

Research on the Diversified Resolution Mechanism of Foreign-related Civil and Commercial Disputes under the Opportunity of "One Belt and One Road"

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Abstract: This manuscript discusses the diversified resolution mechanism of foreign-related civil and commercial disputes under the opportunity of "One Belt and One Road". Civil and commercial cases themselves can reflect a country's economic development and market operations, while foreign-related civil and commercial cases are difficult for non-professionals to comprehend thoroughly due to the international nature, complexity, and non-recurring nature of their adjustment targets. Statistical analysis of this type of cases. Jurisdiction in international civil and commercial litigation is the scope of authority and legal basis for a country's courts to hear foreign-related civil and commercial cases. This paper gives the novel suggestions considering the "One Belt and One Road".

Keywords: One Belt and One Road; Opportunity Analysis; Diversified Resolution; Foreign-related; Civil and Commercial Disputes

1. INTRODUCTION

Jurisdiction in international civil and commercial litigation is the scope of authority and legal basis for a country's courts to hear foreign-related civil and commercial cases. The legal system related to jurisdiction has always been one of the basic systems of international private law.

Theoretically, jurisdiction is an important part of a country's national sovereignty, and is the centralized expression of the national. In judicial practice, jurisdiction is the first gate to initiate other international civil proceedings. The definition of the scope of application of the jurisdiction agreement in my country's "Civil Procedure Law" can also be divided into general provisions and exclusionary provisions. Article 242 of the "Civil Procedure Law" stipulates that "a party to a foreign-related contract or dispute over foreign-related property rights and also the interests may, by written agreement, choose the jurisdiction of the court with the place of actual connection with the dispute. In terms of research fields and research methods, the focus is on the philosophical level and abstract macro-level private international law research, while the empirical research aimed at solving legislative and practical problems is dwarfed, so that, for example, the relationship between two foreign-invested enterprises Fundamental issues such as whether the contractual relationship is a foreign-related civil and commercial relationship, how to determine jurisdiction over disputes between Chinese domestic-funded enterprises and foreign-invested enterprises are still debated in judicial and arbitration practice.

Especially under the background of the One Belt and One Road, the cases will be complex and need to consider different factors, and this will be the focus of this study. To begin with, in the figure 1, we firstly show the One Belt and One Road pattern.



Figure. 1 The One Belt and One Road (Image source: <https://theonebrief.com/chinas-global-ambition-balancing-opportunities-and-risks-in-one-belt-one-road/>)

2. THE PROPOSED METHODOLOGY

2.1 The Overview of One Belt and One Road and Related Law Issues

In terms of the international law, the "Belt and the Road" international economic and also trade rule system has initially formed, and the content covered is becoming more and more abundant. The commercial dispute prevention and resolution system with the "Belt and Road" characteristics is becoming more and more perfect. The countries along the "Belt and Road" have some of the different resource endowments and strong economic complementarity, so there is great potential and space for mutual cooperation.

The joint construction of the "Belt and Road" aims to promote the orderly and free flow of economic factors, the efficient allocation of resources and the deep integration of markets, promote the coordination of the economic policies among countries along the route, carry out regional cooperation on a larger scale, at a higher level, and at a deeper level, and jointly create an open world considering the inclusive, balanced and inclusive regional economy. The "Belt and Road" initiative is based on the principle of some extensive consultation, joint contribution and shared benefits, and aims at high standards, sustainability, and benefiting people's livelihood. It is a core popular international public product and also the international

cooperation platform in the world today. Law is the rules of conduct that regulate and adjust interpersonal communication. The important function of the rule of law is to ensure the fairness, openness and stability of the communication through certain legal rules. Therefore, the rule of law is an important foundation and guarantee for the Belt and Road Initiative.

Since the interests of my country and the countries along the "Belt and Road" are not exactly the same, the laws of some countries set the investment scope and shareholding ratio of foreign investors in joint ventures out of consideration of ideology, national interests, and security.

Many restrictions are then set, or the joint venture must be operated by the government of the host country and its designated agencies. We will be based on these ideas, the novel perspectives will be conducted.

2.2 The Diversified Resolution Mechanism of Foreign-related Civil and Commercial Disputes

The jurisdiction of the foreign-related civil and commercial litigation in my country adopts a general special chapter-style legislative model. The jurisdiction of foreign-related civil and commercial litigation in my country has not adopted a codified legislative model. Chapter 2 of Part 1 of the Civil Procedure Law and Chapter 25 of Part 4 of the Civil Procedure Law have special chapters for the general provisions and special provisions of the jurisdiction system. Chapter 2 of the Special Procedure Law provides a special chapter for the special provisions on the jurisdiction of the maritime litigation. Hence, the related work has been then considered in the current scenario.

