

An Overview of Choice of Jurisdiction and Law of Foreign-related Cases in China

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Abstract: As a result of development in the relations of foreign economy and trade, there have been a great number of civil and commercial cases involving foreign elements in China. Many problems of private international law are very pressing, such as choice of jurisdiction, choice of law and judicial assistance, etc., which need to be resolved step by step. In fulfilling China's commitments to the WTO entry and in reforming the judicial system, the Supreme People's Court of the PRC redefined the jurisdiction over foreign-related civil and commercial cases and implemented centralized jurisdiction over particular cases. Most Chinese courts can respect applicable law chosen by the party. The courts generally use the principle of the most significant relationship to resolve the problem about applicable law of the dispute, contract or other property rights and interests, when the parties have not chosen the applicable law.

Key Words: Choice of Jurisdiction, Choice of Law, Private International Law, China

I. Introduction

Generally speaking, the theory of private international law (PIL) is usually connected with the judicial practice of private international law. The historical development of private international law supports this view. As to China's private international law, as a result of development in the relations of foreign economy and trade, there have been a great number of civil and commercial cases involving foreign elements. Therefore, many problems of private international law are very pressing, such as choice of jurisdiction, choice of law and judicial assistance, etc., which need to be resolved step by step.¹

This article introduces choice of jurisdiction and choice of law in foreign-related judicial practice in Chinese courts. It is divided into three parts. The first part examines a judicial interpretation on centralized jurisdiction and some methods of ascertainment-of-jurisdiction in Chinese courts. The second part analyses choice-of-law methods in civil and commercial cases involving foreign elements and the last part draws a short conclusion.

II. Choice of Jurisdiction: Judicial Interpretation and Methods

1. Judicial Interpretation on Centralized Jurisdiction

On December 25, 2001, the Supreme People's Court of the People's Republic of China (PRC) issued the *Rules on Certain Issues Relating to Jurisdiction over Proceedings of Foreign-Related Civil and Commercial Cases*² [hereinafter referred to as *Rules*], which implements centralized jurisdiction over particular cases. The main contents of the *Rules* are following:

Art. 1 The first-instance adjudication of foreign-related civil and commercial cases shall be governed by the following People's Courts: (1) People's Courts in the Economic and Technological Development Areas approved by the State Council; (2) Intermediate People's Courts in the provincial capital cities, the capital cities of autonomous regions and municipalities directly under the Central Government; (3) Intermediate People's Courts in the Special Economic Zones and cities directly under State planning; (4) Other Intermediate People's Courts designated by the Supreme People's Court; and (5) Higher People's Courts. The regional jurisdiction of the above Intermediate People's Courts shall be determined by their own Higher People's Courts.

Art. 2 Where the parties concerned refused to accept a first-instance judgment or ruling given by a People's Court in an Economic and Technological Development Area established with the approval of the State Council, the second-instance trial of the case shall be under the jurisdiction of the local Intermediate People's Court.

Art. 3 This set of *Rules* shall be applicable to the following cases: (1) Cases of disputes over foreign-related contracts or rights infringement; (2) Cases of disputes over letters of credits; (3) Cases of application for the cancellation, recognition or enforcement of international arbitral decision; (4) Cases of application for verifying the binding force of foreign-related civil and commercial arbitration clause; and (5) Cases of application for the recognition or enforcement of civil or commercial judgments or rulings given by foreign courts.

¹ Han Depei (ed.). *Private International Law*. Beijing: Higher Education Press & Beijing University Press: 55-61 (2000); Huang Jin (ed.). *Private International Law*. Beijing: Law Press: 118-124 (2nd ed. 2005).

² Legal Interpretation (2001) No. 22, adopted at the 1203rd Session of the Judicial Committee of the Supreme People's Court on December 25, 2001.

Art. 4 This set of *Rules* shall not be applicable to cases of border trade disputes taking place in frontier provinces bordering foreign countries, cases involving foreign-related real estate and cases of foreign-related disputes over intellectual property.

