

On the judicial application of United Nations Convention on Contracts for the International Sale of Goods in China

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Abstract. Under the background of economic globalization and the increasing and in-depth trade among countries, the United Nations Convention on Contracts for the International Sale of Goods (CISG), which was implemented in 1988, has become the most important international uniform law to regulate international trade conflicts. In recent years, with the continuous improvement of globalization, CISG has been widely applied in the judicial practice of various countries. But as a result of the treaty is a compromise between different countries, the adjustment principle, causes in the judicial practice there are some limitations. This situation means that although the Treaty is applicable to many countries, each country may have different standards and interpretations. Although China is a party to the CISG, it was only after China became the world's second largest economy that the convention really received attention in academia. But the new civil code of the international treaty to make no rules. Although the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases concerning International Sale of Goods issued by the Supreme People's Court in 1987 can be applied in judicial practice, the lack of specific provisions has led to different judgments by different courts and arbitration bodies. The Supreme People's Court on the international sale of goods cases to explain some issues of applicable law in the regulation of content is extremely limited, unable to cope with the complexity of case treatment, there is no specific steps to perform the convention provides guidance. Against this background, this article discusses the judicial application of the CISG in China, and offers suggestions and recommendations based on the study of the Convention and its practical application.

Keywords: CISG convention; Autonomy of meaning; Application of law.

1. Introduction

The United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted in 1980, has become the most influential treaty in the field of international trade, with 95 contracting parties. The accurate application of CISG is the treaty obligation of the contracting states, and also an important manifestation of the foreign-related judicial level of each country. However, in terms of the application of CISG, there are still some shortcomings in the judicial practice of Chinese courts, which are also being discussed in the academia.

The implementation of the Civil Code of Chinese Mainland has abolished the General Principles of the Civil Law of Chinese Mainland. However, neither the Civil Code nor the Law of Chinese Mainland on the Application of Law in Civil Relations Involving Foreign Affairs has made provisions on the application of treaties, which leads to the situation that the application of civil and commercial treaties in China is facing challenges due to the lack of a clear legal basis. In order to enhance China's ability of treaty application and improve the system of treaty application, we should reflect on the deficiencies of domestic practice and draw lessons from international practice to make up for these deficiencies. Therefore, this paper aims to analyze the application rules of CISG and evaluate the judicial practices at home and abroad, which is of great practical significance for China's judicial system to clearly understand and accurately apply CISG.

2. The application of the CISG in China follows specific procedures and guidelines.

Our domestic on the application of the CISG convention adopted in principle, one in the field of international civil and commercial cases in accordance with related international uniform substantive law applicable conditions of the treaty, the treaty should be directly applicable, regardless of whether the parties have made provision in the country's conflict rules. This is because the international uniform substantive Law treaty has more clear, specific and convenient characteristics in dealing with international civil and commercial cases compared with the "conflict norms" which are found by means of indirect application. It directly defines what the parties should do and what they cannot do, so that the parties can clearly understand their rights and obligations and meet the consequences of their actions in time. The application of CISG in China is a strong proof of the advantages of the international Convention on Uniform Substantive Law

As one of the earliest contracting parties to the United Nations Convention on Contracts for the International Sale of Goods (CISG), China holds a significant role in its implementation and enforcement. Given the scale of its international trade activities, it is imperative for China to apply the CISG extensively, encompassing a wide range of merchant subjects and civil cases involved in international trade. This not only ensures the smooth conduct of trade activities, but also contributes to the establishment of a fair, transparent and predictable legal environment for international commerce. It further underscores China's commitment to uphold and promote the principles of international trade law. Despite being one of the earliest contracting parties to the United Nations Convention on Contracts for the International Sale of Goods (CISG), China still faces challenges in its implementation due to the lack of constitutional legal affirmation of the CISG's status and the absence of a clear, unified judicial interpretation.

The Supreme People's Court's 1987 notice, which was forwarded to the Ministry of Foreign Trade and highlights several issues concerning the execution of the CISG, currently serves as the primary guideline for applying the CISG in China. However, this 'notice' lacks comprehensive coverage of the CISG's scope, making it insufficient for addressing complex international trade cases. Moreover, it fails to provide specific procedural directions for applying the CISG within the country.

