

# **Application and Improvement of Blocking Statute in the View of the Intersection of Public International Law and Private International Law: Review of the Huawei's Meng Wanzhou Incident**

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**Abstract:** Blocking Statute, usually, refers to the legislative measures taken by a country to resist the extraterritorial application of a domestic law of another country, aiming to prevent and confront such foreign law within its own jurisdiction. On the one hand, as one of the national political tools to express attitudes, it has always been more symbolic than practical in significance. On the other hand, in recent years, sanctions and anti-sanctions have been frequent, and there must be laws to rely on. Laws on sanctions and anti-sanctions would push private subjects into a “dilemma” in fulfillment of their legal obligations, and the private subjects are forced to be in a dilemma of national interests. This paper, in the view of the intersection of public international law and private international law and from a political and legal perspective, proposes that the imperfections in the application of Blocking Statute itself exacerbate the negative impact of jurisdictional conflicts caused by extraterritorial jurisdiction on private subjects. When a private subject is involved in an inter-state conflict, it can only be resolved by one of the conflicting countries renouncing its jurisdictional claims and accepting non-compliance with its regulations by the other party. This paper holds that Blocking Statute alone cannot confront the doubts about foreign extraterritorial jurisdiction, and that the solution lies in the international cooperation at the level of public international law and the full operation through judicial procedures and the enforcement of Blocking Statute in private international law.

**Keywords:** Blocking Statute; Extraterritorial Jurisdiction; Conflict of Laws; Extraterritorial Evidence Collection; Application Dilemma

## **1. INTRODUCTION**

As national sovereignty and domestic legal interests become the protection object of the national governments, more and more countries are willing to, against the tide of globalization, try to enforce their national interests abroad by applying domestic laws extraterritorially, that is, a country extends the jurisdiction of its domestic laws to other countries around the world, imposes improper intervention and influence, and even imposes sanctions on countries which do not comply with its domestic

laws, seriously violating the fundamental principle of sovereign equality in international law. From the perspective of public international law, Blocking Statute is legally based on the protection of national sovereignty and equality, and is on the premise of the illegality of the foreign law blocked. It is a countermeasure against “internationally wrongful acts” and is similar to a political means of a state in nature (Shiping, 2021). In the term of private international law, the nature of Blocking Statute is still in a state of blurred boundaries. In the opinion of some scholars, as a conflict law in public law, Blocking Statute is different from that in private international law. With the refusal to apply specific foreign laws and regulations as the core, it plays the blocking effect by deliberately creating legal conflicts. But some other scholars believe that conflict law targeting private subjects is a way of imposing improper sanctions and applying laws to foreign countries, causing businesses and individuals to be caught in the mire of disputes between national interests. This section determines the origins and legislative logic of Blocking Statute, and establishes an appropriate interpretation in the ambiguous categories of public international law and private international law.

### 1.1 Concept and Nature of Blocking Statute

In 1996, the United States enacted the Cuban Liberty and Democratic Solidarity Act (also known as the "Helms-Burton Act") and the Iran and Libya Sanctions Act (also known as the "D'Amato Act"), which imposed restrictions on third-country enterprises engaging in commercial activities with Cuba, Iran, and Libya (Congress, 1996). These measures directly impacted the normal business interactions between European Union enterprises and the aforementioned countries. At that time, the EU introduced the "Blocking Statute" with the legislative aim of safeguarding the normal trade dealings of EU enterprises with Cuba, Iran, and other third countries, while not entirely targeting the relevant unilateral sanctions imposed by the United States (Stat, 1996). Consequently, for a long time, the prohibited compliance regulations listed in the appendix of the EU Blocking Statute were limited to the Helms-Burton Act and the D'Amato Act (COUNTRY, 1997). It was only after the United States unilaterally withdrew from the Joint Comprehensive Plan of Action (JCPOA) in 2018 and comprehensively reinstated sanctions against Iran that the "Iran Transactions and Sanctions Regulations" and other related provisions were added to the prohibited compliance regulations appendix of the Blocking Statute ("Joint Comprehensive Plan of Action (JCPOA)," 2015). Blocking Statute normally manifest as prohibiting a domestic business or individual

from complying with an order issued by another country based on the domestic laws of such another country, and refusing to recognize and enforce a judgment made by that country to implement such order. Blocking Statute mainly occurs in the following two situations: the first is to resist the economic sanctions (secondary sanctions) applied by other countries outside the territory of the country, and the second is to confront the application of specific rules of evidence disclosure outside the territory of the country in civil litigation by other countries. According to Article 2 of the *Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures* (hereinafter referred to as the “Blocking Measures”) issued by the Ministry of Commerce of China on January 9, 2021, “these Measures apply to situations where the extraterritorial application of foreign laws and measures violates international law and basic norms governing international relations, and improperly prohibits or restricts Chinese citizens, legal persons or other organizations from conducting normal economic, trade and related activities with any third country (region) and their citizens, legal persons or other organizations”, which shows that China’s Blocking Statute mainly addresses the “secondary sanctions” imposed on China outside the country, while providing corresponding means of right relief. Substantive rights may include the right to information confidentiality, the right to exempt application, and the right to relief. Substantive obligations include reporting obligations and obligations of non-compliance with relevant laws and judgments. Blocking Statute, in narrow sense, does not fall to conflict law and its application is not subject to the guidance of conflict rules, but achieves its conflict of laws with the blocked foreign law through the dual role of legislative intent and implementation approach. This is the root for Blocking Statute to assume the characteristics of public law or serve as a “political tool”. For private subjects, Blocking Statute is usually a way to invalidate the law blocked by issuing injunctions or applying for exemptions in the form of mandatory application. Otherwise, even if the law blocked become is the governing law as guided by conflict rules, the parties involved will still bear legal liability for complying with the law blocked. In a broad sense, Blocking Statute does not fall to the specific application of public order reservation in private international law, but its core lies in the maintenance of the order and stability of public policy. When the reservation of public order is deemed to have a function of “safety valve”, it will enable the court to apply a foreign law or recognize and enforce a foreign judgment while ensuring the significant public interests of the country not harmed. The international legal system divides

