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Proper Notice in the WS China Import GmbH Case: Pro-enforcement Stance in Chinese Practice

Hui Chu

School of International Law, East China University of Political Science and Law, Changning District, Shanghai-200050, China; 13645556652@163.com

† This study is completed under the supervision of Ms. Fei Xiuyan.

Abstract: Compared to traditional domestic trade, international trade involves more unstable factors, which to a certain extent lead to commercial disputes. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides a critical framework for resolving such disputes, yet its Article V(1)(b) requirement for “proper notice” – essential for arbitration legitimacy – lacks detailed specifications, creating interpretive divergences in Chinese judicial practice. This article examines how Chinese judicial practice interprets and applies this requirement, centering its analysis on the landmark case *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd*’s Application for Recognition and Enforcement of a Foreign Arbitral Award. Using case analysis, the article dissects the Chengdu Intermediate People’s Court’s reasoning, evaluating four legal frameworks for assessing notice validity: (1) party-agreed law, (2) *lex arbitri*, (3) uniform international standards, and (4) *lex fori*. The ruling affirms China’s pro-enforcement stance under the New York Convention, adopting pragmatic standards that bolster predictability in cross-border award enforcement while respecting arbitral autonomy.

Keywords: New York Convention; proper notice; international commercial arbitration; recognition and enforcement

1. Introduction

In today’s increasingly globalized world, cross-border commercial transactions have become frequent, yet the accompanying legal disputes have also grown increasingly complex. Among the typical cases recently released by the Supreme People’s Court of China, *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd* (2022).¹ stands as a typical example. This case not only touches upon the issue of the application of laws in cross-border transactions but also profoundly illuminates the interpretation of international treaties such as the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter referred to as the “Hague Service Convention”) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the “New York Convention”) in specific cases.

To be specific, the said case is related to the proper notice required by the New York Convention. Article V(1)(b) of the New York Convention establishes the requirement for proper notice, which, along with the failure to present the case, constitutes a due process defense available to the party against whom the award under the New York Convention. Nevertheless, in order to attract more contracting states to reduce obstacles to the recognition and enforcement of international arbitration, the New York Convention merely sets forth the requirement that the respondent shall be given proper notice without providing extremely specific details on this requirement, allowing contracting states discretionary power in some regards. In practice, cases that involve disputes over proper notice primarily focus on the content of the notice, the service of the notice, and other aspects. The main point of contention in the case discussed *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.*, revolves around the legal basis for reviewing the property of notice and the proper addressee of notice.

The outcome of this case conveys a message: Chinese courts would review based on the substantive law chosen by the parties; if the parties have not reached an agreement on the applicable law or arbitration rules, the courts then will review based on the law of the place of arbitration.

Due to the egalitarian nature of the international community, there exists no authoritative legislative body within it. When confronted with complex or novel issues, forming ambiguous texts under

Citation: Hui Chu. 2025. Proper Notice in the *WS China Import GmbH Case: Pro-enforcement Stance in Chinese Practice*. *Legal Research & Analysis* 3(2), 14-25. <https://doi.org/10.69971/lra.3.2.2025.101>



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¹. (2022) Chuan 01 LimeWire No.5. (in Chinese)

certain circumstances can serve as a viable approach to concluding an international treaty or agreement (Han 2015). Nevertheless, this may lead to discrepancies in judicial practices among countries and even within the same country, ultimately causing judicial confusion. In China's judicial practice, there have been instances where courts cited judicial assistance treaties or international treaties outside the realm of arbitration as the basis for review, reflecting the ambiguity in understanding the applicability of treaties. The release of this case accurately interprets the scope of application of the Hague Convention and offers an explicit interpretation for "proper notice" stipulated in Article V(1)(b) of the New York Convention, thereby setting an example for the adjudication of following similar cases and providing invaluable academic and practical reference.

2. Methods

The study has followed qualitative research methodology by analyzing data from both primary and secondary sources. The primary source contains case-precedents from both China and foreign judgments. The secondary data source contains various books, journal articles, newspaper and other reports, internet sources, etc.