Furthermore, the 142nd provision of the original 'General Principles of Civil Law' only addresses conflicts between relevant international treaties and domestic law, providing only a broad overview without specific details. Therefore, the existing laws and regulations in China merely offer a general summary and do not provide comprehensive guidance on the application of the CISG

Currently, the primary reference for the application of CISG in China is the 1987 notice forwarded by the Supreme People's Court from the Ministry of Foreign Economic Relations and Trade. This document, however, does not provide comprehensive guidelines on the implementation of the CISG. Its contents are not detailed enough to address complex international trade cases and it does not clearly stipulate the specific procedures for applying the CISG within China.^[P]Moreover, the original General Principles of the Civil Law of China, specifically paragraph 2 of Article 142, only addresses conflicts between international treaties and domestic law. It lacks specific provisions on how to apply the CISG in cases that involve the content of the Convention.^[P]Therefore, to ensure the effective application of the CISG in China's judicial practice, there is a pressing need for further refinement and enhancement of the relevant laws and regulations. This will not only streamline the process but also provide a more robust legal framework for international trade cases in China.

3. The existing problems in the judicial application of CISG countries

3.1 Chinese courts have erroneously neglected to apply the CISG

In court in our country, often appear in the case of the applicable law is not agreed by the parties incorrectly ruled out the convention on the international sale of goods (CISG). In the direct application of CISG, whether the parties effectively exclude CISG is the key to whether the court can apply CISG.

If the parties do not stipulate the application of law in the contract, then the application of CISG cannot be regarded as excluded, and the court should apply the CISG according to the provisions of the CISG.

For example, in the case of International Goods Trade Contract dispute between Entor Import & Export Company and Podraxay Anjie Klitvik Commercial Company, the business places of both parties are located in China and Poland respectively, and there is no agreement on the application of law. In this case, the court should directly apply the CISG. However, Yiwu Municipal People's Court mistakenly chose the applicable law according to China's conflict of laws and regulations, but ignored the application of CISG.

In addition, Chinese courts often wrongly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) when the agreement between the parties is not clear. Whether the application is direct or indirect, the parties' blocking of CISG application based on the agreement must meet the standard of "effective exclusion". Effectively eliminate CISG need to satisfy the formal requirements is an agreement, the parties substantial requirements to form the court ruled out CISG apply am sure on the parties. If the parties do not reach an agreement to exclude CISG, or just generally agree to apply the law of a contracting state, it will not have the effect of effectively excluding CISG. [P] in "The Moneycon Consultant Inc. And ningbo import and export co., LTD.", also sale contract dispute, the parties of the business place is located in the United States and China respectively. In respect of The application of law, The Moneycon Consultant Inc. The Moneycon Consultant argued for the application of Chinese law, while Bridger said: "If there is any conflict between CISG and the laws of Chinese Mainland, CISG shall take precedence". The Intermediate People's Court of Ningbo City, on the grounds that "there is no conflict between Chinese law and CISG", finally applied Chinese law according to Chinese conflict of laws. [P] in this case, the parties claim for legal application looks very complex, from the perspective of the final judgment of the court, can't say the claims of the parties has no influence on it. However, if the court will grasp the parties to effectively eliminate the formal requirements of CISG situation becomes clear. In this case, the parties did not reach accord to eliminate CISG, thus cannot be effectively ruled out form of CISG, shall directly apply CISG. [P] in addition, in the "shouguang wood can be more economic and trade co., LTD sale contract dispute with oster parker chemicals co., LTD", the client's business place in China and Australia. Case, the two sides agreed to applicable Chinese law, weifang intermediate people's court to apply the original "contract law". However, in the second instance, the Higher People's Court of Shandong Province corrected the application of law in the case and applied CISG. The Chinese law agreed by the parties to be applied is regarded as the applicable law for matters not covered by CISG, and the practice of the court of second instance should be regarded as worthy of affirmation.

