

Study on the Legal Legitimacy of the Rights Protection of Overseas Chinese in Russia and the Strategy*

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Abstract—Overseas Chinese (Chinese citizens who have settled abroad) are important supporting power for safeguarding national sovereignty, security, development interests and promoting the friendship between China and foreign countries. Overseas Chinese in Russia also play a role as a bridge in Sino-Russian strategic cooperation, "the Belt and Road" construction and Sino-Russian folk friendly exchanges. However, in real life, there are still unsatisfactory practical problems in the rights protection of overseas Chinese in Russia. By clarifying the concept of the rights protection of overseas Chinese, this paper explores the legitimacy of the rights protection of overseas Chinese in Russia based on the relevant provisions of Chinese and Russian laws and international law. To solve the main difficulties and problems in the rights protection of overseas Chinese in Russian, it is urgent to get familiar with the international rules, compare the differences in the legal system between Russia and China, comprehensively assess and effectively prevent various legal risks, and use legal rules to coordinate and resolve specific disputes.

Keywords—overseas Chinese in Russia; legitimacy; rights protection strategy

I. INTRODUCTION

Against the background of comprehensive governance based on law and strictly administering the party, it is of great theoretical and practical significance to strengthen and deepen the construction of the culture of rule by law in the whole society. The culture of rule by law means the active participation of the whole society and all the people, making rule of law not only the basic strategy of national governance and social governance, but also the universal way of thinking and lifestyle of the whole people by pursuing and guaranteeing fairness and justice through respecting law, knowing the law, obeying the law and using the law. China is a big country with overseas Chinese resources. More than 60 million overseas Chinese are located in nearly 200 countries and regions in the world. Maintaining the rights of overseas Chinese according to the law is an important task for the party and the state to comprehensively promote the

rule of law. Since the beginning of the 17th century, overseas Chinese in Russia have lived there for nearly 400 years. They have made great contributions to the social and economic development of China and Russia and the spread of the outstanding Chinese culture. However, for a long time, due to various reasons, whether in foreign countries or in China, the issue of protecting the rights of overseas Chinese in Russia has not received enough attention. Under the circumstance of the culture of rule by law, the study on the construction of legal protection of the interests of overseas Chinese in Russia will help to enhance the pride and self-confidence of Chinese citizens and enhance the cohesiveness of the country.

II. THE CONNOTATION, ESSENTIALS AND PARTICULARITY OF THE RIGHTS PROTECTION OF OVERSEAS CHINESE

A. The Definition of the Rights Protection of Overseas Chinese

As a legal concept, "Overseas Chinese" is clearly stipulated in Article 50 of the Constitution of the People's Republic of China. At the same time, in the current China's only special overseas Chinese legislation — "Law of the People's Republic of China on the Rights Protection of Returned Overseas Chinese and Their Relatives" defines in Article 2 the concept of overseas Chinese, which stipulates that "the overseas Chinese are Chinese citizens who are settled abroad". As a legal concept, the meaning of "overseas Chinese" is relatively clear: first of all, the person must be a Chinese citizen, which means the person has Chinese nationality, and the specific requirement is to hold a Chinese passport abroad; the second is to be settled abroad, which means obtaining long-term or permanent residency in a foreign country. If permanent residency isn't obtained, the person must legally residing for a certain period of time in order to be distinguished from ordinary citizens who go abroad for short-term travel, study and labor dispatching.