extraterritorial jurisdiction into normative jurisdiction, judicial jurisdiction, and enforcement jurisdiction, while the US's domestic law divides it into extraterritorial legislative jurisdiction, extraterritorial judicial jurisdiction, and extraterritorial enforcement jurisdiction. And the three types of jurisdictions under the two systems do not correspond to each other one to one. The recognition of the legitimacy of extraterritorial effects by international law is premised on two conditions: firstly, there is sufficient connection between the matter under jurisdiction and the country formulating the law; Secondly, what happens extraterritorially can have a significant impact on the interests to be protected by the country where the legislation is located. From this, Blocking Statute is aimed at extraterritorial jurisdiction, and other countries have taken some confrontational measures, including: prohibiting evidence provision and the document production in foreign litigation; preventing the execution of foreign judgments; prohibiting compliance with the administrative orders of foreign authorities, etc.

## 1.2 Legislative Logic of International Blocking Statute

Blocking Statute is an important means for a country to maintain its domestic legal order and swear judicial sovereignty. In the international community, different countries mainly formulate Blocking Statute from different dimensions of private subjects and public subjects in the areas of commerce, investment, industry, finance, etc. in response to extraterritorial jurisdiction. Now internationally, countries like the European Union, Australia, and Canada have formulated Blocking Statute, as shown in the following table 1.

Table 1(a): Status and Effectiveness of Law

| Country   | Year | Name of Law   | Updates                | Status of Effectiveness |
|-----------|------|---|------------------------|-------------------------|
| Canada    | 1977 | Business Information Protection Act   |                        | Valid                   |
| France    | 1980 | Law No. 80-538 on Individuals or Officials Providing Economic, Commercial, Industrial, Financial or Technical Documents or Intelligence to Foreign Natural or Legal Persons |                        | Valid                   |
| UK        | 1980 | Protection of Trading Interests Act   |                        | Valid                   |
| Australia | 1984 | Foreign Proceedings (Expanded Jurisdiction) Act   |                        | Valid                   |
| Canada    | 1985 | Foreign Extraterritorial Measures Act   | Latest revised in 1997 | Valid                   |

Table 1 (b): Status and Effectiveness of Law

| Country | Year | Name of Law   | Updates                | Status of Effectiveness |
|---------|------|---|------------------------|-------------------------|
| Mexico  | 1996 | Law to Protect Trade and Investment from Foreign Laws that Contravene International Law |                        | Valid                   |
| EU      | 1996 | EC Regulation No. 2271/96 (the EU Blocking Regulation)                                  | Latest revised in 2018 | Valid                   |
| EU      | 2003 | EC Regulation No. 2238/200  |                        | Valid                   |
| Japan   | 2004 | Special Measures to Protect Companies from the US Anti-dumping Act of 1916              |                        | Valid                   |

Blocking Statute has the following three conventional effects: Firstly, it prohibits domestic entities, individuals, and administrative agencies from obeying measures with extraterritorial effect issued by foreign competent authorities that may harm its domestic sovereignty security and major national interests. Secondly, it prohibits domestic judicial institutions from recognizing or enforcing any judgment or decision made by a foreign court on the basis of its particular domestic law. The third is claw back clause, that is, it allows a domestic entity or individual to file a lawsuit in a domestic court against the opposing party who has infringed upon the legitimate rights and interests of such entity or individual due to the improper application of any foreign law and measure.

### 1.3 Connection of Blocking Statute with Public International Law and Private International Law

From the perspective of public international law, as a defensive mechanism, Blocking Statute itself cannot guide a private subject to solve problems, and the implementation of Blocking Statute directly conflicts with the law blocked. Based on this, sovereign states will take targeted sanctions and countermeasures to further exacerbate the deterioration of bilateral relations. The will of the state is the main opposite side of the conflicts of laws caused by Blocking Statute. Some scholars hold that the conflict between Blocking Statute and the law blocked is the one between international mandatory norms, and the private interests involved are not the primary consideration in themselves. The effective mechanism of Blocking Statute is to achieve the goal of blocking foreign extraterritorial control laws by punishing domestic entities, which directly places the domestic entities in a dilemma of being subject to foreign sanctions laws or domestic Blocking Statute. However, Blocking Statute and the law blocked belong to the confrontation of the fundamental interests of