3.2 The application of the CISG in Chinese courts is not accurate

In the application of CISG by Chinese courts, there is sometimes a problem that the logical order is reversed. CISG can be applied in three ways: direct application, indirect application and convention application, each of which is based on different legal basis and logical reasoning. Therefore, when judging whether CISG is applicable, courts must make judgments in a certain logical order. As far as direct application is concerned, the court should first judge whether the contract in question falls within the jurisdiction of CISG, then the international nature of the contract in question, and finally whether the parties have effectively excluded the application of CISG. However, in judicial practice, Chinese courts often judge the parties' autonomy of meaning first, and this reversal of logical order will often lead to the application error of CISG. In the "Dispute case of Supply Contract of ship materials and spare Parts between Italy ZF Padua Co., Ltd. and Ningbo Arts & Crafts Import & Export Co., LTD.", the business places of both parties are located in Italy and China respectively. During the trial, both parties agreed to apply the determination of CISG Ningbo Maritime Court of first Instance: "The two sides agreed to apply CISG, according to the law of Chinese Mainland foreign-related civil relationship between law applicable law (the law applicable law) stipulated in article 3, the case in

accordance with the applicable CISG." Although the court properly applied CISG in this case, there were certain logical errors in the application based on the agreement between the parties. Logic on the reverse, that is, the court initially think the party autonomy, may cause errors in two levels.

Firstly, concerning the application of the CISG, the court of first instance has explicitly acknowledged the parties' agreed application of the CISG. However, in situations where the CISG can be directly applied, there should be no need for the court to confirm the agreed application of the CISG. This is because the basis for direct application is the obligation of the State party to adhere to its treaty commitments. If the parties have not effectively excluded the application of the CISG, the court should apply it directly. Secondly, on the issue of the nature of the parties' agreed application of the CISG, the court of first instance views it as an exercise of the parties' autonomy as stipulated in Article 3 of the Law on the Application of Law. However, in cases where the CISG should be applied, any statements made by the parties regarding the application of the CISG should be considered as non-binding and should not have any legal effect or serve as the basis for choice of law.

In the application of CISG by Chinese courts, there is often the problem of wrong path. Once CISG is incorporated into Chinese legal system, it becomes a part of Chinese law and has the status of legal source. If the conditions for direct application of CISG are met, courts should automatically apply CISG directly. The so-called automatic application is mainly reflected in the preferential application of CISG, while the so-called direct application means that courts should apply CISG as if it were domestic law. However, in judicial practice, Chinese courts often apply CISG according to the guidance of Chinese domestic law, which leads to mistakes in the application path. Taking a typical case issued by the Supreme People's Court as an example, the following will analyze the differences in the application paths of CISG by the three levels of courts in China, so as to understand the possible deviations in the application of CISG by Chinese courts. In the case of "C & J Sheet Metal Co., Ltd. and Wenzhou Chenxing Machinery Co., LTD. International Goods Sale Contract dispute" (hereinafter referred to as "C & J Case"), the Wenzhou Intermediate People's Court of first instance held that: "In accordance with the provisions of Paragraph 2 of Article 142 of the General Principles of the Civil Law of Chinese Mainland, if an international treaty concluded or acceding to by Chinese Mainland has different provisions from the civil law of Chinese Mainland, the provisions of the international treaty shall apply, except for those provisions which Chinese Mainland has declared to be reserved. C & J Company and Morningside Company have different places of business and are located in countries that are contracting parties to CISG. Provided that both parties do not exclude the application of the Convention, CISG shall have priority in the application of international contracts for the sale of goods entered into by C & J Company and Morningside Company." In this case, the application of CISG by the court is correct, but it is not necessary to apply CISG according to Article 142 of the original General Principles of the Civil Law. Subsequently, the case was appealed to Zhejiang Higher People's Court. The High People's Court of Zhejiang Province also determined the priority of CISG according to Article 142 of the original General Principles of the Civil Law, "at the same time, according to the provisions of CISG", and then applied CISG. Finally, the case was retried by the Supreme People's Court. The Supreme People's Court of the case is made in this paper, the application of law: "C & J company and morningside companies operating in the United States of America and Chinese Mainland, the two countries, China and America are CISG contracting countries, parties in involved in the contract the convention applies" has not been ruled out, so the case should apply CISG. Comparing the judgments of the above three courts, it can be seen that the discussion of the Supreme People's Court on the application path of CISG is not only concise and comprehensive, but also fully meets the requirements of "direct" and "automatic" application. The application of CISG by the first-instance court and the second-instance court based on the guidance of Article 142 of the original General Principles of the Civil Law is just icing on the cake. It should be noted that there are many cases of CISG so applied in China's judicial trials.

