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Analysis of Inter-jurisdictional Conflict Law in China

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Abstract: Since the implementation of the "one country, two systems" policy and the return of Hong Kong and Macau, China has become a region with multiple legal jurisdictions, inevitably leading to inter-regional legal conflicts. Consequently, the development of unified inter-jurisdictional conflict law in China has become an imperative trend. Considering the potential future unification of Taiwan, such conflicts are expected to become even more complex. Hence, perfecting China's inter-jurisdictional conflict law has become a major issue for the Chinese conflict law community in the present and the foreseeable future. This paper offers a brief analysis and recommendations regarding the inter-jurisdictional legal conflicts existing within the "four legal domains" of China. Through an analysis of the concept of conflict law, the paper extends to the concept of China's inter-jurisdictional conflict law. Additionally, the paper highlights the issues present within the four legal domains and proposes corresponding solutions. Therefore, this paper holds significant practical significance for resolving inter-jurisdictional legal conflicts within the "four legal domains" of China.

Keywords: Conflict Law, Inter-jurisdictional Conflict Law, China's Inter-jurisdictional Conflict Law

1. Introduction

With the return of Hong Kong and Macau and the potential unification of the mainland and Taiwan, China has emerged as a nation with multiple legal jurisdictions. Due to differences in history, legal systems, and social structures, legal conflicts between various regions are inevitable. To address these challenges, the author draws on the experiences of various countries internationally and combines them with the unique features of China's "one country, two systems" policy to analyze inter-jurisdictional legal conflicts. "Inter-jurisdictional" legal conflicts are commonly described as those arising between multiple territories of a nation where differing legal systems exist. These territories may encompass distinct economic, cultural, social, or religious aspects, each having their own constitutions, fundamental principles, and social customs. China has become a country with inter-jurisdictional legal conflicts due to the implementation of the "one country, two systems" policy, resulting in the situation of "one country, four legal domains." Currently, mainland China, Hong Kong, Taiwan, and Macau all have their own legal systems, leading to intricate inter-jurisdictional legal conflicts. The potential future return of Taiwan is expected to introduce even more complexity. Given the current absence of a comprehensive inter-jurisdictional conflict law in China, the formulation and

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improvement of China's inter-jurisdictional conflict law have become a significant task for the judicial academic and practical communities in the foreseeable future.

2. The Concept of Legal Conflict

2.1. The Basic Concept of Legal Conflict

From a legal perspective, the international community consists of various legal domains. Each domain must involve relationships of interests between individuals and society, and each must have laws regulating these relationships. "Legal conflict" refers to the situation in cross-border civil disputes where there is a lack of clarity concerning the provisions of foreign laws and the application of domestic laws to resolve the disputes. The conditions leading to legal conflicts include differing regulations on the same issue in relevant countries and the recognition of the effectiveness of foreign provisions by the courts handling such relationships. Thus, the meaning of legal conflict not only manifests as differences in the elements of interests across multiple legal domains but also as the coexistence of various legal provisions governing the same claim of interest. Even if multiple legal provisions are consistent, conflicts may arise between their effects. Therefore, it can be concluded that legal conflict not only arises from contradictions within the content of provisions but also manifests as contradictions in their effects, primarily originating from conflicts in effectiveness. Legal conflict involves a dual contradiction between effects and content.