Art. 5 For jurisdiction over cases of civil and commercial disputes involving parties concerned from the Hong Kong Special Administrative Region, the Macao Special Administrative Region or Taiwan Region, this set of *Rules* shall be referred to in application.

Art. 6 Higher People's Court shall exercise the supervision over jurisdiction over foreign-related civil or commercial cases. Where a foreign-related civil or commercial case has been accepted by a court in excess of jurisdiction, the court concerned shall be told to transfer the case to a People's Court with jurisdiction over it, or there shall be a ruling that the court concerned transfers the case to a People's Court with jurisdiction over it.

Art. 7 This set of *Rules* shall go into force on March 1, 2002. For cases that were accepted by People's Courts before the entry into force of this set of *Rules*, they shall still be adjudicated by the same People's Courts on a continued basis.

(1) *The Background and Significance of Centralized Jurisdiction*

In faithfully fulfilling China's commitments to the WTO entry and in reforming the judicial system, the Supreme People's Court of the PRC, in accordance with Article 19 of the *Civil Procedural Law of the People's Republic of China* [hereinafter referred to as *Civil Procedural Law*]³ greatly redefined the jurisdiction over foreign-related civil and commercial cases by issuing the *Rules* as a set of judicial interpretations, bringing foreign-related civil and commercial cases under the centralized jurisdiction of a small number of intermediate or grassroots courts. According to the *Rules*, foreign-related civil and commercial cases are now shifted in a centralized way to a small number of intermediate or grassroots courts that take more such cases and that are relatively highly capable of adjudicate such cases, from ordinary intermediate or grassroots courts. This means optimization of judicial resources in China and a major move to reform the judicial system of the country.

This way has some advantages as the following: Firstly, it is beneficial to regional handling of foreign-related civil and commercial cases by the courts concerned, countering interference by local government authorities and maintaining unity of the judicial system.

Secondly, to authorize a small number of intermediate and grassroots courts to exercise jurisdiction over the first-instance trial of foreign-related civil and commercial cases is in the interest of concentrating advantageous judicial resources on well handling such cases. It is also in the interest of strengthening supervision over and guidance to the adjudication of foreign-related civil and commercial cases and realizing specialization in the trial of such cases.

Thirdly, to bring foreign-related civil and commercial cases under centralized jurisdiction means upgrading of the adjudication of such cases. The final-instance trial of foreign-related civil and commercial cases by Higher People's Courts is beneficial to raising the quality of adjudication and ensuring impartiality of justice.

And lastly, to bring foreign-related civil and commercial cases under centralized jurisdiction is beneficial to optimizing the structure of judges and strengthening professional training of judges. It is also in the interest of developing a force of highly qualified judges who well understand laws

³ It was adopted at the 4th Session of the Seventh National People's Congress (NPC) of the PRC on April 9, 1991. It has been revised at the 30th Session of the Standing Committee of the Tenth NPC of the PRC on October 28, 2007 and shall go into force on April 1, 2008.

(including relevant international laws and conventions), who have good knowledge about international economy and trade, and who are good at foreign languages.

From the point of this original intention and Chinese present trial situation, this way of centralized jurisdiction is positive. On the other hand, however, as a general judicial interpretation, the exercise of the *Rules* inevitably has the profound influence on the jurisdiction over foreign-related civil and commercial cases. This kind of jurisdiction has cross-regional character, besides the Higher People's Courts, only do the minor grassroots (Economic and Technological Development Areas) People's Courts and the specific Intermediate People's Courts exercise this kind of jurisdiction as to the first-instance.

Moreover, the trial grade of this kind of case also enhanced correspondingly. Besides the first trial cases accepted by the People's Courts of Economic and Technical Development Areas are adjudicated finally by the Intermediate People's Courts, the most cases are adjudicated finally by the Higher People's Courts. This means the Higher People's Courts will shoulder heavy responsibility on trials of foreign-related cases in final processing, no matter whether the cases are complex or simple, whether the amount of dispute is big or small and no matter how the effectiveness of cases does.