The "Law on the Application of Laws in Foreign-Related Civil Relations" stipulates in the "General Provisions" in the Chapter 1 that the principle of autonomy of will for the parties to choose the applicable law. Article 3 of the law stipulates: "The parties may expressly choose the law applicable to foreign-related civil relations in accordance with the law." as the modern idea of behavioral autonomy. Then, we consider the following aspects.

(1) Article 1 of the "Law on the Application of Laws in Foreign-Related Civil Relations" clearly states that the purpose of the legislation is to clarify the application of laws in foreign-related civil relations and to reasonably resolve foreign-related civil disputes.

(2) There are still many deficiencies in the handling of the foreign-related civil and also commercial cases, such as the difficulty of then delivering documents across borders, the difficulty of identifying and applying foreign laws, and the invariability of the evidence collection. "Case screening, put forward reference suggestions for similar cases, that give legal workers a framework for measurement, and make complex issues concrete.

(3) Our country's current legislation only stipulates that the general scope of application of the agreement jurisdiction system is "foreign-related contracts or foreign-related property rights and interests disputes", and the agreement jurisdiction must not violate the provisions of our country's laws on the exclusive jurisdiction, but the general provisions are still vague and need to be defined

3. CONCLUSIONS

This manuscript discusses diversified resolution mechanism of foreign-related civil and commercial disputes under the

opportunity of "One Belt and One Road". On the whole, the scope of application of exclusive jurisdiction in the foreign-related civil and commercial cases in my country is too narrow, and the scope of exclusive jurisdiction should be appropriately expanded by referring to then internationally accepted practices. The discussed ideas will be applied into the further plans.

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5. REFERENCES

- [1] Song, Xiao. "Judicial Methods for Anti-Suit Injunction in Relation to Foreign-Related Standard Essential Patent Disputes." *Law Sci.* 1 (2022): 623.
- [2] Liu, Qiao. "COVID-19 in civil or commercial disputes: First responses from Chinese Courts." *The Chinese Journal of Comparative Law* 8, no. 2 (2020): 485-501.
- [3] Wang, Yuhong, Jiajing Zhang, and Xiaojie Song. "Research on the Path of Cultivating Foreign-Related Legal Talents—Taking Xi'an University of Technology as an Example." In *2020 International Symposium on Advances in Informatics, Electronics and Education (ISAIEE)*, pp. 286-289. IEEE, 2020.
- [4] Łągiewska, Magdalena. "International Dispute Resolution of BRI-Related Cases: Changes and Challenges." *Journal of Contemporary China* (2022): 1-14.
- [5] Wang, Xiangxiu, and Yongpeng Zhao. "Research on Private International Law in Siemens International Trading (Shanghai) Limited's Application for Enforcement of Foreign Arbitral Awards." In *4th International Conference on Contemporary Education, Social Sciences and Humanities (ICCESSH 2019)*, pp. 1875-1881. Atlantis Press, 2019.
- [6] Weidong, Zhu. "The Recognition and Enforcement of Commercial Judgments Between China and South Africa: Comparison and Convergence." *China Legal Sci.* 7 (2019): 33.
- [7] Chaisse, Julien, and Xu Qian. "Conservative innovation: the ambiguities of the China International Commercial Court." *American Journal of International Law* 115 (2021): 17-21.
- [8] Wong, Yuen Kiu Yuki. "Centre for Chinese and Comparative Law Conference: Dispute Resolution in Asia and Beyond: Progress and Trends." *European Review of Private Law* 28, no. 1 (2020).
- [9] Ye, Jinfen, and Chunhua Hu. "Jurisdiction Related Issues in the Operation of Electronic Money." In *International Conference on Frontier Computing*, pp. 936-942. Springer, Singapore, 2019.
- [10] Huanfang, Du. "Choice of Court Agreement with Foreign Elements in China: Shandong Jufeng v. South Korea Mgame." *Frontiers of Law in China* 13, no. 2 (2018): 241-259.

- [11] Zou, Mimi. "An Empirical Study of Reforming Commercial Arbitration in China." *Pepp. Disp. Resol. LJ* 20 (2020): 281.
- [12] Shang, Carrie Shu, and Lamine Balde. "Searching for China's Lex Mercatoria through Commercial Dispute Resolution." *Justice System Journal* 42, no. 2 (2021): 205-221.
- [13] Huang, Jing, and Yan Shao. "Research on Xi Jinping Thought on the Rule of Law on the Coordinated Promotion of Domestic and Foreign-Related Rule of Law." *Studies in Law and Justice* 1, no. 1 (2022): 28-35.
- [14] Shan, Wenhua, and Yunya Feng. "The China International Commercial Court: towards an integrated dispute resolution system." *Asia Pacific Law Review* 29, no. 1 (2021): 107-128.
- [15] Yiming, Li, and Yi Zaicheng. "The Plight, Essence and Way out of Judicial Settlement of China's Inter-Regional Private Law Disputes: From the Perspective of Legal Interest Coordination." *China Legal Sci.* 7 (2019): 95.