countries, and the will of the state takes precedence over private interests. But this viewpoint is imperfect. When a private subject is involved as an element in a national dispute, it cannot be explained that it is impossible to solve civil and commercial cases such as foreign litigation and legal conflicts arising from extraterritorial evidence collection solely from macro perspectives such as public interests, international relations, and political diplomacy. Therefore, it is necessary to introduce the perspective of private international law to understand the impact of Blocking Statute on private subjects. From the perspective of international private law, even though the subject of extraterritorial evidence collection is the state, the consequences of the extraterritorial evidence obtained are still borne by the specific litigation subjects. Therefore, the whole civil and commercial extraterritorial evidence collection is still an act of “private right”. China should take a more open attitude towards extraterritorial evidence collection and provide assistance as much as possible without violating domestic laws. Article 2 of Blocking Statute expressly stipulates that Blocking Statute applies to situations where the extraterritorial application of foreign laws and measures violates international law and basic norms governing international relations, and improperly prohibits or restricts Chinese citizens, legal persons or other organizations from conducting normal economic, trade and related activities with any third country (region) and their citizens, legal persons or other organizations. It can be seen that the series of problems derived from the conflicts of laws of private subjects triggered by Blocking Statute are not limited to the dimension of public international law. The intersection and integration of the views in public international law and private international law have led to the dual elements of private law and public law in the application and improvement of Blocking Statute. Through reporting to the competent commercial authorities, issuing injunctions, exemptions, judicial remedies and other measures, the conflicts between Blocking Statute and the law blocked will be more detailed for the application and improvement of Blocking Statute in the integration of perspectives from public law and private law in international mandatory norms and foreign civil and commercial cases.

## 2. APPLICATION AND IMPLEMENTATION OF BLOCKING STATUTE

“Extraterritorial jurisdiction” has the aggregation of three types of state

powers, namely legislative power, administrative power, and judicial power, which exercises sovereign power through the application of framework agreements in which domestic laws go beyond the principles of international law and the implementation and enforcement of laws. In the implementation mechanisms of blocking legislation in different countries, there are acts directly going beyond the sovereign state and then regulating private subjects. For example, the state may attempt to apply pressure of responsibility on private subjects through Blocking Statute and there are regulations that prohibit domestic companies from engaging in trade negotiations with foreigners on the sanctions list. Similarly, domestic banks may also be prohibited from providing investment loans to foreign companies. Based on this, this paper comprehensively discusses the implementation mechanism and legal effectiveness of Blocking Statute from the perspectives of public law on public enforcement and the perspectives of private law on private subject relief.

## 2.1 Two Implementation Mechanisms of Blocking Statute

Blocking Statute includes two basic implementation mechanisms: public enforcement and private law relief. Under the interaction of the two mechanisms, Blocking Statute achieves the blocking of improper extraterritorial application of foreign laws by negating the effectiveness of foreign laws in the country, regulating private subjects' compliance with foreign laws, influencing judicial comity in US courts, and providing legal positions in diplomatic coordination.

## 2.2 Public Enforcement Mechanism

Blocking Statute was first introduced in Canada in 1940 (Wallace, 2021). Ontario and Quebec in Canada enacted the Business Records Act in response to the orders from the US courts regarding extraterritorial evidence retrieval of long-arm jurisdiction in antitrust cases. In 1977, the *Business Information Protection Act* was enacted to prevent Canadian citizens submitting information involving their own trade secrets and interests to US courts beyond the will of the state, which achieved the domestic effect of "blocking" US court orders by regulating the choice of Canadian citizens to comply with foreign laws. The public enforcement mechanism was rapidly absorbed by many countries and a blocking implementation mechanism led by competent government departments was formed, based on which, the implementation of the Blocking Statute mainly relied on penalties or short-term/long-term trade restrictions

imposed on domestic private subjects for complying with foreign laws. As the main institution of exercising the power of national sovereignty, the public authorities naturally need to maintain domestic economic interests and order and stability in economy, trade, industry, finance, science and technology and other related fields. As for private subjects facing enforcement of judgments from foreign courts, like in France, if a citizen complies with the US court's discovery order to provide the information above mentioned to the US court, it will be deemed as a criminal offense, and violators will be fined up to 18,000 euros and may be sentenced to 6 months in prison. Based on the dimension of the parties involved, the public enforcement mechanism also endows them with some rights and obligations, and provides corresponding law enforcement patterns through reporting, prohibition, and punishment. From the dimension of public international law, there is a strong correlation between public enforcement mechanisms, the foreign sovereign compulsion doctrine and the act of state doctrine. The foreign sovereign compulsion doctrine is closely related to the act of state doctrine. When the acts of the parties involved in a private dispute is under the force of their own government, the act can also be deemed as a continuation of the state act. Therefore, the foreign sovereign compulsion doctrine is often compared to the act of state doctrine (Peng, 2014). The public enforcement mechanism of Blocking Statute ultimately belongs to the disposal of legal responsibilities in the implementation of national policies.

### 2.3 Private Law Relief Mechanism

Private law relief grants the parties involved the right to compensation. From the dimension of private international law, private law relief falls to the category of civil law, and more specifically, it shall be closely related to foreign-related civil litigation and its evidence collection system. This system will guide domestic private subjects to claim relief through domestic judicial procedures, which is particularly important for compensating for the economic losses of the parties, such as judicial review, testification and compensation standards. Under the dimension of private international law, Article 9 of China's Blocking Measures stipulates that if a Chinese subject suffers losses due to the improper extraterritorial application of foreign laws and measures, it may seek judicial relief from the court. This judicial relief procedure, on the one hand, provides a way for Chinese subjects to safeguard their rights and interests, and on the other hand, it also leads to the possibility of foreign companies and foreign-invested enterprises being sued in China (Han, 2022). Therefore, from the perspective of protecting



the rights and interests of the parties involved, it is crucial to complete and improve the civil claim system and the foreign-related civil litigation mechanism in private law. If a Chinese party wants to make up for its losses through foreign-related civil and commercial litigation, it shall file a lawsuit with a court of competent jurisdiction. Therefore, the determination of jurisdiction becomes very important. In Chinese court litigation, Chinese parties have better protection of litigation response and their rights and interests. In international economic and trade contracts, in case of a dispute, the parties may agree to choose the competent court or there may arbitration clauses. In this case, it is worth exploring how Chinese courts obtain jurisdiction and what institutional framework they rely on.