(2) *The Sphere of Centralized Jurisdiction*

The *Rules* has removed three kinds of cases being not suitable for the centralized jurisdiction while it accepts definitely five kinds of cases being suitable for the centralized jurisdiction. But there are some problems as following:

Firstly, besides above five kinds of cases under the centralized jurisdiction, whether it has excluded others? Along with accession of WTO and as the advancement of globalization of world economics further speeds up, foreign-related relations in civil and commercial matters deepens day by day, new and complex cases emerge also unceasingly, then whether can they enjoy the centralized jurisdiction? The *Rules* should have the positive preparation for this but cannot negatively wait for new jurisdiction problems to be appearing. Therefore, the best method is to establish an elastic provision in the *Rules* to hold the new cases, which in the future will possibly appear.

Secondly, what are detailed cases included in above five kinds of cases? The *Rules* has not been clear about it, but the *speech* delivered by Wan E'xiang, the vice president of the Supreme People's Court at the press conference⁴ has been generalization, for instance, the disputes over foreign-related contracts are disputes over the international economy trade, the investment, the finance, the insurance, financing, guarantee, negotiable securities, stock, trust, cooperation, management between the legal persons and legal person and other organization and so on; the disputes over foreign-related torts mainly are disputes over bill, negotiable securities, shareholder's rights and interests, company's rights and interests, property rights and so on. Therefore, there may be disputable that whether different courts apply to the *Rules*.

At last, are three kinds of cases being not suitable for the centralized jurisdiction absolute? The quantity of the dispute over the frontier trade is generally speaking so few that that it is not suitable for the centralized jurisdiction has its rationality. However, it is difficult to differentiate in certain situations the relationship between the case of foreign-related real estate, the case of foreign-related intellectual property, the case of foreign-related contract and the case of foreign-related torts, which may reduce the overlap situation, such as the contract of real estate development, the torts of real

⁴ Wan E'xiang. Answer for Reporters' Question on Rules on Certain Issues Relating to Jurisdiction over Proceedings of Foreign-Related Civil and Commercial Cases. Civil Trial Instruction and Reference. 1: 135-137, (2002).

estate, the contract of trademark transfer, the torts of copyright, and so on. Moreover, as far as these two kinds of cases involving, the amount of them is huge and their society affect is also wide.

Therefore, the *Rules* has no reason to remove them from the centralized jurisdiction. Even if it is to emphasize the particularity of these two kinds of cases, whether it is the dispute over the contract or the dispute over torts, which is distinguished into the real estate case or the intellectual property case, they also should enjoy the optimized judicial resources of the *Rules* and carry on the centralized jurisdiction.

2. Choice of Jurisdiction and Its Ascertainment Methods

(1) Common Jurisdiction and Special Jurisdiction

So-called common jurisdiction has another name called “ordinary trial”, in which court determines one’s jurisdiction under the relationship between the defendant and the court area.⁵ Generally speaking, the courts regard the defendant’s residence as the jurisdiction ground. Chinese courts regard the defendant’s residence as the basis of exercising common jurisdiction over the foreign-related cases in civil and commercial matters too. According to Articles 235 and 22 of the *Civil Procedural Law*; the courts have jurisdiction over the foreign-related cases in civil and commercial matters if the defendant’s residence is located in China.

This is either suitable for the situation that foreign plaintiffs (natural person, legal person or other organizations) prosecute, or suitable for the foreign-related cases in civil and commercial matters taking place between Chinese parties who have residences in China, e.g., *Hubei Technology Import & Export Co. v. Hubei Branch of Chinese People’s Insurance Co.*⁶ Besides, Article 23 of the *Civil Procedural Law* has also stipulated the plaintiff’s residence as the supplement of common jurisdiction.