2.2. The History of Legal Conflict

Once multiple interests are involved, legal conflicts are objectively triggered. Western scholars often state that conflict law was a product of 13th and 14th-century Europe. In other words, this viewpoint suggests that there was no conflict law before the 13th and 14th centuries. Some scholars have proposed that conflict law emerged during the Baroque period, as Bartolus theoretically established recognition of law beyond the domain, thus leading to legal conflicts. [1] Clearly, these two views are not sustainable under scrutiny. Looking at the Tang Dynasty, the prosperity of various aspects such as politics, economy, and culture encouraged many nations and states around it to send envoys to establish friendly relations, and some even sent their children to study the advanced cultural system of the Tang Dynasty. [2] "Since ancient times, China has always cherished and respected all peoples equally and loved them as one. Therefore, their descendants have all treated us as their parents." [3] These words from Emperor Taizong of the Tang Dynasty undoubtedly demonstrate that the Tang Dynasty adopted the idea of a unified approach to Chinese and non-Chinese peoples. In terms of foreign relations, the Tang Dynasty implemented a liberal political policy and an unprecedented level of openness, leading to social prosperity and stability. The Tang Dynasty also had the most foreigners in Chinese history. In order to attract foreigners to settle in China, the Household Registration Law of the 25th year of the Kaiyuan era stipulated: "All those who have been expelled or are foreigners returning to the court, the prefectures and towns where they are located shall provide them with food and clothing, and report their situation to the court. Foreigners who are settled in the open town." [4] At the same time, the "Yonghui Code: Regulations on Names" stipulates: "For those foreigners of the same class who commit offenses, they shall be judged according to their respective customs; for those of different classes who commit offenses, they shall be judged according to the law." [5] For cases that occurred within Chinese territory, if they involved people from the same country, the judgment would be based on the laws of the respective parties' countries. If the parties involved were from different countries, the laws of the Tang Dynasty would be applied for judgment. This legislation concerning foreign affairs demonstrated the principles of national jurisdiction and territorial jurisdiction at that time, fully reflecting the open-mindedness of the Tang Dynasty. It is evident that legal conflict arose simultaneously with the relationship of interests between legal domains in human

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history, being a byproduct of conflicting interests. Strictly speaking, Bartolus is not the founder of private international law but the originator of inter-jurisdictional conflict law.

2.3. Classification of Legal Conflicts

Based on the nature of legal conflicts, they can be classified into spatial legal conflicts, temporal legal conflicts, and interpersonal legal conflicts. Spatial legal conflicts refer to conflicts between different regions, including international legal conflicts and inter-jurisdictional legal conflicts. International legal conflicts pertain to conflicts between different countries, whereas inter-jurisdictional legal conflicts involve conflicts between different legal domains within a single country. Temporal legal conflicts refer to conflicts between new and old laws or conflicts between preceding and subsequent laws that may impact the same social relationship. Interpersonal legal conflicts refer to the changes in corresponding laws in today's world, resulting from differences among various countries, ethnicities, religions, tribes, or social classes. These changes have a significant impact on contemporary society, leading to legal contradictions among countries, groups, and cultural backgrounds. While inter-jurisdictional legal conflicts were the primary form of legal conflicts in early transnational relations, they have become a secondary form in modern and contemporary conflict law. With the emergence of modern-day nation-states, foreign relations are no longer determined by whether they transcend a single legal domain, but rather by whether they transcend the sovereign territory of a nation [6].

Within the field of private international law, there are numerous and widespread civil transactions between legal jurisdictions, giving rise to various legal contradictions. This has further propelled the development of conflict laws, particularly due to globalization, economic integration, and the general recognition of the effectiveness of other legal domains' private laws within a legal domain during foreign exchanges. Consequently, the formulation of inter-jurisdictional conflict laws is especially critical, particularly given the increasingly frequent interactions and complex conflicts of interest between China's four major legal domains.

3. Manifestations and Nature of China's Regional Legal Conflicts

3.1. Manifestations of China's Regional Legal Conflicts

China's regional legal conflicts can be classified into various regional legal conflicts based on different criteria. For instance, the following are several different classification methods:

3.1.1. Classification Based on National Structural Forms

Based on different national structural forms, inter-jurisdictional legal conflicts in China can be divided into: inter-jurisdictional legal conflicts in federal states and inter-jurisdictional legal conflicts in unitary states. The former refers to judicial conflicts between the federal government and other governments, while the latter refers to judicial conflicts between independent governments and other governments. The occurrence and resolution of regional judicial conflicts vary, for example, in countries such as the United States, Australia, and Mexico. In comparison, the situations in countries like China, Spain, and the United Kingdom are more complex. These developed countries typically use constitutional provisions to regulate and limit the occurrence and resolution of these conflicts. In Spain, a common law can regulate certain behaviors, whereas in the United Kingdom, these behaviors are often determined by local customs.