B. Interpretation of the Essentials of Rights Protection of Overseas Chinese

Overseas Chinese are Chinese citizens with Chinese nationality and for the country of residence, they are

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foreigners. Foreigners in international law refer to persons who do not have the nationality of the country of residence in a country but have other nationalities or are stateless. From the perspective of international law, overseas Chinese have connected two different legal relationships. On the one hand, based on the legal relationship of nationality, overseas Chinese are protected by the state of nationality and have the obligation to be loyal to the country; on the other hand, the country of residence, according to its territorial jurisdiction, imposes jurisdiction over the overseas Chinese in the country and imposes corresponding obligations. Foreigners should abide by the laws of the country of residence, which are not limited to the laws at the time of entry, but they also shall comply with newly enacted or amended laws during their stay. Overseas Chinese shall not violate the laws and decrees of the country of residence since they are under the jurisdiction of it. However, because they are not citizens of the country of residence, overseas Chinese do not enjoy the basic political rights of the country of residence. This is determined by the territorial jurisdiction of the national jurisdiction that reflects the sovereignty of the state. Corresponding to this is the personal jurisdiction of international law. Personal jurisdiction, also known as personal supremacy, means that the country has right of jurisdiction over all persons within the country and abroad who has nationality. According to personal jurisdiction, the country can exercise jurisdiction over the citizens who travel or reside in foreign countries. This is the national jurisdiction permitted by international law with nationality as a legal bond. Based on nationality, the nationals have special rights to the state and bear special obligations. The country should have jurisdiction over its own nationals and have the duty to protect. This is the obligation as well as the right of a country. Therefore, it is realistic and reasonable for the state to protect its nationals based on nationality.

C. *The Embodiment of Particularity in the Rights Protection of Overseas Chinese*

From the perspective of legal principle, as Chinese citizen, overseas Chinese should enjoy the rights of citizens under the Constitution and laws, except for those with special restrictions. However, because overseas Chinese settled abroad, the protection of overseas Chinese rights has particularity. First of all, overseas Chinese must cancel their domestic household registration, so it is difficult to actually enjoy the many rights and interests related to household registration, such as marriage, maternity, medical care, education, housing, employment, social security, elections, etc., which causes various inconveniences when they return to live in China. This can be said to be the biggest dilemma faced by overseas Chinese in the protection of domestic rights and interests. Secondly, because overseas Chinese settled abroad, the degree of knowledge of relevant domestic laws and policies is quite different from that of domestic residents, and it is also the reason why some of their rights cannot be realized. Finally, because they are settled abroad, the basic rights of the people of the country of residence are not available to the overseas Chinese. The country's protection of their rights and interests is also insufficient due to the non-citizenship and the extraterritorial effect of the

law and protection ability of related institutions of nationality state is greatly limited, which is also an important reason for the particularity of rights protection of this group.

III. THE LEGAL LEGITIMACY OF THE RIGHTS PROTECTION OF OVERSEAS CHINESE IN RUSSIA

A. *Based on the Clear Provisions of the Chinese Constitution*

As the fundamental law of the country, the Constitution is the most fundamental source of all citizens' rights. Protecting the rights and interests of overseas Chinese has an unquestionable constitutional source. In the Article 23 of the first Constitution of the People's Republic of China in 1954, Section 6, Article 27 of the 1975 Constitution, Article 54 of the 1978 Constitution, and Article 50 of the current 1982 Constitution, there are clear provisions on the legitimate rights and interests of overseas Chinese, which is "The People's Republic of China protects the legitimate rights and interests of overseas Chinese and protects the legitimate rights and interests of returned overseas Chinese and their relatives."

B. *Based on the Rights and Obligations of Our Citizenship*

In the chapter two of the current Constitution, "Civil Rights and Obligations of citizens", Article 33 (the first article of the Chapter) clarifies that all the people with Chinese nationality are Chinese citizens, and the rights and duties of citizens are guaranteed by the Constitution and the law. Nationality is the only criterion for judging whether a person is a citizen of China. The citizenship recognized by the nationality serves as the bond between the individual and the state, so that the state must bear the obligation of basic guarantee for the individual rights of the citizen. As a citizen of the People's Republic of China, overseas Chinese undoubtedly enjoy the rights stipulated in the Constitution and laws. These rights include not only the basic rights explicitly listed in the Constitution, but also the rights that should be enjoyed by ordinary citizens as long as there are no exclusionary restrictions as stipulated by other laws and regulations.