The common jurisdiction, however, is just a kind of jurisdiction while there is not special jurisdiction. So-called the special jurisdiction has another name called “special trial”, in which court determines one’s jurisdiction under the relationship between the object of litigation and the court area.

Under defendant’s domicile not located in China, the *Civil Procedural Law* stipulates also some special jurisdiction principles according to different nature of the foreign-related cases in civil and commercial matters. According to the Article 241 of the *Civil Procedural Law*, the courts shall have jurisdiction over an action arising from contractual relation or other property rights and interests, if the place where the contract is concluded, or the place where the contract is performed, or the place where the subject matter of the action, or the defendant’s property, or the branch entity of the defendant or the place where a tortuous act is committed is within the territory of the PRC.

In addition, Articles 24 to 33 of the *Civil Procedural Law* have also stipulated that some special civil and commercial cases can be adjudicated by courts where the residence of defendant is located. In judicial practice, most cases are mainly taken by the place where the contract is concluded, or the place where the contract is performed or the place where a tortuous act is committed for as jurisdiction ground.

(2) Agreed Selective Jurisdiction and Presumptive Jurisdiction

⁵ Editorial Board of Chinese Encyclopedia Book (ed.). Chinese Encyclopedia Book (Law Issue). Beijing: Chinese Encyclopedia Book Press: 419 (1984).

⁶ (2002)-E’min-Si-Zhongzi-No.11, the 2nd judgment of Hubei Higher People’s Court of the PRC; (2001)-Wujing-Chuzi-No.141, the 1st judgment of Wuhan Intermediate People’s Court of the PRC.

Agreed selective jurisdiction means that both sides agree to select a court while being desirable before or after dispute.⁷ During international civil action in China, the agreed selective jurisdiction is only limited to express selection and it should reach in the written form but not oral agreement. For example, in *Yuancheng (Qingdao) Trading International Corp. v. Xixia City Hengxing Trade Co. Ltd.*, the bill of lading involved in the case is stated clearly:⁸

Any dispute and claim right of the last instance caused by the contract is in Chinese court but not other courts.

That is to say that the parties chose the Chinese court as jurisdiction court through the form of written agreement, thus it establish that Chinese court shall have jurisdiction over this case.

According to the Article 242 of the *Civil Procedural Law*, there are still three questions. Firstly, the range of this kind of choice is generally limited to the disputes over foreign-related contract or other property rights and interests but excludes the disputes over the personal identity, the personal ability and family relationship; Secondly, the court of this kind of choice has contacts with dispute and is only limited to the court of first instance; Thirdly, this kind of choice can't violate the provisions about the rank jurisdiction and exclusive jurisdiction in China.

But in practice, the parties have not chosen the court desirably in advance in most cases, and it is very difficult for the party to reach an agreement after the dispute took place. So, the courts adopt presumptive jurisdiction to define their jurisdiction during trying. So-called presumptive jurisdiction means that when one party is litigating to a court, another party doesn't challenge for this court's jurisdiction, or he mentions counter-action in this court.⁹ The Article 243 of the *Civil Procedural Law* stipulates it.

However, this kind of jurisdiction can't violate the exclusive jurisdiction. In addition, the defendant should volunteer to appear before court and reply on the essential question of dispute or mention any counter-actions.¹⁰

In *Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resource Ltd.*, the court decides:¹¹

Under the plaintiff of external enterprise of Singapore litigated an action to this court, the defendant of the other legal person of enterprise of the Hong Kong Special Administrative Region neither appeared before this court to the action nor put forward any objection about jurisdiction or other. Therefore, it should assert that the defendant accepted jurisdiction of this court over the case; According to the Article 243 of the *Civil Procedural Law*, this court has jurisdiction over this case legally.

