Greater Bay Area." Doing so can not only give play to the spillover effect of institutional innovations in FTZs[39] and drive the development of the region where they are located but also create a favorable external environment for the development of FTZs and consolidate FTZ construction through the development of other regions.

In terms of the development of the rule of law in foreign-related affairs, the institutional innovations in FTZs should be in line with the rule of law. Especially, China's uniform legal system as a unitary state should be emphasized. At present, the institutional innovations in FTZs are very likely to lead to different legal provisions existing within and outside FTZs, thereby objectively causing conflicts of law among special economic zones and even the existence of multiple law districts.[40] Therefore, in terms of the development of the rule of law in FTZs, especially the development of the rule of law in foreign-related affairs, attention should be paid to the legality of legislation and institutional innovations in FTZs. Endless efforts should be made to enhance the filing and review system of the National People's Congress and the People's Congresses at all levels and ensure the consistency of basic legal rules and systems within and outside FTZs. The flexible arrangement and adjustment in the fields where relevant laws are not available need to keep the same basic directions.

Finally, efforts should be made to strengthen the cooperation between public authorities and market entities and enhance the quality and efficiency of institutional innovations in FTZs.

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[38] See LIU Yunliang, 中国特色自由贸易港建设法治先行论 (On Taking the Lead to Develop the Rule of Law in the Construction of Free Trade Ports with Chinese Characteristics), 2 上海政法学院学报 (法治论丛) (*Journal of Shanghai University of Political Science and Law (The Rule of Law Forum)*), 72–83 (2022).

[39] See FENG Fan, XU Yayun & HAN Jian, 自由贸易试验区对长三角经济增长外溢影响的实证研究 (An Empirical Study of the Spillover Impact of Pilot FTZs on the Economic Growth in the Yangtze River Delta), 5 世界经济与政治论坛 (*Forum of World Economics & Politics*), 118–138 (2019).

[40] See DING Wei, 我国特定经济区域变通适用国际私法规范的前瞻思考 (Forward-Looking Thoughts on the Flexible Application of Private International Law Norms in Specific Economic Zones in China), 9 政治与法律 (*Political Science and Law*), 2–14 (2022).

XI Jinping emphasized that the country should pursue coordinated progress in law-based governance, law-based exercise of state power, and law-based government administration, and promote the integrated development of the rule of law for the country, the government, and the society. Whether it is the development of the rule of law in FTZs or the development of the rule of law in foreign-related affairs, all should satisfy this requirement. Moreover, emphasis should be placed on the cooperation between public authorities and social forces in the development of the rule of law, because the development of FTZs is in its nature to promote the further growth of the market economy, which requires not only the government's streamlined administration and delegation of powers to lower levels but also market entities' active participation.

The cooperation between public authorities and market entities should be carried out from multiple dimensions, including legislation, administration, and administration of justice. In terms of legislation, the legislation of FTZs should satisfy the legislation requirement of whole-process people's democracy. In the process of formulating and amending rules, importance should be attached to listening to the demands of market entities and carrying out institutional innovation to attract and serve market entities. In terms of administrative management, streamlined administration, and delegation of powers to lower levels should go on, and emphasis should be placed on the modest and restrained principle of administrative powers so as to provide greater space for market entities' economic activities by building a law-based, market-oriented, and internationalized business environment. In terms of the administration of justice, it is necessary not only to equally protect all types of market entities and safeguard their legitimate rights and interests but also to give full play to non-litigation dispute resolution mechanisms such as arbitration and mediation to meet the autonomy of will of domestic and foreign market entities in resolving commercial disputes to the greatest extent.

IV Conclusion

FTZs are a testing ground for the domestic rule of law and a leading area for aligning with the international rule of law. The process of developing the rule of law in FTZs is an integral part of the overall process of developing the rule of law in foreign-related affairs. As more FTZs were established, China's FTZs have shaped up a new pattern in which eastern FTZs collaborate with western ones, and opening up is implemented across the board in the areas along borders, rivers, and coastal regions. However, they have given rise to the issue of coordination of multiple interests, such as reform and innovation, development and risks. At present, FTZ construction still needs to advance opening up and innovation, enable development to be coordinated with security, and strengthen the overall planning and system integration of reforms. To follow the guiding principles of the Third Plenary Session of the 20th CPC Central Committee, the FTZ upgrading strategy needs to attach importance to the development of the rule of law in foreign-related affairs and integrate it into the next round of reform and opening up. Therefore, efforts should be made to optimize the FTZ development pattern through the collaboration between the central and local governments, give full play to the enthusiasm

of both the central and local governments, and highlight the great strength of the socialist system with Chinese characteristics. Moreover, it is necessary to continuously advance the steady opening up in FTZs by aligning with international standards and enhance the international competitiveness and attractiveness of FTZs. More importantly, efforts should be made to keep promoting and consolidating institutional innovations and achieve new leaps in the development of FTZs in the new era by strengthening the cooperation among FTZs, between FTZs and other regions, and between public authorities and market entities.