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3.1.2. Classification Based on Legal Systems

Based on different legal systems, inter-jurisdictional legal conflicts can be divided into: inter-jurisdictional legal conflicts within the same legal system and inter-jurisdictional legal conflicts within different legal systems. Legal conflicts within the same legal system refer to inter-jurisdictional legal conflicts within a country where various legal domains belong to the same legal system, such as the United Kingdom, Switzerland, Australia, and the former Soviet Union. Inter-jurisdictional legal conflicts within different legal systems refer to inter-jurisdictional legal conflicts within a country where various legal domains belong to different legal systems, such as China, the United States, and Canada.

3.2. The Nature of China's Inter-jurisdictional Legal Conflicts

The issue of the nature of inter-jurisdictional legal conflicts refers to the relationship between inter-jurisdictional legal conflicts and private international law, such as whether inter-jurisdictional legal conflicts fall within the scope of adjustment of private international law. Inter-jurisdictional legal conflicts often exist within a single country, while international legal conflicts occur between different countries. The two are fundamentally different, but there are certain similarities in their resolution methods and legislative techniques, while also having both connections and distinctions [7]. Inter-jurisdictional conflict law, which deals with inter-jurisdictional legal conflicts, often discusses the nature of inter-jurisdictional legal conflicts through discussions on the relationship between inter-jurisdictional conflict law and private international law. Currently, various doctrines are proposed concerning the nature of inter-jurisdictional legal conflicts and inter-jurisdictional conflict law [8].

3.2.1. The Doctrine of Similarity

The Doctrine of Similarity holds that legal techniques in private international law and conflict law should have certain similarities to facilitate the selection and effective interpretation and application of conflict norms among various legal systems. However, German legal scholars emphasize the differences in legislative techniques of conflict law to better address conflict issues.

3.2.2. Doctrine of Differentiation

The Doctrine of Differentiation holds that the two conflict laws should address different issues. Inter-jurisdictional conflict law aims to resolve legal disputes across multiple countries, while private international law places more emphasis on interests across multiple countries to ensure peace and stability among nations. Some scholars propose that there are significant differences in the practical application of private international law and regional conflict law.

3.2.3. Doctrine of Compromise

According to the principle of compromise, regional legal conflicts can be divided into two categories: one composed of countries with legislative freedom and the other composed of organizations that do not possess corresponding legislative capabilities. E. Vita believes that when determining the nature of inter-jurisdictional legal conflicts and conflict law, factors such as the autonomy and completeness of regional legal systems within a country should be considered. Therefore, the following issues should be considered when determining the nature of inter-jurisdictional conflict law: [9] Based on E. Vita's theory, the following issues need to be analyzed:

Whether the regional legal system within a country is established by its legislative body, and whether the legislative body has established such laws within an appropriate scope, or whether the

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regional legal system is only formed by customary law developed by the practice of the courts; whether they have their own judicial institutions directly applying to their laws and customs, or whether the laws are implemented by judicial institutions appointed by the central government; whether they have their own conflict rules, or whether the system is influenced by the central legislative body; if the answer to the previous question is affirmative, whether the system is formed in accordance with the effective local private international law system, or whether the system is independent even in situations similar to private international law. Whether public policy can be used to exclude the application of other regional legal systems within the country also needs to be considered. Considering the case of China, there are four legal domains: Hong Kong, Macau, Taiwan, and mainland China. These four legal domains have their own legislative and judicial institutions and, under the authorization of central legislation, have established their own regional substantive laws and conflict norms. Although China is a unitary state, the four legal domains have independent and equal status, with independent powers in legislation, judiciary, and law enforcement. The high degree of autonomy and completeness of China's regional legal system makes the nature of inter-jurisdictional legal conflicts closely resemble that of international legal conflicts. Therefore, the methods for resolving inter-jurisdictional conflicts are similar to those in international law practices [10]. Hence, according to E. Vita's theory and considering China's specific situation, China has four legal domains, namely Hong Kong, Macau, Taiwan, and mainland China. Each domain has its own legislative and judicial institutions, and under the authorization of central legislation, has established its own regional substantive laws and conflict norms. China, as a multicultural country, grants a high degree of independence to its four legal domains, including various functions of law, judiciary, and law enforcement, making China's regional legal system more robust. The legal conflicts within it are fundamentally similar to international legal conflicts, and the methods for resolving conflicts are also very similar to those in international law practices.