In above case, though this court has adopted presumptive jurisdiction, the defendant involved in the case neither appeared before the court nor replied for the plaintiff's action, it seems that it does not accord with the terms which are stipulated by the *Civil Procedural Law*.

(3) Exclusive Jurisdiction

⁷ Li Haopei. Introduction to International Civil Procedural Law. Beijing: Law Press: 58-64 (1996).

⁸(2001)-Gao-Jing-Zhongzi-No.229, the 2nd judgment of Tianjin Higher People's Court of the PRC; (2001)-Haishang-Chuzi-No.46, the 1st judgment of Tianjin Maritime Court of the PRC.

⁹ Li Shuangyuan. General Introduction to Chinese Private International Law. Beijing: Law Press: 653 (1996).

¹⁰ About "Special Appearance" and "General Appearance", see Li Shuangyuan & Xie Shisong. Introduction to International Civil Procedural Law. Wuhan: Wuhan University Press: 220 (1990).

¹¹ (2001)-Gaojin-Zhongzi-No.257, the final judgment of Tianjin Higher People's Court of the PRC, the 1st judgment of Tianjin Maritime Court of the PRC.

Exclusive jurisdiction means that the countries concerned keep their acceptance to the lawsuit and make the right awarded unconditionally over specific foreign-related cases in civil and commercial matters, it then get rid of the jurisdiction of other national courts over these cases.¹² According to Article 244 of the *Civil Procedural Law*, the courts of the PRC shall have jurisdiction over those arising from a dispute concerning Sino-foreign joint venture contracts, Sino-foreign co-operative enterprise contracts, or Sino-foreign cooperative exploration and development of natural resources contracts, which are performed within the territory of the PRC.

In *Ural Potassium Co. Ltd. v. Jinan Huaiyin General Chemical Factory*, the court decides in the second instance:¹³

This case belongs to Sino-foreign joint venture dispute over management contract. That Ural chose and prosecuted to this court according to the contract arrangement is according with the Article 246 of the *Civil Procedural Law*, and therefore, Jinan Intermediate People's Court should enjoy jurisdiction over this case.

Besides above-mentioned three kinds of special contract cases, according to Articles 235 and 34 of the *Civil Procedural Law*, the following cases are adjudicated exclusively by Chinese courts too: (1) those arising from a dispute concerning an immovable located within the territory of the PRC; (2) those arising from a dispute concerning operations in a harbor located within the territory of the PRC; (3) those arising from a dispute concerning a succession, if the domicile or the habitual residence of the deceased, or the place where the main assets locate is within the territory of the PRC.

III. Choice of Law: Different Methods in Different Cases

1. Principle of Party Autonomy

Most Chinese courts can respect applicable law chosen by the party, including the applicable law written in the contract terms or the clause of the bill of lading before the dispute took place, or the applicable law agreed orally between the parties in the course of trying. So long as this kind of choice is volunteering, not violates Chinese mandatory or forbidding regulations, and the international treaty that the PRC participates in, doesn't provide other rules, courts should apply the applicable law chosen by the party to the case at first.

From these existing effective rules, including Article 145 (1) of *General Rules of the Civil Law of the PRC* [hereinafter referred to as *GRCL*]¹⁴, Article 126 of *Contract Law of the PRC* and Article 269 of *Maritime Law of the PRC*, all of them have not limited the way of expression that the party chosen the applicable law. Article 100 of *Model Law of the Private International Law of the People's Republic of China*¹⁵ drafted by Chinese Society of Private International Law has also not required making a desirable choice in written agreement clearly. In fact, the choice made in the oral contract should be a kind of desirable choice too, because the decisive factor that realizes party autonomy is intention of expression but not way of expression.¹⁶

¹² Huang Jin (ed.). *Private International Law*. Beijing: Law Press: 639 (2nd ed. 2005).

¹³ (2002)-Lu-Mingsi-Zhongzi-No.2, the 2nd judgment of Shandong Higher People's Court of the PRC; (2001) Ji-Zhongjing-Chuzi-No.20, the 1st judgment of Jinan Intermediate People's Court of the PRC.