3. Analysis and Discussion

3.1 Factual Background

This is a case of international judicial assistance, with the involved parties being the applicant, WS China Import GmbH, and the respondent, Sichuan Rongfeng Import & Export Co., Ltd.² In March 2020, the Arbitration Tribunal of the Hamburg Chamber of Commerce and Industry in Germany issued a decision on an arbitration case between WS China Import GmbH and Sichuan Rongfeng Import & Export Co., Ltd. The tribunal ruled that Sichuan Rongfeng Import & Export Co., Ltd. was obligated to make payment for the goods to WS China Import GmbH. In 2022, WS China Import GmbH filed a lawsuit with the Intermediate People's Court of Chengdu City, People's Republic of China, seeking to have the arbitral award made by the Hamburg Chamber of Commerce and Industry recognized and enforced.

The arbitral award in this case was made in Hamburg, Germany, and the request for recognition and enforcement was in Chengdu, China. Both Germany and China are contracting states of the New York Convention. Therefore, the court reviewed the case based on the New York Convention.

Article V of the New York Convention (1958) sets out reasons for the refusal of the recognition and enforcement of a foreign arbitration award, one of which is that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case.³ The respondent thus raised a defense based on this ground, stating that under the Hague Service Convention, China has made a reservation regarding the freedom to send judicial documents by postal channels to persons abroad directly. However, the arbitration tribunal chose to deliver the arbitration documents to Sichuan Rongfeng Import & Export Co., Ltd. via postal service. Sichuan Rongfeng Import & Export Co., Ltd. then argued that this method of delivery does not comply with Chinese legal requirements. In accordance with the New York Convention's requirement for "proper notice", the arbitral award should be refused to recognize and enforce since Rongfeng did not receive proper notice of the arbitration hearing and related procedures.

The Intermediate People's Court of Chengdu City held that the arbitration documents involved in the case, as stated, was sent by mail. The Hague Service Convention the respondent invoked only applies to judicial documents and not to service of arbitral proceedings documents. Since the parties did not reach an agreement of the applicable law for the arbitration, the service of documents by mail by the tribunal in accordance with the German does not violate the relevant laws and regulations of China. The Hamburg Chamber of Commerce Arbitration Tribunal mailed the hearing notice to Rongfeng at its registered address, with the contact telephone number being that of the company's contact person. Meanwhile, the court successfully delivered the arbitral award to that address. Although Rongfeng refused to accept the documents, the documents are deemed as served in accordance with Article 179(3) of the German Code of Civil Procedure.

The Intermediate People's Court of Chengdu City upheld that there are no grounds for refusal to recognize and enforce the arbitral award under Article V of the New York Convention. Accordingly, it ruled to recognize and enforce the said arbitral award. The following section analyzes the court's reasoning.

3.2. Reasoning Analysis

3.2.1 Disputed Points

Before delving into the court's decision, it's crucial to systematically outline the core disputed facts of the case. Based on the factual background, two main points of contention can be identified: First, does the method of service by postal channel applied by the Arbitration Tribunal of the Hamburg Chamber of Commerce and Industry in Germany meet the requirements of relevant law or arbitration rules? Second, regarding the Sichuan Rongfeng Import & Export Co., Ltd.'s failure to participate in the arbitration, how do we ascertain whether this company has substantively known or should have known about the arbitration proceeding? These two points of dispute form the foundational framework for analyzing the court's ruling.

Given that both China and Germany are parties to the New York Convention, the court reviewed the case on the basis of the article V(1)(b) of the New York Convention on the ground that the respondent claimed it fails to receive the proper notice of the appointment of the arbitrator or the proceedings. Article V(1)(b) of the New York Convention stipulates that parties may apply to refuse the recognition and enforcement an arbitral award in cases of failure to receive "proper notice" and failure to "present his case." Specifically, first, if a party does not properly receive notice for appointing an arbitrator, they cannot participate in that process to select the arbitrator, which contradicts the rules in commercial arbitration empowering parties to appoint arbitrators. Second, if relevant notices related to arbitration are not properly delivered, a party can also claim refusal of the arbitral award. Third,

² Ibid, para 1.