4. Suggestions on the application of CISG in Chinese courts

With the advancement of the Belt and Road Initiative, the scale of China's foreign trade will further expand, so international trade disputes are bound to surge. To cope with this challenge, China needs to further improve its foreign-related legal system and constantly improve the judicial capacity of its judicial organs to ensure that treaties can be properly and accurately applied in Chinese courts.

4.1 Standardize the CISG analysis model

From the legislative and judicial guidance methods such as correction of CISG apply basis and application demonstration is not easy, so follow the CISG internal logic, according to our country's judicial habit, form unified mode of CISG analysis, reference and use for the court system is another effective solution. In the process of accurately applying CISG, the following three links can be passed, and each link has its own internal logic.

Firstly, the relationship between CISG and traditional methods of conflict of law resolution needs to be clarified. There are two ways to solve the problem of conflict of laws: conflict of laws resolution method and unification of substantive law. CISG, as a typical uniform substantive law, has two parallel paths with the method of conflict of laws when dealing with international sales contract disputes. When dealing with international sales of goods contract disputes, Chinese courts should give priority to the application of CISG, which is a necessary choice in order to abide by the purpose of the treaty and fulfill the obligations of the treaty.

Secondly, the external verification of CISG should be carried out. The CISG "access" rule has a strict logical hierarchy when the court deals with the case. It should be emphasized that in the whole external certification of CISG, the examination of the parties' autonomy of meaning should be placed last. The judge should not consider the parties' autonomy of meaning first in the choice of law, so as not to fall into the inertial thinking of conflict of laws mode. In addition, allowing the parties to choose the autonomy of private law embodied in the treaty is not equal to the autonomy of the parties as stipulated in Article 6 of CISG. The choice of law or alternative choice of law by the parties does not necessarily constitute a valid exclusion from the application of CISG. If the final CISG "access" fails after three levels of judgment, the conflict of laws method should be returned; otherwise, CISG should be directly applied.

Finally, the good interaction between CISG and conflict of laws approach is successfully realized. Although the application of CISG, the uniform application of substantive law and the way of conflict of laws are two parallel paths, it does not mean that the court completely refuses to apply the conflict of laws according to CISG when dealing with cases. Due to the limited jurisdiction CISG, when it comes to "external vulnerability of the convention, shall be admitted inversion principle in the law of conflict and should not be directly applicable law in our country. The above analytical paradigm of CISG application is helpful for Chinese courts to judge the applicability of CISG and solve the coordination problem between CISG and conflict of laws.

4.2 Improve the interpretation ability of CISG application

Due to the lack of understanding about treaty applicable rules and treaties applicable practices are not familiar with, the court may exclude the application of the CISG, wrongly or unable to accurately apply CISG, this will lead to in handling cases on the application of the CISG. Therefore, strengthening the learning of the court system on the application of the treaty can realize the simultaneous improvement of the ability of external evidence and internal evidence in cases, so as to enhance the ability of judges to interpret the treaty when dealing with cases.

To enhance the understanding and application of the CISG, it is essential for the court system to give greater consideration to the "Compendium of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (CISG)" published by the United Nations Commission on International Trade Law (UNCITRAL). This comprehensive resource provides valuable insights into the interpretation and application of the CISG, offering a wealth of precedents and guidance for

resolving international sales disputes. By utilizing this authoritative compilation, the court system can ensure more consistent and informed decisions in CISG-related cases. "The assembly" to learn to read the terms of CISG, and provides a case shows that both at home and abroad for China's court system provides a high quality learning materials and reference. Although the Compendium is not a part of CISG and has no binding effect on States parties, courts should pay sufficient attention to it when applying CISG.

In the Compendium, there are certain explanations on the exclusion, indirect application and relationship with domestic law of CISG. However, the divergence of the exclusion of CISG and the errors in the application path of CISG in the judgment documents of Chinese courts show that the court system still has shortcomings in the study of CISG. Therefore, it is necessary to further optimize the court system's learning of CISG, so as to improve the understanding and application ability of CISG.