¹⁴ Article 145 (1) provides that: The parties to a contract involving foreign elements may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

¹⁵ Chinese Society of Private International Law, *Model Law of the Private International Law of the People's Republic of China*. Beijing: Law Press: 22 (2000).

¹⁶ Shenjuan. *Interpretation on the Theory of Applicable Law of Contract*. Beijing: Law Press: 72 (2000).

In practice, although the parties have not made the desirable choice in written or oral form, it can clearly show the law that the parties intend to chose, from situation that the parties concluded contract, content of contract and the behaviors of the parties, etc. Such as in *Germany Victory Shipping Co. v. Junye (Tianjin) Trading International Inc.*, the court of the second instance analyses that:¹⁷

During the second instance, the parties of both sides quote the *Maritime Law* of the PRC and the *GRCL* as the basis of claim and debate, which should be regarded as that the parties of both sides chose Chinese law as applicable law of this case. So, according to Article 145 of the *GRCL*, this case should be ruled by the Chinese law.

We can say that this is a kind of special choice, and it respects party autonomy. Article 7 of 1985 *Convention on Applicable Law of Contract for International Sale of Goods* stipulated also that:

Party's agreement on choice of law shall be shown clearly, or contract content and the behaviors of party show this kind of choice clearly on the whole.

But in practice, this special choice should be distinguished with presumptive choice of court. The former is a kind of hint that the parties chose applicable law, reflecting a selecting intention of the party, but the latter is that the court infers according to various kinds of factors that the parties chose the applicable law, not really representing the party's intention. For example, in *Hebei Shenglun Import & Export Co. v. Jingchuan International Shipping Co.*, the court thinks:¹⁸

Though the back clauses of bill of lading stipulated that dispute arising from this bill of lading should been resolved in Korea or at discharge port according to the choice of carriers and apply to British law, both the plaintiff and the defendant didn't put forward any opinions that this case shall apply to the law outside the *lex fori*. So, this case should apply to the law of the PRC.

Unless the party has abolished the original clause of applicable law clearly, the existing clause of applicable law is still effective, and the court should resolve the substantive problems about the dispute according to the law that the party has chosen. In above case, though the party has already chosen the applicable law of dispute, the court inferred that the party chooses the *lex fori*, i.e. Chinese law. It should be said that this way violated the principle of party autonomy. The severity of the problem still lies in that this kind of presumptive method entrusts a judge with relatively great right of freedom, which will cause subjective random easily, thus it may reduce the certainty and predictability of the result of the application of law.

2. Principle of the Most Significant Relationship

The courts generally use the principle of the most significant relationship, to resolve the problem about applicable law of the dispute, contract or other property rights and interests, when the parties have not chosen the applicable law.¹⁹ This is according with legislation and legislative spirit.²⁰ But in judicial practice, there are different practices in different cases.

In some cases, the court determines the law of the place with which it has the most significant relationship by examining the factors of localization, such as the place of conclusion of contract, the

¹⁷ (2001)-Haishang-Chuzi-No.119, the 1st judgment of Beihai Maritime Court of the PRC.

¹⁸ (2002)-Haishang-Chuzi-No.144, the 1st judgment of Tianjing Maritime Court of the PRC.

¹⁹ Article 145 (2) of the GRCL provides that: If the parties to a contract involving foreign elements have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

²⁰ Han Depei (ed.). Private International Law. Beijing: Higher Education Press & Beijing University Press: 204 (2000).

place of performance of contract, the place of delivering of goods, etc. Such as in *Jinxi Industry Group Co. Ltd. v. Germany Rickmers Linie Co.*, the court thinks:²¹

Both sides have not made an arrangement on choice of law when they concluded the transport agreements. However, the place of conclusion of the agreements is in Beijing of the PRC, the place of actual performance of contract is at New Harbour of Tianjin of the PRC. According to the principle of the most significant relationship in private international law, the case shall be governed by the Chinese law.