³ 330 U.N.T.S. 38.

if a party is unable to present their argument for other reasons, they lose the means to express their claims and justifications, which also serves as the ground for refusing.⁴

Subsequently, this paper will gradually deconstruct and examine the court's reasoning and logic in the case of *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.*, centering on the aforementioned disputed points.

3.2.2 Analysis of the Legality of Service

When the respondent raises objection on the recognition and enforcement of a foreign arbitral award on the grounds of not receiving proper notice as per the New York Convention, the main issue facing the court is to determine whether the foreign arbitral award suffers from such procedural defects. The question of whether a notice was given entails factual assessment, while evaluating whether the notice action meets the standard of propriety is a legal matter requiring a value judgment.

However, neither the travaux préparatoires nor the provisions of the New York Convention reveal clear indication of which law should serve as the basis for examining the article. During the drafting process of New York Convention, Israel once tried to specify the law applied to this procedural issue and proposed that submission to arbitration shall be held valid if valid either under the law of the State where it was made or under the law of the State where the award was sought.⁵ Whereas, there were different opinions and wide disagreements towards this issue. Some delegates, such as the Norway delegate, didn't agree with the proposal of the Israel's representative and considered it advisable not to indicate how the validity should be determined.⁶ No consensus had been reached by these delegates, leading to this issue eventually be left to the competent authority from which the award relied on.

After observing the judicial practices of various countries regarding this article, the author conclude that Possible choices for reviewing the standards of due process applicable under Article V(1)(b) include:

- (1) The Law Agreed upon by the Parties
- (2) The Lex Arbitri
- (3) Uniform International Procedural Standard
- (4) The Lex Fori

In this case, the respondent Sichuan Rongfeng Import & Export Co., Ltd. claimed the arbitration tribunal's service violates the requirements of proper notice under the Hague Service Convention, while the court rejected the respondent's assertion and relied on the German Code of Civil Procedure as the basis for judicial review. The following text will conduct an in-depth rational analysis of each aforementioned scenario, aiming to uncover the underlying legal logic and practical considerations, and ultimately provide a thorough assessment of the legality and reasonableness of the decisions made by the Intermediate People's Court of Chengdu City.

Law Agreed upon by the Parties

This practice originates from the party autonomy principle. It is obvious that arbitration itself is a product of the party autonomy principle. The most distinguished feature of arbitration is that the parties can control the entire arbitration process, which allows the flexibility of arbitration to be fully utilized. This principle was guaranteed by many national arbitration laws and arbitration rules. Consequently, in most cases, the practice that parties involved select the applicable law has always been deemed effective.

To take China as an example, in *TS Haimalu Co., Ltd. v. Daqing PoPeyes Food Co., Ltd.*(2005),⁷ after TS Haimalu Co., Ltd. applied to the Intermediate People's Court of Harbin City (the court of first instance) for recognition and enforcement of the arbitral award, Daqing PoPeyes Food Co., Ltd. pleaded for refusing the recognition and enforcement of the arbitral award for the reasons that the arbitral tribunal failed to serve him the notice on court session and the arbitral award according to Article 4 and Article 8 of the Treaty between the People's Republic of China and the Republic of Korea on the Judicial Assistance in Civil and Commercial Matters. The Supreme People's Court holds that, as the parties explicitly agreed in the agreements that "*the arbitration shall be governed by the Arbitration Rules of the Korean Commercial Arbitration Board*", and the arbitral tribunal for this case has served the notice on court session and the arbitral award to PoPeyes by mails according to the said rules, and there are also evidences proving that PoPeyes has received the said notice on court session and the said arbitral award.

To sum up, the application of the law agreed upon by the parties does not invite so many controversies, as has been demonstrated by the extensive practice of the international community. However, the parties involved in the case *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.* did not reach such an agreement. Thus the main dispute regarding this matter is actually which law should be invoked when the parties have not agreed on the applicable law.