In 2009 the Supreme People's Court issued "about judicial documents Reference to the provisions of laws, regulations and other normative legal documents asked: "the written judgment of the people's courts shall, in accordance with the reference to relevant laws, regulations and other normative legal documents as a referee." This puts forward higher requirements for Chinese courts at all levels to use treaties in reasoning. In terms of the content of treaties, compared with domestic law, one of the biggest differences of treaties is that they usually stipulate more specific conditions of application. This feature is particularly prominent in civil and commercial treaties. International treaties often involve transnational transactions or international relations, so clear conditions of application are needed to ensure that the rights and obligations of the parties are protected and enforced. Domestic laws, on the other hand, tend to be more flexible and comprehensive, and the conditions of application may be broader or vague. The clear conditions of application of treaties can help improve the predictability and consistency of application of treaties, thus promoting the smooth progress of international exchanges and cooperation. Therefore, when dealing with cases involving treaties, courts need to carefully study and understand the conditions of application of treaties, and make judgments and rulings accordingly. Therefore, when dealing with cases involving treaties, courts need not only to logically prove the applicability of the treaties, but also to carry out a process of "interpretation", that is, to interpret and apply them according to specific provisions. Therefore, the court is when applicable treaty should be clearly indicated in Ming said the terms of the quoted, and reasoning, and according to this interpretation. However, at present, there is often a lack of such discussion in the judicial documents of Chinese courts. This may be due to the fact that there are still some deficiencies in the understanding and application of the treaty, or that the court has not fully realized the importance of explicitly invoking the clause when writing the judgment document. In order to improve the ability of courts to apply treaties and the quality of judicial documents, it is necessary to strengthen the study and understanding of treaties, and to explicitly invoke specific articles in judgment documents, so as to better interpret and apply the provisions of treaties. This can increase the transparency and credibility of the judgment, while also helping to provide a clearer legal basis and guarantee for the relevant parties.

Compared with domestic courts, foreign courts are more standardized and adequate in dealing with issues such as the application of CISG provisions and the determination of the parties' place of business. Foreign court when apply CISG often made clear the specific terms, and a detailed demonstration and explanation, to ensure the accuracy and rationality of applicable. In addition, foreign courts are also more rigorous and meticulous in determining the place of business of the parties concerned, usually considering a variety of factors, such as the company's registration place, actual place of business, and place of contract performance, to determine the applicable legal system.

Therefore, learning from the judgments of foreign courts is an effective way to improve the reasoning ability of Chinese courts. In order to facilitate Chinese courts to obtain relevant foreign cases, the "Case Law Database" established by UNCITRAL and the "CISG Database" established by Pace University can provide relevant case information of countries around the world.

Through these databases, Chinese courts can consult and analyze foreign court judgments on CISG applicable provisions and related issues, and learn about international practices and interpretation trends. This helps the court to better understanding and application of the provisions of CISG, improve their ability on the application of the treaty and the quality of judicial documents.

At the same time, draw lessons from foreign court decisions can also help our country court to better grasp the developments in the field of international business and international commercial practice, improve the level of handling of international commercial disputes and impartiality.

To sum up, draw lessons from foreign court judgment of the court is to improve the reasoning ability of a kind of important way, through the use of relational database, the court may obtain the world case information, learn from it and draw lessons from and improve on the application of the treaty and explain ability, for the processing of foreign-related commercial cases provide a more accurate and reasonable decision.

5. Conclusion

With the increasingly frequent international trade, the application of CISG in China will play a more important role. However, due to the lack of provisions on the application of treaties in the Civil Code, China faces more prominent challenges in the application of treaties. In spite of this, in the post-Civil Code era, Chinese courts will continue to apply civil and commercial contracts. However, there are still some shortcomings in the understanding and application of CISG. Therefore, Chinese courts should broaden their international vision and learn from the mature experience of foreign countries in the application of CISG to make up for their own shortcomings. ^[P]_[SEP] view CISG only positive, can make its maximum value. At the same time, only accurately apply CISG, can show the court's judicial ability in our country, set up the judicial power of the image, and create a new international commercial order of fair and justice. ^[P]_[SEP], therefore, the court need to strengthen the study and understanding of CISG, through learning and draw lessons from foreign experience in CISG applies, improve the ability in the application of CISG. In addition, also need to further improve the legal system of our country, especially in terms of treaty applicable, in order to ensure the effective use of CISG and applicable. Only in this way can China better participate in the exchanges and cooperation in the field of international commercial affairs and provide a strong judicial guarantee for the development of international trade.

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