#### 2.4 Implementation Effectiveness of Blocking Statute

In the different analytical dimensions of public law and private law, there are multiple paths to achieve the implementation effectiveness of Blocking Statute by combining the coordination of the public and private implementation mechanisms, and specific requirements are put forward to negate the effectiveness of foreign laws in the country and regulate the mandatory norm effect of private subjects.

#### 2.5 Negation of The Effectiveness of Foreign Laws in The Country

When addressing foreign compulsory jurisdiction and extraterritorial effect, the most direct form of law blocking is direct negation of its domestic legal effect by the competent authority of public enforcement. Blocking Statute naturally has such a blocking effect, and most of the blocking statutes of various countries, in their legislative purposes, explicitly reject the legal effect of specific foreign laws, measures, and related judgments in their own countries. In consideration of the difference in the hierarchy of interests between private subjects and sovereign states, it is not sufficient protection if Blocking Statute simply “negates” the legal effect of other countries’ laws in the country. In most cases, like the application of the US’s “long-arm jurisdiction”, it has gradually developed a huge, complementary and interlocking system of extraterritorial sanctions and jurisdiction due to its long-term foreign practice. In the judicial proceedings involving other countries, the US frequently takes unilateral coercive measures to conduct extraterritorial evidence collection, bypasses the normal channels of judicial law enforcement cooperation between countries, and directly demands banks and Internet companies with branches or listed in the US to provide it with evidence such as account

information and data outside the US. At this point, the effectiveness of Blocking Statute is extremely limited, as it still can damage private subjects and the sovereign interests of other countries by disclosing extraterritorial evidence.

## 2.6 Regulation of the Mandatory Norm Effect of Private Subjects

Starting from the obligations prohibited by the EU, Article 4 of the Blocking Regulation stipulates that any decision made by a foreign court or administrative authority under the laws and regulations on economic sanctions listed in the EU Blocking Regulation shall not be recognized and enforced within the EU. Article 5 states that no natural or legal person in the EU shall comply with any requirement or prohibition made by any US court under any law and regulation on economic sanctions. It can be seen that under the EU's Blocking Statute governance framework, regulating private subjects' non-compliance and non-performance is a manifestation of "coercive power". This is a more proactive way of blocking. In order to achieve this effect, the blocking statutes of various countries focus on punishing citizens and businesses who "comply" with extraterritorial laws in their public enforcement mechanisms. It can be seen that the premise for regulating private subjects' noncompliance with foreign laws is to choose the party causing the least damage to their own rights and interests when faced with the dilemma of violating Blocking Statute or violating a foreign laws or judgment.

## 2.7 Provision of Effectiveness of a Diplomatic Coordination Platform

From the perspective of practical effect, another way to achieve the blocking effect of Blocking Statute is to provide a legal position for diplomatic coordination with the US. As the British Parliament stated in deliberation of the *Protection of Trading Interests Act*, this law is a "symbol", a "diplomatic flag", and a "the UK's declaration on international law". The UK Protection of Trading Interests Act of 1980 has been examined in various scholarly articles for its role in providing a platform for diplomatic coordination. This Act was a response to extraterritorial measures, particularly from the United States, that threatened UK trading interests (Lowe, 1981). It serves to protect British entities from foreign laws that attempt to control their trading activities and provides the UK government with tools to counter such extraterritorial legislation (Daffada, 1980). The Act is significant for international lawyers and policymakers because it illustrates how a nation can legislate to safeguard its sovereignty and

economic interests in the face of foreign judicial overreach. One of the key features of the Act is its provision for blocking orders, which prevent the enforcement of foreign judgments that the UK deems to infringe upon its interests. This legal framework has enabled the UK to engage in diplomatic negotiations and assert its stance against foreign extraterritorial claims, effectively using the Act as a diplomatic tool to coordinate and protect its trade interests (Rosen, 1981). On account of the multiple dilemmas of realistic legal interest conflicts, the two sides must evaluate the actual legal interests of the case from multiple dimensions such as rationality and predictability when private subjects are involved in national interest conflicts, and determine which one is easier to achieve and realize. If an extraterritorial act affects the important interests of other countries, the countries affected may draw attention to it.

### 3. CASE STUDY: THE HUAWEI'S MENG WANZHOU INCIDENT - BLOCKING STATUTE AND EXTRATERRITORIAL EVIDENCE COLLECTION SYSTEM

#### 3.1 Course of the Incident

The Huawei Incident can be traced back to ten years ago. In January 2013, as reported by Reuters, a US media, Skycom Tech Co. Ltd. (SKYCOM), as one of the subsidiaries of Huawei, violated the ban issued by the US government by selling some products not allowed for import and export by the US to Iran. After the release of the report, HSBC, as Huawei's financial service provider, consulted Huawei about the authenticity of these reports. On August 22, 2013, Huawei representatives met with Alan Thomas, Head of Global Banking, Asia Pacific, HSBC, at the International Financial Centre, Hong Kong, to explain the issues raised in the report. At the meeting, Meng Wanzhou, Huawei's Vice Chairman and Chief Financial Officer, stated that the business activities conducted by Huawei and its subsidiaries in Iran were within their normal scopes and complied with the export standards of the US and the EU. The business in Iran was not of official government nature and was purely a civilian communication solution. Huawei collaborated with the local suppliers, distributors and operators to strictly abide by the established codes of business conduct. In the PowerPoint presentation presented by Huawei this time, there was a page explaining the capital relationship between Skycom and Huawei. Skycom used to be a subsidiary of Huawei, but was removed from the group by Huawei in 2009, completing the division, and