Lex Arbitri

In the case *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.*(2022), the lex arbitri (the law of arbitration) is German law, which in fact serves as the law the arbitral tribunal relied upon. The Intermediate People's Court of Chengdu City stated that according to Article 18 of the Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships (2011),⁸ since the parties did not agree on the applicable law, the tribunal's act of delivering arbitration documents to the respondent via mail in accordance of the German Code of Civil Procedure did not violate Chinese law.

China courts generally resort to the law of the place where the arbitration was made to review whether it has met the standard of proper notice when it falls out of the agreement between the relevant parties. The decision of the Intermediate People's Court of Chengdu City aligns with the position of the Supreme People's Court. The Supreme People's Court of People's Republic of China

⁴ Ibid.

⁵ U.N.Doc. E/CONF.26/L.31.

⁶ U.N.Doc. E/CONF.26/SR.12.

⁷ (2005) Min 4 Ta No.46.(in Chinese)

⁸ Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships, 2011, art. 18.

has previously mentioned in its reply to a lower court that the property of the service of notice in arbitration proceedings should be determined in accordance with the law of arbitration.⁹

This approach is closely related to the “seat theory”. In this theory, the place of arbitration is the most decisive connecting factor in determining the application of the law of the arbitral proceedings. Proper notice, as a legal procedure in arbitral proceedings, is certainly no exception. There are also other countries generally review the proper notice of the relevant issues according to the *lex arbitri* when the parties have not agreed on applicable laws or rules. In the United Kingdom, *Tesco (Ireland) Ltd. v. Moffett & Ors* (2015)¹⁰ is a typical example. In this case, the High Court dismissed the argument of two defendants that they had not been informed of the arbitration, finding that notices had been proper under the parties’ contract and the applicable Irish law, the law of arbitration.

Actually, this approach is quite understandable. After all, each country has different regulations and requirements concerning procedural issues. As a result, strict application of the law of the forum states would make it difficult for many foreign awards to be recognized and enforced. As the procedural law of the seat of arbitration plays a decisive role in the arbitration process, which has become a widely accepted stance, many countries choose to take a non-interventionist attitude and review the Article V(1)(b) based on the law of the place where the award was made (Lew 1976).

In addition, in the early stages of the drafting process of the New York Convention, some authorities suggested that the question whether the due process requirement has been met should be determined under the *lex arbitri*, pursuant to Article V(1)(d). For example, the New Zealand delegate stated that the draft does not specify clearly by what law Article V(1)(b)’s criteria are to be interpreted and suggested “that it should be expressly provided that the law of the place where the award was made should apply to them.”¹¹

Since the two terms are in the same article, the proposal that the law adopted by V(1)(d) could also be applied to V(1)(b) is not so strange. Indeed, it is sometimes difficult to assess whether a procedural “error” shall be invoked on the basis of Article V(1)(b) or under Article V(1)(d). Procedural irregularities or irregularities concerning the composition of the tribunal are generally covered by Article V(1)(d). However, if they are of such gravity that they also violate the fundamental standards of due process, they likewise constitute a due process defense that may be raised under Article V(1)(b) (Lew 1976).

In practice, the two provisions are also closely linked. Some respondents argue that the lack of proper notice was a result of discrepancies in the composition of the arbitral tribunal as agreed upon or in accordance with the law of arbitration and eventually led to the consequences of depriving the respondent of the right to present their defense.¹² There are also some parties claim that it was due to the lack of proper notice in the arbitral tribunal’s composition process that the respondent was unable to select arbitrators, ultimately resulting in discrepancies between the composition of the arbitral tribunal and the agreement or arbitration laws.¹³

Nevertheless, Article V(1)(b) focuses on generally-applicable and mandatory standards of procedural fairness and provides a basis for refusal to recognition only in cases of serious procedural unfairness. Just as a court explained, “*insofar as the procedure is concerned, not every irregularity will automatically entail refusal of enforcement of a foreign award, even if such irregularity would entail the annulment of an award rendered in Switzerland. It should rather involve a violation of fundamental principles of the Swiss legal order which hurts in an intolerable manner the notion of justice* (Van den Berg 1986).” While Article V(1)(d) is concerned with non-compliance with the arbitral procedures agreed upon by the parties or the procedural law of the arbitration. As a result, in order to avoid blurring the boundaries of the two provisions, the proposal that Article V(1)(b) should also subject to the *lex arbitri* was rejected.