C. *Based on the Legal Status of Foreign Citizens in the Russian Federation*

Article 4 of the Law on the Legal Status of Foreign Citizens in the Russian Federation stipulates that "except for the special provisions of the laws of the Russian Federation, foreign citizens have equal rights and obligations in the Russian Federation as the citizens of the Russian Federation", which makes the principle specification for the status of foreign citizens in Russia. At the same time, foreign citizens can also enjoy the right to vote and be elected according to Article 12: "foreign citizens who permanently reside in Russian Federation have the right to vote and be elected in the election of local self-governing bodies in accordance with the conditions and procedures stipulated by federal law. They also has the right to participate in local referendums"; finally, the provision of Article 13 stipulate foreign citizens enjoy the right to work: "foreign citizens have the right to

freely control their own labor ability, choose the type of work and occupation, and have the right to freely use their own abilities and property to be engaged in business and other economic activities that are not prohibited by law, but they should take into account the relevant restrictions of federal law."

D. Based on Relevant Basic Principles in the Field of International Law

The protection of the rights and interests of citizens when they are abroad, in addition to the basic protection provided by the country of residence in accordance with the provisions of domestic laws, is mainly based on the rules of international law consisting of relevant international treaties and international customs. The rules of international law relating to the protection of overseas Chinese rights include:

1) *Rule of consular protection*: Consular protection of nationals is a universally recognized rule of international law. Article 5 of the Vienna Convention on Consular Relations lists the main duties of consular functions, and the main contents related to the protection of the rights and interests of their citizens are: protecting their citizens, especially supervising juveniles and other persons with insufficient capacity; assisting and aiding domestic citizens; safeguarding the interests of their citizens in the event of death inheritance; assisting their citizens in defending their rights and interests in litigation.¹ The premise of the protection of these rights and interests is of course to abide by the laws of the country of residence, but it is the basic duty of consular protection to protect the rights and interests of the citizens. As Chinese citizens, overseas Chinese should enjoy the consular protection of China, the nationality state. This is also the basic way for overseas Chinese to obtain protection in addition to the legal protection of the country of residence.

2) *Rule of diplomatic protection*: Although diplomatic protection has not yet formed a statute law such as a convention or agreement that has entered into force, there are various theories on its nature, but as a necessary supplement when consular protection cannot be realized, it is also a common consensus in international exchanges. The Vienna Convention on Diplomatic Relations also summarizes the functions of the Embassy. In addition to basic duties such as diplomacy and envoys, it also involves the protection of the basic rights and interests of its citizens. It includes the fundamental protection of the interests of the country and its citizens and also states that in the event of special circumstances when the two countries break off diplomatic relations or the embassy retreat, the rights

protection of the country and its citizens can be entrusted to the third country recognized by the country of residence. This rule of international law is the legal basis for the nationality state to exercise diplomatic protection outside consular protection, and it is also the basis of international law that the nationality country should exhaust various means to protect the rights and interests of its citizens.

3) *The theory of personal jurisdiction*: For personal jurisdiction, regardless of whether the citizen or legal person is within the territory of the nationality state, the state has the right to exercise jurisdiction over the person with the nationality of the country. According to the basic principles of international law, personal jurisdiction is generally lower than territorial jurisdiction, but its concession to territorial jurisdiction is not absolute. That is to say, no matter where the person is, first of all, the person must abide by the law of location, and the rights and interests should first be guaranteed by the laws of location. However, the nationality state still has jurisdiction over the person. When his rights are clearly violated, the country has the right to take certain measures to protect it. This is also the legal source of the state's right and obligation to provide consular, diplomatic or other protection of its citizens in foreign countries.²

4) *Principle of Basic human rights protection*: The theory of human rights protection is a basic rule of international law that has gradually formed in modern times and is widely used in various fields of the international community. As the world's largest international organization, the United Nations has promoted the realization of human rights as its basic purpose in its charter.³ Based on this principle, states are obliged to give the most basic human rights guarantees to nationals of other countries in their own countries. At the same time, the basic protection of nationals in other countries can and should be carried out through various channels, even in the event of an emergency when the country cannot guarantee the basic rights and interests of its citizens, the country can guarantee the most basic human rights of its citizens by implementing consular protection, diplomatic protection, armed evacuation and other means.