4. Methods for Resolving China's Inter-jurisdictional Legal Conflicts

4.1. Analogy Application of Private International Law

The analogy application of private international law is a way to resolve inter-jurisdictional legal conflicts and has a traceable history in various countries' legal systems. For example, Article 5 of the 1948 Czech "Code of Private International and Inter-jurisdictional Law" stipulates, "Inter-jurisdictional legal conflicts are resolved by analogy applying private international law to inter-jurisdictional legal conflicts." Article 14 of the 1888 Spanish "Civil Code" similarly stipulates that the private international law rules in the law are applicable to resolving inter-jurisdictional legal conflicts within Spain [11]. Currently, most mainland scholars advocate initially adopting this approach to resolve inter-jurisdictional legal conflicts among the various legal domains under "one country, two systems." [12]. However, when employing this approach, it is necessary to consider that Hong Kong, Macau, and the mainland do not belong to the same legal system, as well as the international practices reflected by the conflict rules and norms adopted in private international law [13]. It should be noted that Hong Kong and Macau do not come from the same legal system as mainland China, and the conflict principles and relevant international standards used in these regions should be considered. Although this approach may seem plausible, it is not the only long-term solution.

4.2. Improvement of Relevant Legislation in Each Region

Each region should formulate and improve laws for resolving conflicts. Formulating and improving relevant laws should include not only rules for legal choice but also substantive rules that directly determine the rights and obligations in inter-jurisdictional legal relationships. This allows parties in

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one legal domain to clearly understand their rights and obligations when participating in civil legal relationships in other legal domains, which is conducive to the stability of inter-jurisdictional relations and the protection of the interests of the parties. Formulating and improving legislation enables judicial institutions to have laws to rely on when resolving inter-jurisdictional conflicts, enabling the fair and reasonable resolution of disputes based on the law. With laws to rely on, judicial institutions do not need to report and consult layer by layer when handling inter-jurisdictional conflict cases, which can improve the efficiency of judicial work.

4.3. Approach of Unified Conflict Law

Scholars generally believe that the establishment of unified private international law in China is "the most desirable way." Establishing unified private international law in China is easier than unifying substantive law and has many advantages. For example, it is conducive to maintaining normal and orderly interactions between different legal domains, helpful in resolving identification issues, and aids in avoiding problems such as counter-action and "forum shopping." However, it should be noted that the central government does not have the authority to establish unified inter-jurisdictional conflict law [14]. The unified conflict law should be jointly established through negotiations among the legal domains while respecting the principle of "one country, two systems" [15], and the interests of each legal domain should be fairly balanced.

5. Conclusion

Legal conflicts and conflicts of interest often influence each other and arise simultaneously, rather than depending on the recognition of the law's effectiveness beyond the jurisdiction. Therefore, measures must be taken to address these issues. For countries with disparate laws, establishing domestic legal relationships is more important than establishing international relationships, especially in terms of quantity and scope, as these issues often lead to international judicial conflicts. Given the significant significance of inter-jurisdictional legal conflicts for national security, prosperity, and development, China should take swift action to establish and improve inter-jurisdictional conflict law to ensure national security, prosperity, and development. The established law not only requires each country to comply with its own laws but also requires each government to formulate specific substantive laws to ensure the effective adjustment of legal relationships between countries.

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