In some cases, the court's analysis of factors of the most significant relationship is improper. Such as in *Dafei Shipping Co. Ltd. v. Shangdong Orient International Trade Co.*, the court of the second instance thinks.²²

The Dafei Co. and the Oriental Trade Co. have not arranged the applicable law in the bill of lading, and, in the course of the trying of this case, both sides didn't reach an unanimous agreement on choice of law too. From analysis of connecting factors of application of law, the Dafei Co. is a French legal person but the Oriental Trade Co. is a Chinese legal person; The place of issuing bill of lading is in China but the performance place of bill of lading is in Russia; The Shipping place of goods under bill of lading is in China but the delivering place of goods is in Russia. Especially Chinese court obtains jurisdiction over this case in accordance with the law and this case is judged in the Chinese court. So, China is the country that has the most significant contacts with this case and the Chinese law shall be applied to this case according to the Article 145 (2) of the *GRCL*.

From the all above-mentioned connecting factors involved this case, it's hard to say that China has the most significant contacts with this case. In addition, this court made jurisdiction and trying of this case for as connecting factors, which misunderstood the principle of the most significant relationship in fact. The jurisdiction item and application of law are two independent relatively legal problems, i.e. the case ruled by one country can't reduce that the case shall be ruled by the law of this country.

In other cases, the court doesn't explain why does it use the principle of the most significant relationship. Such as in *Shangdong Weihai Ship Factory v. DS-Rendite-Fonds Nr.52 MS"Cap Charles" GmbH & Co Containe reschiff KG*, the court thinks:²³

The contracting parties can make a choice of law governing the foreign-related contract. Failing choice of the law, the contract is governed by the law of the place with which it has the most significant relationship. According to the Article 145 of the *GRCL*, this case shall be governed by the law of the place with which it has the most significant relationship, i.e. the Chinese law.

How did this court draw a conclusion that "the Chinese law" is "the law with which it has the most significant relationship"? According to the judgment, the court didn't explain why.

Therefore, as to application of the principle of the most significant relationship, the courts should combine the concrete conditions of the case to determine the law of the place with which it has the most significant relationship on the basis of analyzing and appraising the various kinds of

²¹ (2000)-Guang-Haifa-Shizi-No.92, the 1st judgment of Guangzhou Maritime Court of the PRC.

²² (2002)-Lumin-Si-Zhongzi-No.20, the 2nd judgment of Shangdong Higher People's Court of the PRC; (2000)-Qinghaifa-Haishang-Chuzi-No.289, the 1st judgment of Qingdao Maritime Court of the PRC.

²³ (2002)-Qinghaifa-Weihaishang-Chuzi-No.1, the 1st judgment of Qingdao Maritime Court of the PRC.

connecting factors involved dispute objectively. It is necessary to prevent the judges from borrowing the right of freedom to expand application of the *lex fori* at the same time.

IV. Conclusion

At present, through many kinds of way including judicial training and academic exchange, Chinese judges who handle with civil and commercial cases involving foreign elements have accumulated much experience and are constantly improving their ability to try cases involving foreign elements. However, there are still some problems in existence in practice, including but not limited to ignoring the application of law, distorting the parties' intent and writing judgments and verdicts without reason and analysis, etc. Luckily, The Supreme People's Court in charge of the trial work of the foreign-related cases has obviously realized these problems and has taken some measures. Under a climate of relatively light legislation, the Supreme People's Court issued some relevant judicial interpretations aimed to solve some problems concerning jurisdiction, applicable law and judicial assistance, etc., and to provide direction to lower courts for dealing with similar cases in the future. No doubt, resolving above problems must be promoted combining with the process of reform in Chinese trial of foreign-related cases in civil and commercial matters day by day.