Enforcing a New National Security? China’s National Security Law and International Law

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New national security (NNS) represents a twenty-first century’s sociological paradigm on which the law is based on and is characterized by multiple actors, wide covering, low predictability, subjective perception, dual nature, and rampant diffusion. The emergence and expansion of the NNS prompts a highly advanced perspective to the rule of law at both the national and international levels, specifically, the relationship between international and domestic law. In this context, traditional approaches, ‘international approach’ or ‘national approach,’ are insufficient, so that a new ‘managerial approach’ is thus needed. The legal practice in relation to national security of China, a rising great power, attracts close attention in the international society. Furthermore, since Chinese conception of national security has its own ‘Chinese characteristics,’ how China will enforce its national security law in the context of international law remains to be seen. The NNS will lead profound sociological transformation upon which all legal orders are based.

Keywords
New National Security, National Security Law, International Law, China

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I. Introduction

On July 1, 2015, the National People’s Congress (“NPC”) of China passed the National Security Law (“NSL”). During the drafting process, several Western states raised serious concerns. They complained that, if national security were defined in such a broad manner, it would be readily susceptible to misuse and abuse. After its adoption, these States and non-State actors expressed their disappointment. Defending the law, however, China firmly maintained that many other countries has also adopt national security laws and that China’s NSL is not substantially different from those of other countries.2

Legal practice in national security of great powers is of special prominence to international relations and the rule of law.3 Compared to the US legal practice in this field which has been widely examined,4 little has been done for China’s stance. Therefore, a case study of China’s newly adopted NSL will be of significant value to shed light on what national security law would bring, including the relationship between international law and domestic law.

The main argument presented in this paper can be summarized as follows. On the one hand, the New National Security (“NNS”) represents a new and profound sociological transformation upon which all legal orders are based. Due to its inherent characteristics it is not easy to appropriately understand, identify, and respond to the NNS at both the national and international level. As a result, governments tend to claim more discretions for their actions, arguing that undue hurdles imposed on them would curtail their ability to effectively protect national security, putting it at peril. On the other hand, these characteristics also make NNS to be readily misaddressed, misused, or abused. As a result, the rule of law at a national and an international level might potentially be derogated. In this context, the relationship between international law and national law, which has perplexed many international lawyers and states for centuries, becomes more difficult to define.

This paper consists of five parts including a short Introduction and Conclusion. Part two will examine the evolution from the Old National Security (“ONS”) to the

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2 For details, see Ch. III (C) of this paper.