IV. OBSTACLES TO THE LEGAL PROTECTION OF THE RIGHTS OF OVERSEAS CHINESE IN RUSSIA

A. Obstacle of Conflicts in Sovereign Jurisdiction and Difficulties in Implementing Rights and Interests

The sovereignty of a country mainly refers to the jurisdiction of the state. On the issue of the rights protection of overseas Chinese, the exercise of national jurisdiction may result in conflicts and contradictions due to personal jurisdiction and territorial jurisdiction. At present, the existing laws and regulations concerning the rights protection of overseas Chinese in China only stipulate the

¹ See Article 5 of the Vienna Convention on Consular Relations. The treaty was scheduled for Vienna on April 24, 1963 and entered into force on March 19, 1967. On July 3, 1979, the Government of the People's Republic of China submitted the instrument of accession to the Secretary-General of the United Nations, and it entered into force for China on August 1 of the same year.

² Liu Linlin. On the Protection of China's Citizens' Rights and Interests in Foreign Economic Relations — From the Perspective of Chinese exclusion, Yunnan University of Finance and Economics, 2016, 10.

³ Paragraph 1, Article 13 of the Charter of the United Nations.

protection of returned overseas Chinese and their relatives and the domestic interests of overseas Chinese, without stipulating the rights protection of overseas Chinese, or it can be said that it only protect the domestic interests of overseas Chinese without concerning the stipulation of overseas rights protection of overseas Chinese. However, the existing legal protection can no longer meet the needs of the development of international relations in the era of globalization. This is because the legal protection of overseas Chinese rights faces two major obstacles. From the perspective of sociology, it faces social obstacles such as conflicts of interest between ethnic groups, racial discrimination, and hostility mentality caused by economic globalization. From the perspective of jurisprudence, it faces the legal obstacles of lack of legislation and the limited capacity of overseas law enforcement agencies. The existence of two major obstacles makes China's legal protection of overseas Chinese face difficulties, which make it difficult to meet the actual needs.

B. Lack of Legal Support in China, and Diverse Claims for Rights and Interests

In order to protect the rights and interests of overseas Chinese, the Law on the Rights Protection of Returned Overseas Chinese and Their Relatives, Exit and Entry Administration Law, the Law on Charities, the Law on the Administration of Domestic Activities of Foreign NGOs, and the Regulations on the Administration of Entry and Exit of Foreigners, etc. provide guarantee of related rights such as protecting the identity cognizance, settlement in hometown, education, social security, and donation management of overseas Chinese, but there are still the following major problems. First, the Constitution has clearly stipulated the protection of the rights and interests of overseas Chinese. However, there is no specific law at the national level to protect the rights and interests of overseas Chinese. The lack of special laws has made it difficult for some of the rights and interests of overseas Chinese to be effectively implemented in practice. The legal system for the rights protection of overseas Chinese needs further improvement. Second, some places and departments have insufficient understanding and different opinions of the particularity and importance of the rights protection of overseas Chinese. Some of the policy measures concerning the rights protection of overseas Chinese are still not in place. Third, in accordance with the provisions of the Exit and Entry Administration Law, overseas Chinese can use passports to prove their identity when dealing with affairs in China. Because the passport number is not unique, it is not convenient for overseas Chinese to handle affairs through passports, which has become a prominent problem that proposed by most overseas Chinese. Fourth, most overseas Chinese investment enterprises are concentrated in labor-intensive industries, with insufficient ability of innovative development, so enterprises are under greater pressure to transform and upgrade. Some local governments still have problems such as not fulfilling the promise of attracting investment and arbitrarily changing the plan. In addition, the concept of the rule of law of overseas Chinese is not strong, so the problem of the violation of the rights and interests of overseas Chinese investment enterprises is more prominent.