Uniform International Procedural Standard

It has been proposed that uniform international procedure standard derived directly from Article V(1)(b) of the New York Convention should be established. The respondent also defended in the case *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.* (2022) that the review of the service shall based on the Hague Service Convention. However, this argument was rejected by the Intermediate People’s Court of Chengdu City. The court’s stated that the Hague Service Convention applies only to judicial documents, which, the author deems, can be found in the convention itself.

With its aim to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time, the Convention stipulated in Article 1 that, “*the present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad*”.¹⁴ According to the provision of this article, the scope of the application of the Hague Service Convention can be determined.

Firstly, the Convention only applies between contracting parties, which is a widely accepted principle. China ratified the Hague Service Convention on May 3, 1991, and Germany is also a member of the convention. Therefore, the Hague Service Convention can be applied between these two countries.

Secondly, the Convention applies to the service of documents in civil or commercial matters. Regarding the concepts of civil or commercial matters, the Convention does not provide a specific definition. Representatives stated at the Hague Conference on Private International Law held in 1977 that it is almost impossible to provide such a definition. And this issue should be left to the discretion of the central authorities of each country in line with the spirit of the convention to facilitate the service of documents (Li and Xie 2001). In practice, central authorities of various countries generally consider that as long as it does not involve criminal or tax matters, it can be classified as civil or commercial matters (Li 1996). The arbitration proceedings between WS China Import

⁹ (2006) Min 4 Ta No.36.

¹⁰ *Tesco (Ireland) Ltd. v. Moffett & Ors*, [2015] NIQB 68 (Ire).

¹¹ U.N.Doc. E/CONF.26/3.

¹² (2007) Min 4 Ta No.35.

¹³ (2006) Min 4 Ta No.41.

¹⁴ 20 U.S.T. 361.

GmbH and Sichuan Rongfeng Import & Export Co., Ltd. originated from payment issues, falling within the scope of civil or commercial matters. In this respect, Rongfeng's defense seems reasonable.

Thirdly, however, the Hague Service Convention applies only to judicial documents and extrajudicial documents. The Convention does not provide a definition of what constitutes judicial and extrajudicial documents. Generally, judicial documents are directly related to litigation, such as summonses or judgments issued by courts. Extrajudicial documents are not directly related to litigation, such as a demand for payment by a debtor or a notice to vacate premises by a tenant (Li 1996). Therefore, whether judicial or extrajudicial, these documents involved in the course of litigation. In the said case, the parties were in dispute over payment, which led to arbitration proceedings. Rongfeng argues that it did not receive proper notice of the arbitration proceedings, as it did not fall under judicial or extrajudicial documents. Hence, the Hague Service Convention does not apply in this case.

In short, civil procedures are distinct from that of arbitration. In civil procedures, the service of documents is regarded as a sovereign act. In China, service of judicial proceedings can only be made by public authorities rather than private channels. While arbitration is a mechanism based on voluntary, and one of the features of this procedure is confidentiality (Zhu and Xiao 2019). Thus, there are some differences between the service in judicial proceedings and that of arbitration. The service of judicial documents is statutory, which can be found in specific regulations and provisions of international treaties and civil procedure laws of various countries. Failure to serve judicial documents in accordance with the law renders the service invalid. In the contrast, the service of arbitration documents is contractual. Although international treaties and laws of various countries require arbitral tribunals to serve arbitration documents on the parties in arbitration procedures, there are no specific requirements regarding this issue in international treaties, civil procedure laws, and arbitration laws (Qi 2010).

China has repeatedly demonstrated in practice. In the Letter of Reply of the Supreme People's Court on Request for Instructions Re Application of Boertong Corp. for Recognition of Foreign Arbitration Award (2006),¹⁵ the Supreme People's Court stated that the service of process in the arbitration procedure is not governed by the Treaty between the People's Republic of China and the Republic of Korea on the Judicial Assistance in Civil and Commercial Matters and the Hague Service Convention, but should be subject to the arbitration rules. Likewise, in the Reply of the Supreme People's Court to the Request for Instructions about Whether or Not to Recognize and Enforce the Arbitral Award of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federal (2012),¹⁶ the Supreme People's Court also pointed out that in the arbitration procedure, whether the service of documents meet the standard of proper notice or not should be in accordance with the parties' agreement or the applicable arbitration rules, rather than the provisions of the Hague Service Convention or the treaties on judicial assistance. This rule has also been repeatedly verified in following practice.