Huawei had sold stocks related to Skycom long ago. At the meantime, Ms. Meng Wanzhou also withdrew from Skycom's senior management, and since then, there had been no capital relationship between the two parties. In the presentation, Meng Wanzhou also pointed out the risks of doing business in Iran. She stated that the US sanctions policy was constantly changing, basically there were a series of updates, and the blacklist would also be changed frequently. The laws related to US sanctions were very complex, and it was a task for all businesses to understand and master these laws and regulations. In 2016, HSBC submitted this presentation to the US Department of Justice. The US pointed out that Meng Wanzhou's PowerPoint presentation contained many misrepresentations about Huawei's ownership and control over Skycom Tech Co. Ltd. and Huawei's compliance with applicable laws of the US, including that

(1) Huawei "has not violated any laws, regulations and sanctions of the US in doing business in Iran";

(2) "Huawei has never provided, and will never provide, any technology, product, or service to monitor the communication flows, track user locations, or filter media contents in the Iranian market";

(3) "The contact between Huawei and Skycom Tech Co. Ltd. is a normal business cooperation";

(4) The purpose of the defendant Meng Wanzhou's participation in the board of directors of Skycom Tech Co. Ltd. is to "learn about the past operating results of Skycom Tech Co. Ltd. for effective regulation";

(5) Huawei's subsidiaries in sensitive countries will not open any account with a financial institution, nor will they conduct business transactions with such financial institution". The said financial institution refers to HSBC. With the fermentation of the event, the role of political factors in it was gradually highlighted. On 25 June 2019, China pronounced to block all pork shipments from Canada. As a responsive action, Canada postponed decision on whether to allow Huawei to build a 5G network in Canada on 15 July 2019 (Reuters, April 1, 2019). As HSBC denied Meng's request for disclosure relevant documents on the grounds that the Supreme Court of British Columbia did not have jurisdiction to make the order, Meng applied to the High Court of Hong Kong to obtain relevant documents from HSBC on her extradition case on 25 February 2021, and the Hong Kong High Court judge issued an order on the document-sharing agreement between HSBC and Huawei after the hearing (News, April 4, 2021). On August 22, 2018, the Eastern District Court of New York issued an international arrest warrant for Meng Wanzhou on the grounds of violating US-Iran sanctions. On December 1, 2018, Meng Wanzhou was arrested.

On January 28, 2019, the US Department of Justice officially sued Huawei and Meng Wanzhou. On March 1, 2019, Meng Wanzhou filed a civil lawsuit against the personnel from the Canada Border Services Agency. On August 20, 2019, the High Court of British Columbia agreed to release the surveillance videos about Meng Wanzhou's arrest and other documents. From January 20<sup>th</sup> to 23<sup>rd</sup>, 2020, there was a discussion on whether the US's extradition request for Meng Wanzhou complies with the principle of "dual criminality" in the extradition law, but no judgment was made. On May 27, 2020, the High Court of Canada announced to judge that Meng Wanzhou met the criteria of "dual criminality". On August 17, 2020, the High Court of Canada held consultations on the disclosure of evidence and information in the Meng Wanzhou case. On November 25, 2020, the second phase of the court trial for Meng Wanzhou's extradition continued in Vancouver, Canada. On March 1, 2021, Meng Wanzhou appeared again in the High Court of British Columbia for trial, which was expected to take two months. The focus of the trial was whether there was any abuse of judicial process in the US and Canada.

### 3.2 Reconstruction path of Blocking Statute to the Case

It is worth noting that after the detention of Meng Wanzhou, China successively implemented the Law on Safeguarding National Security in the Hong Kong Special Administrative Region, the Provisions on the Unreliable Entity List, the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures, the Law on Countering Foreign Sanctions, and the Data Security Law. Among them, the Provisions on the Unreliable Entity List and the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures (hereinafter referred to as "Blocking Statute" and "the Law on Countering Foreign Sanctions") are important legal weapons against the US economic sanctions. Had these laws and regulations taken effect before Meng Wanzhou's detention, the case would have gone in a different direction. Article 2 of Blocking Statute expressly stipulates that Blocking Statute applies to situations where the extraterritorial application of foreign laws and measures violates international law and basic norms governing international relations, and improperly prohibits or restricts Chinese citizens, legal persons or other organizations from conducting normal economic, trade and related activities with any third country (region) and their citizens, legal persons or other organizations. The unilateral sanctions imposed by the US on Iran in violation of the basic norms of international law have resulted in Huawei