C. The Lack of Stability in the Russian Law and the Hidden Dangers Caused by Corruption

With the entry of the "WTO" and the operation of the unified economic space of the Commonwealth of Independent States, laws of Russia are frequently updated, and the policy environment and social security still have some instability. First, based on the WTO commitments, the Russian government needs to adjust about 100 legislative documents and 1,000 administrative regulations. At the same time, in order to promote the operation of the customs union and the unified economic space, it is necessary to continuously adjust the energy, transportation and other industrial policies that attract foreign investment. Second, Russia implements four levels of decentralization management of the federation, federal district, federal subject, and local autonomy. There are legal conflicts between the central government and local government at different levels of legislation due to competition and cooperation or contradiction. Third, the enforcement of Russia's law is opaque. It has been listed among the most corrupt countries in the world. In the "Transparency International" Corruption Perceptions Index in 2016, Russia ranked 147th out of 176 countries and regions.⁴ In addition, Chinese exclusion forces in the Far East of Russia still have considerable power. They often carry out special customs clearance on China's import and export commodities on the grounds of rectifying "gray customs clearance", and even more black and evil forces bully Chinese businessmen (overseas). These all make it difficult for Chinese enterprises (overseas Chinese) to grasp the immediate trading rules of Russia, and the lack of guarantees for normal operations and personal safety will eventually lead to increased difficulty in investing and trading in Russia.

V. IMPLEMENTATION PATH OF LEGAL PROTECTION OF RIGHTS OF OVERSEAS CHINESE IN RUSSIA

A. Clarifying the Internal and External Dual Protection and Strengthening Foreign Law Enforcement Capabilities

In view of the fact that overseas Chinese have lived abroad for a long time, for aggression and interference of survival and development rights of overseas Chinese in foreign countries, China has the responsibility and obligation to protect their legitimate rights in accordance with international law and make good use of international law to protect their legitimate rights and interests. The legal protection of overseas Chinese should focus on the protection of international law and the protection of domestic law. From the perspective of international law and domestic law, it is necessary to establish a "dual track protection" for the foreign and domestic rights of overseas Chinese. First, we can actively use the UN human rights protection mechanism. Maintaining the equal human rights of all, including international immigrants, is a fundamental purpose and principle of the United Nations. China can establish a

⁴ See "Russian Corruption and Anti-corruption: The Anti-corruption Storm Is Extremely Fierce", October 24, 2017, The Procuratorate Daily.

more comprehensive foundation for the rights protection of overseas Chinese by joining relevant international conventions and using the mechanisms of relevant international organizations. The second is to flexibly use the consular protection mechanism. Protecting overseas citizens, foreign residents and their interests is the most basic and important content of consular work. Overseas Chinese should understand the scope and function of the consular protection system and make reasonable use of it. When encountering difficulties or troubles, they can seek consular protection including personal safety, property rights, residency, labor and employment rights, freedom of communication, social welfare, and humanitarian treatment from Chinese overseas embassies and consulates. The third is to participate in the protection framework of global governance. On September 23, 2016, the signing of Agreement on Relationship between the United Nations and the International Organization for Migration (IOM for short) marked the official and active participation of IOM in the United Nations system, which will certainly have a positive and far-reaching impact on the global governance of immigrants. As a member of IOM, China's experience in the management of foreign residents can provide a key reference for the world, which is conducive to enhancing China's international voice in the field of immigration.