Then question occurred, apart from the Hague Service Convention, whether other international procedural standards can be established or applied to international arbitration? Some scholars hold a supportive attitude, which may based on two main considerations:

The first consideration focuses on the underlying purpose of the New York Convention. Considering that the overall objectives of the New York Convention are to establish a uniform international set of standards facilitating the recognition and enforcement of arbitral awards and to prevent the application of parochial rules that would render ineffective or obstruct the arbitral process, the proposal of setting a uniform international procedural standard occurred (Born 2009).

Although different legal systems of different states have fundamentally different approaches to dispute resolution, there is little disagreement about the basic principles of natural justice.

Article 18 of the UNCITRAL Model Law on International Commercial Arbitration (2008) provides that "*the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case*",¹⁷ and article 36(1)(a)(ii) of the Model Law sets ground for refusing recognition of an arbitral award with the fact that "*the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case*".¹⁸

Similarly, Article 182(3) of the Swiss Private International Law Act (1982) provides that, in arbitrations conducted in Switzerland, "*the arbitral tribunal shall ensure equal treatment of the parties and their right to be heard in adversarial proceedings*",¹⁹ and article 190(2)(d) of the Act allows to challenge on the ground that the principle of equal treatment of the parties or their right to be heard in adversarial proceedings was violated.²⁰

Taking a step back, the scope for differences in national procedural laws is further reduced by the fact that the procedural law applied in a specific case can be seen as a common requirement to the particular parties involved in the particular arbitration proceeding. Arbitration in essence always involves two parties from two different legal traditions, and even if it is unlikely to identify specific rules of procedural fairness recognized by all legal traditions around the world, it is usually possible to identify the same standards of procedural norms that satisfy both parties in each scope of law (Born 2009).

Second, it follows from the relationship between Article V(1)(b) and V(1)(d) that the former requires the notice of the appointment of arbitrators be properly served on the parties. Generally, the notice shall contain the full name, email address, postal address and telephone number of the arbitrator.²¹ The names of the arbitrators are often deemed necessary given that parties may challenge

¹⁵ Ibid, para 23.

¹⁶ (2012) Min 4 Ta No.42.(in Chinese)

¹⁷ E.08.V.4.

¹⁸ Ibid.

¹⁹ Swiss Private International Law Act, 1982, art. 182.

²⁰ Ibid.

²¹ LCIA Arbitration Rules 2020, The London Court of International Arbitration, accessed August 2, 2025, at https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx.

an arbitrator perceived as partial. Otherwise, the arbitral award may be regarded as a ghost arbitration and refused to recognize and enforce consequently (Van den Berg 2007).

In practice, however, there may be a situation where the parties agree on the composition of the arbitral tribunal and on the arbitration agreement, in which the parties agree that the names of the arbitrators need not be notified. Such a practice would not be contrary to the requirements of V(1)(d), but it would clearly contradict the practice of the Contracting States with respect to V(1)(b), which is to enable the parties to understand the background of the arbitrator, then to decide whether to exercise their right to challenge the appointment, thus ensuring the fairness of arbitration. In this situation, the question of which article should be applied will arise leading to the proposal to establish a uniform international procedure standard derived directly from V(1)(b) of the New York Convention prevalent. From the perspective of the scholars who support this proposition, it has been advocated that V(1)(b) can be viewed as a rule outside the scope of domestic law, correcting the agreement between the parties and the law of arbitration. Thus, in such a case, V(1)(d) would have to be in conformity with V(1)(b), and the judge could also rely on V(1)(b) for refusing recognition and enforcement of the award (Van den Berg 1981).