having to suspend normal trade cooperation with Iran, which is situation to be regulated by Article 2 of Blocking Statute. In addition, the US required HSBC Hong Kong to cooperate in providing Huawei's transaction data. If HSBC had realized that such behavior may cause damages to the legitimate rights and interests of Huawei and Meng Wanzhou, it may truthfully report the relevant situation to the competent commerce department under the State Council according to Blocking Statute. The Chinese government would make assessment based on the report, and can issue an injunction upon determination that the act of the US has violated the basic principles of international law and will cause relevant damages to Chinese companies. HSBC can refuse the obligation to cooperate with judicial investigations from the US government under this injunction. HSBC Hong Kong believes that as long as it complies with the relevant regulations of the US Treasury and Department of Justice and cuts off all business with Huawei, Huawei can report to the Chinese Ministry of Commerce according to the provisions on the Unreliable Entity List. HSBC has cut off the normal economic and trade relations with Huawei in a "one-size-fits-all" approach, and China can include HSBC in the "list of unreliable entities". It can be seen that when China has its own "blocking statute" system, it is theoretically difficult for the US to arbitrarily carry out similar "judicial acts" above mentioned or impose fines for contempt of court at will on Chinese citizens. Secondly, in terms of jurisdiction and judicial relief, given the principle of equality before the law in Chinese law and the provisions of legal equivalence in foreign affairs, submitting this case to a Chinese court for jurisdiction can also ensure the rights and interests of both parties, without the need for cumbersome extradition procedures, which is conducive to the advancement of the case, also avoids the possibility that forced extradition by the US will damage China's sovereignty, and can weaken the conflicts between the two sides. If the US forcibly imposes sanctions and uses this case to put pressure on China's new scientific and technological undertakings, the jurisdictional motive is unreasonable (Su, 2021). Back to the perspective of judicial relief under China's Blocking Statute, Article 5 of the Blocking Measures stipulates the obligations of relevant subjects to "report information", requiring Chinese citizens, legal persons or other organizations to truthfully report the relevant situation to the competent commerce department of the State Council within 30 days when they encounter foreign laws and measures that prohibit or restrict their normal economic, trade and related activities with third countries (regions) and their citizens, legal persons or other organizations. The EU *Blocking Regulation* also adopts this approach,

requiring any private subject within the EU affected by foreign laws and regulations to report to the European Commission within 30 days. In addition, Article 13 of China's Blocking Measures provides legal responsibilities for "information reporting" and "prohibition compliance". A Chinese citizen, legal person or other organization that fails to truthfully report the relevant situations as required or fails to comply with any prohibition, may be given a warning, ordered to make corrections within a time limit, and imposed a fine according to the severity of the circumstances. In practice, in order to better implement Blocking Statute, there are usually legal liability clauses to impose corresponding penalties on entities or individuals who violate the provisions of Blocking Statute, which is also a common practice in the international community. For example, Article 7 of Canada's *Foreign Extraterritorial Measures Act* stipulates that any person who complies with an order from a foreign court to provide relevant information, or with an order made by a foreign government or judicial authority under the law in that country, commits an offence and may be fined or imprisoned. Based on this, when a private subject is forced to be involved in an interest game of national disputes, even though the subject of extraterritorial evidence collection is the state, the consequences of the extraterritorial evidence obtained are still borne by the specific litigation subjects. Therefore, the whole civil and commercial extraterritorial evidence collection is still an act of "private right". China should take a more open attitude towards extraterritorial evidence collection and provide assistance as much as possible without violating domestic laws.

#### 4. DIFFICULTIES IN AND IMPROVEMENT APPROACHES FOR IMPLEMENTATION OF BLOCKING STATUTE

At present, there are only more than ten articles in China's Blocking Measures, and the provisions therein are general in nature and mostly declarative statements, which is consistent with the legislative spirit of Blocking Statute. Compared with the EU, it can be found that although the EU Blocking Regulation is generally very brief, it is still more informative than that in China. The EU has also released the Implementation Regulations and Official Guidelines while its Blocking Regulation comes on, which have refined and explained many procedural issues, greatly enhancing its operability. And many core concepts and systems in China's current Blocking Measures are not clear enough, with their operability needing to be enhanced (Shen & Wu, 2023). Even with the relatively mature

EU Blocking Statute, when the US was about to re-impose sanctions on Iran in 2018 and demanded the countries to withdraw their related investments and personnel as soon as possible, the EU giants represented by Total, Siemens and Renault, etc. were the first to respond by withdrawing from the Iranian market. In case of a large gap between domestic and international commercial interests, tough enforcement of Blocking Statute against domestic or multi-national enterprises will force them to give up in a market in a country with smaller commercial interests, which is not conducive to protecting the interests of relevant market subjects and also puts Blocking Statute in the country in an awkward position. Under the interweaving of public law and private law, there are some urgent issues that need to be clarified in the specific implementation.

#### 4.1 Scope and Condition Ambiguity of Law Application

The scope of application of Article 2 of the Blocking Measures can be distinguished from the dimensions of personal jurisdiction and subject matter jurisdiction. The personal scope mainly refers to the main objects that comply with the Blocking Measures, while the subject matter scope refers to which objects or matters are to be regulated (Liu, 2023). Do the Blocking Measures apply to situation where the businesses voluntarily abandon or cease related activities due to concerns about the extraterritorial application of foreign laws? Does the issuance of an injunction apply to foreign subjects? Pursuant to the general principles of administrative law, the “injunction” issued by the Ministry of Commerce is an embodiment of the administrative management functions of the Chinese government, and its main scope of application shall be within China or targeted at Chinese subjects. Although the injunction clearly applies to Chinese subjects, can it also apply if the economic and trade relationship itself does not involve the relationship between “a Chinese subject and a third country subject”? There are often ambiguous interpretations arisen in the rules and provisions of the law, which hinders its application. According to Article 9 of the Blocking Measures, “when a party violates the legitimate rights and interests of a Chinese citizen, legal person, or other organization by complying with any foreign law and measure within the scope of an injunction, such Chinese citizen, legal person, or other organization may file a lawsuit with the people’s court according to law to demand compensation for losses from the party, however, except when the party is exempted in accordance with Article 8 of these Measures. In case of a judgment or ruling made under a foreign law within the scope of the injunction, causing losses to a Chinese citizen,