B. Strengthening the Legislation Concerning Overseas Chinese and Improving the Livelihood of the Overseas Chinese

It is of vital importance for realizing the great rejuvenation of the Chinese nation to follow the implementation of the Constitution and the laws concerning overseas Chinese, and continue to do a good job in protecting the rights and interests of overseas Chinese. First, we should earnestly fulfill the statutory duties of the government and relevant departments. It is necessary to conscientiously implement the laws and regulations concerning overseas Chinese, strengthen the organization, coordination, supervision and inspection of the implementation of laws, regulations and policies concerning overseas Chinese, solve outstanding problems such as violations of rights and interests, intellectual property rights protection and economic disputes encountered by overseas Chinese living and working in China, and encourage and guide them to exercise their rights, express their claims, and resolve disputes in accordance with the law. The second is to study and formulate the Law on the Rights Protection of Overseas Chinese. It is necessary to transform the legislative concept of the rights protection of overseas Chinese, and establish the legislative principles for the rights protection of overseas Chinese. China urgently needs to further enact the special legislation for the rights protection of overseas Chinese based on further strengthening the legislative investigations, and thoroughly end the situation where the high-level legislation of the rights protection of overseas Chinese is little and relevant regulation is fragmented and immethodical. The third is to vigorously carry out the work of attracting overseas Chinese from Russia. We should focus on the strategy of building an innovative country and strengthening the country through talents, and deepen the

implementation of the plan of overseas Chinese in Russia serving China (to China), and play the role of platform and channel for all kinds of overseas Chinese affairs. The fourth is to continuously improve the construction of the public service system for domestic Chinese people's livelihood. It is necessary to establish a coordination mechanism between the government's overseas Chinese affairs department and relevant departments, promote the resolution of issues related to public service of overseas Chinese, and coordinate the work of handling overseas Chinese affairs, protecting rights and interests, caring for assist, strengthening overseas Chinese, and social communication.

C. Using Appropriate Legal Rules to Protect the Foreign Interests of Overseas Chinese

Since the overseas Chinese in Russia have settled in Russia, their legitimate and legal rights are not only reflected in China but also in Russia. The first is to improve the law to protect the interests of overseas Chinese. Signing international agreements with foreign governments is an important way for China to protect overseas investment. Overseas Chinese in Russia should flexibly use the consular protection mechanism, understand the scope and function of consular protection and their own obligations, and cooperate with local embassies and consulates to safeguard their legitimate rights and interests. The second is to put prevention first and strive to avoid various risks. Overseas Chinese in Russia need to fully understand some laws and regulations related to their own life and production work in Russia. Chinese mainly carry out business affairs and investment business in Russia. Overseas Chinese in Russia must seriously study the contents of relevant Russian laws and regulations, and pay close attention to Russia's policy changes in taxation, environmental protection, and market to judge potential legal risks. The third is to use law according to law and use relevant laws to help themselves. Governments at all levels and functional departments should increase the publicity of legal knowledge related to Russia, so that Russian-related enterprises and overseas Chinese can know, understand, and abide by the law; as the first notarized legal service platform established by China in Russia, "Russian Amur State International Notarization Law Complex" can provide legal protection for Russia-related rights of overseas Chinese who are doing business, living and working in the Russian Far East.

The "Decision of the Central Committee of the Communist Party of China on Comprehensively Advancing Certain Major Issues in Governing the Country According to Law" states: "It is necessary to protect the rights and interests of overseas Chinese under the law." The report of the 19th National Congress of the Communist Party of China puts forward: "It is necessary to widely unite and contact overseas Chinese, returned overseas Chinese and their relatives to work together for the great rejuvenation of the Chinese nation"

VI. CONCLUSION

Overseas Chinese in Russia is a huge asset of China and a special force for realizing the great rejuvenation of the

Chinese nation. Whether it is from the level of international law or from the level of domestic law, their rights and interests should be protected by China's laws. Although the legal protection of overseas Chinese in Russia faces various difficulties and obstacles, through the active use of the United Nations human rights protection mechanism and the subjective initiative of overseas Chinese in Russia, flexible use of the protection mechanism, and improvement of the relevant domestic protection legislation, legal and legitimate rights and interests of overseas Chinese will surely receive the deserved protection.

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