legal person, or other organization, such Chinese citizen, legal person, or other organization may file a lawsuit with the people's court according to law to demand compensation for losses from the party benefiting from the judgment or ruling....." As stated above, the Blocking Measures stipulate that the liability for compensation should be borne by the "parties", rather than emphasizing "Chinese citizens, legal persons or other organizations". Combining this regulation with the important legislative purpose of "protecting the legitimate rights and interests of Chinese citizens, legal persons or other organizations", the term "parties" here shall not be interpreted as only including Chinese subjects. For another example, in practice, the participants of international "economic, trade and related activities" will often agree upon, in the transaction text, the law applicable to the transaction and the dispute resolution mechanism in case of any dispute, which resolution mechanism may include court litigation or arbitration in China, also international arbitration or foreign court litigation. And the legality of the above agreements has been confirmed by China's top-level legislation and international treaties it has participated in. Thus, in the application of this provision, the following question arises, that is, when the other "party" improperly applies foreign laws and measures referred to in this provision, should the correspondingly damaged Chinese subject seek relief according to the applicable laws and dispute jurisdiction clauses stipulated in the transaction text, or can they ignore these prior agreements (there is even an effective international arbitration award) and directly file a lawsuit with the people's court according to this provision? It should be said that the above issues involve the basic issues of how a country's judiciary intervenes in the international economic and trade affairs and how to deal with the relationship with the arbitration system, and need to be given full attention in subsequent implementation and coordinated in individual cases. To sum up, there are still some ambiguities and equivocations in the application conditions of the Blocking Measures.

#### 4.2 Compliance Dilemma of Private Subjects

The conflict between Blocking Statute and the law blocked is direct, real, and confrontational, is the competition between mandatory norms of public law nature, and reflects the public interests and sovereignty between countries. However, when a private subject is forced to be involved in the disputes between bilateral sovereign states, if it complies with the unilateral economic sanctions or relevant laws of the country blocked, it will violate the provisions of Blocking Statute and may be subject to civil or even

criminal legal consequences. Article 13 of the Blocking Measures stipulates that those who fail to comply with the injunction shall be given a warning by the competent commerce department under the State Council, and those with severe situation shall be fined. Article 14 of the Law on Countering Foreign Sanctions also stipulates that any party shall cooperate in the implementation of countermeasures, and anyone who fails shall be held accountable. If foreign laws or measures are ignored and the provisions of Blocking Statute are followed, there will inevitably be a strong response from the country imposing sanctions, and such response will be very costly for private subjects. If a Chinese or foreign company fails to comply with US sanctions against DJI, termination of contracts with DJI or refusal to trade with DJI would constitute a violation of this provision. Then, both the Chinese and foreign company will become the private subject in a dilemma, fearing both the punishment by US authorities and also the accountability by the Chinese government (Zou & Hu, 2021). The dilemma of private subjects can also be found in relevant precedents abroad. In the case of “Bank Melli Iran v. Deutsche Telekom”, the German company was in a dilemma. On the one hand, its compliance with the US sanctions and termination of its contracts with Bank Melli would be ruled by the European Court of Justice as a violation of the EU’s Blocking Regulation. On the other hand, violating the US sanctions and continuing to provide services to Bank Melli would result in significant economic losses which cannot be offset by relief. This kind of dilemma forces companies to “take side” in conflicts of laws in different countries.

#### 4.3 Dilemma of Inadequate Implementation and Relief by Public Authorities

The implementation of the blocking law system will affect the balance between the national interests and individual rights and interests, and public authorities will also be caught in a dilemma in execution, which is mainly manifested in the opposite relationship between protecting national interests and punishing illegal entities. On the one hand, the logical starting point of the blocking law system is to protect the legitimate rights and interests of the domestic parties. On the other hand, the prohibiting or blocking clauses of the blocking law system will also have a reciprocal effect on the domestic parties<sup>①</sup>. In reality, the US, with its strong market size, has advantageous position in fields such as trade and finance, and foreign companies and individuals can only choose to comply with the US laws or measures and try to avoid the application of domestic blocking statutes. This kind of circumvention essentially violates the laws of country of

Blocking Statute, and the law enforcement of the public authorities in the country of Blocking Statute will face a dilemma based on the above logical starting point. In terms of relief methods, is it to require the illegal entity be required to cease its illegal act or give a negative punishment? Different relief methods will produce different blocking effects. If the illegal act is ceased, it means that the illegal entity needs to fulfill the signed<sup>7</sup> contract, which is actually forcing it to “take a side” between the law in the blocking country and the law in the blocked country. If only negative punishment is given, the illegal entity simply gets be fined by the blocking country, without leading the illegal entity into a strong dilemma. There is currently no specific guiding document for the implementation of China’s blocking law system. If a unilateral economic sanction imposed by a foreign country is deemed as invalid, do the public authorities require the contracting parties to comply with the foreign economic sanctions or simply impose fines to settle the matter? In summary, Blocking Statute will render the compliance of entities with the laws or measures of the blocked country invalid, and the implementation of the blocking law system will also affect the balance between Chinese entities and foreign entities. The reason for the implementation dilemma of Blocking Statute is the irreconcilable conflicts of national jurisdiction caused by extraterritorial regulations, the abuse of unilateral sanctions to intensify inter-state conflicts, and the inability to bridge conflicts and contradictions due to the poor international relief channels. Thus, the U.S. political intervention in the legal discourse construction around Meng’s case is actually out of the concern of “U.S. priority” motivation, which can be further mined by its application to real-life practices including deliberately concealing the presentation and intervention of the FBI, by using the Canadian government to carry out investigation at the Vancouver airport (Mearsheimer, 2013). Based on this, at the macro level, the implementation mechanism of China’s blocking law system should be aimed at establishing dedicated institutions to coordinate implementation and implementing coordination mechanisms to form a joint force. At the micro level, it is necessary to gradually clarify the scope of application of the blocking list, reasonably regulate the recovery elements, and refine the rules for exemption applications and relief procedures, so as to overcome the adverse effects of the implementation of Blocking Statute.

## 5. CONCLUSION

In summary, this paper breaks away from the traditional limited view

that “public international law only regulates the legal relationships among international sovereign states and other subjects, while private international law tends to deal with conflicts of laws with domestic conflict rules”. Combined with the Meng Wanzhou Incident, it is analyzed that the Blocking Measures are an antecedent departmental regulation in the nature of pilot and principle, which is a normal legislation of China based on the principle of “personal jurisdiction” under international law. Its purpose of legislation is to establish a preliminary framework for China to block extraterritorial “long-arm jurisdiction”, protect the legitimate rights and interests of Chinese subjects in international economic and trade activities from infringement, and not intervene in the normal international economic and trade activities that are not improperly affected by the laws or measures of a third country, fully respecting the normal order of international economic and trade activities and the basic principles of international law. Meanwhile, the introduction of the Blocking Measures also symbolizes the firm determination of Chinese government to safeguard national sovereignty, security, and development interests by legal means in today’s increasingly volatile and complex international situation, and to protect the legitimate rights and interests of Chinese citizens, legal persons, or other organizations. With the continuous perfection of China’s blocking law system in legislation, the implementation of the obstruction law system has entered a new phase of development, to establish a working mechanism for joint coordination and coordination among multiple departments, improve the inconsistency in the implementation of laws and regulations at different levels in the blocking law system, and further optimize the implementation rules of the blocking law system. It is necessary to not only clarify the scope, subject, and object of application, but also straighten out the procedural matters of law enforcement and justice, refine the relevant procedures for exemption applications and provisions on recovery and compensation, and seek the best interests of the state and subjects, to provide effect guidance of implementation mechanisms and path blocking for the application of the blocking law system. Finally, in order to enable private subjects such as Meng Wanzhou and other businesses to more effectively utilize Blocking Statute and safeguard their legitimate rights and interests, it is necessary to improve the system of extraterritorial evidence collection, clarify the application of the Blocking Measures in civil litigation and position of the authority of the Ministry of Commerce, as well as relying on exemption procedures and support for enterprises, to better achieve the blocking effect of the Blocking Measures while taking into account the interests of businesses. And in terms of the application of the

blocking law, there is also a need to establish a more mature blocking system, namely by multidimensional means at the legal and political levels to actively apply Blocking Statute and make a more mature response from China to the expansion of extraterritorial jurisdiction by the US.

#### References

- Congress, U. (1996). Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996. *Public Law*, 104-114.
- COUNTRY, T. (1997). EUROPEAN UNION: COUNCIL REGULATION (EC) NO. 2271/96, PROTECTING AGAINST THE EFFECTS OF THE EXTRA-TERRITORIAL APPLICATION OF LEGISLATION ADOPTED BY A THIRD COUNTRY\*[November 22, 1996]+ Cite as 36 ILM 125 (1997).
- Daffada, A. (1980). Protection of Trading Interests Act of 1980-Britain's Latest Weapon in the Fight against United States Antitrust Laws. *Fordham Int'l LJ*, 4, 341.
- Han, H. (2022). *Research on the civil compensation litigation mechanism in blocking legislation* [Master's Thesis, East China University of Political Science and Law].
- Joint Comprehensive Plan of Action (JCPOA). (2015). In.
- Liu, Z. (2023). *Research on the implementation mechanism of China's blocking law system* [Master's Thesis, Guangxi Normal University].
- Lowe, A. V. (1981). Blocking extraterritorial jurisdiction: the British protection of trading interests act, 1980. *American Journal of International Law*, 75(2), 257-282.
- Mearsheimer, J. J. (2013). Structural realism. *International relations theories: Discipline and diversity*, 3, 77-93.
- News, C. (April 4, 2021). Huawei, HSBC agree on document deal for Meng Wanzhou extradition case. *CTV News*.
- Peng, Y. (2014). On the sovereign defense in U.S. cross-border antitrust litigation: A discussion from the "Vitamin C case." *Law and Commerce Studies*, 1.
- Reuters. (April 1, 2019). Exclusive: Canada set to postpone Huawei 5G decision to after vote given sour ties with China.
- Rosen, J. P. (1981). The Protection of Trading Interests Act. *Int'l L.*,
- Shen, W., & Wu, C. (2023). Sharp tool or blunt instrument? The dilemmas and references in the implementation of the EU's blocking regulation. *German Studies*, 8(30).
- Shiping, L. (2021). The Jurisdictional Scope of the "Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures. *International Law Studies*, 3(15).
- Stat. (1996). Iran and Libya Sanctions Act of 1996. *Pub. L.*, 1541, 104-172.
- Su, N. (2021). *On the expansion and application of U.S. long-arm jurisdiction and China's countermeasures* [Ph.D. Thesis,
- Wallace, C. D. (2021). *The multinational enterprise and legal control: host state sovereignty in an era of economic globalization*. BRILL.
- Zou, P., & Hu, C. (2021). A reexamination of the principle of foreign sovereign compulsion: Discussing the dilemmas and utilization of blocking laws. *Customs and Trade Research*, 7(1).