However, this consideration has incurred some controversy. Some held that it is paramount to give utmost regard to the stipulations made by the involved parties. Refusing to recognize or enforce an arbitral award based on due process considerations where the tribunal strictly followed the procedures chosen by the parties would constitute an “abuse of party autonomy”. The mutual agreement between the parties to adopt a less stringent due process criterion could be interpreted as a tacit waiver of the due process protection stipulated in Article V(1)(b). Nevertheless, it is crucial to note that such a waiver may be rendered invalidated if it results in a severe violation of the basic procedural safeguards. In instances where such breaches occur, a party challenging an award should have the right to invoke Article V(1)(b), even if prior consent to a more lenient standard was provided (Reinmar Wolff et.al. 2012).

Above all, there is no consensus on whether a uniform international procedural standard should be established. Generally, the law agreed upon by the parties would be given priority on reviewing such issues. In the absence of the agreement between the parties, some countries, including China, choose the law of the seat or the law where the arbitration institution is located, which has been embodied in the said case *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd* (2022). On top of that, some countries resort to the *lex fori*. Although parties in the said case does not advocate for the law of the forum as the basis, it serves as an option for many countries dealing with such disputes. To provide a more comprehensive perspective on the applicable law under article V(1)(b) of the New York Convention, this paper will analyze the reasons for selecting the *lex fori* as the basis for review.

Lex Fori

Since the middle of the last century, there has been a gradual trend in the theory and practice of international commercial arbitration to advocate the adoption of “non-localization theory”. This theory has exerted some influence on the traditional “seat theory”, and has led to new attempts in the practice of international commercial arbitration.

National courts in France, Italy, Germany, Spain, Switzerland, the US, and elsewhere, for instance, apply - as a matter of principle - the law of the forum where enforcement or recognition is sought to determine Article V(1)(b)’s standard of procedural fairness (Reinmar Wolff et. al. 2012).

US courts deemed that the defense provided for in Article V(1)(b) essentially sanctions the application of the forum state’s standards of due process,²² which has been reconfirmed on several occasions. In the meantime, the Swedish Supreme Court also upheld that the law of the forum state shall apply in addition to making the factual determination in relation to domestic standards of providing notice and securing due process guarantees. Germany adopted the same approach. The Hanseatic Higher Regional Court of Hamburg once claimed that the question whether the requirements of due process have been satisfied must be considered under German law, which is the law of the enforcing State (Sanders 1979).

To take America as an example. The principle of due process lies at the heart of the common law system. In the legal system of the United States, the Fifth and Fourteenth Amendments to the Constitution provide safeguards for due process. And the judiciary are empowered to interpret and apply the guarantees and freedoms enumerated in the Constitution. As for judicial review, it is the courts that can determine compliance with the requirements of due legal process (Edward 1991).

Problems will arise if the law of arbitri was applied to evaluate whether a foreign arbitral award complies with due process. For instance, the decision on recognition and enforcement is made by the judge of the court of forum state, who should be clear about its own legal system; however, to have the judge of that state apply the legal standards of another state is a very high demand on the professional standard of the judge, and it will also add to the burden of the court. Therefore, it is natural for American courts to use its own laws to review the requirement of proper notice under the New York Convention.

During the process of drafting, some delegates supported the application of the enforcing state and stated that it might otherwise compel a country to enforce an award which may invalid under its own law.²³ Also, the application of the *lex fori* was expressly and separately contemplated in Article V(2)(b): an award shall be refused to recognize and enforce if the award violates the public policy of the country where enforcement is sought and due process is a matter of public policy (Paulsson 2016).

In saying that, it seems advisable to apply the same standard to Article V(1)(b). After all, it is not uncommon to raise due process defense combined with public policy defense in practice. The public policy includes procedural and substantive fundamental principles. An example of a procedural fundamental principle is the requirement that tribunals be impartial (Mayer and Audley William Sheppard 2003). While the due process also requires everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law,²⁴ which leads to an inevitable overlapping application of the two terms of the New York Convention. Many courts hold that a party had not been able to present his case in an arbitration abroad, would the basic principles of the legal order be violated (Sanders 1977). Many cases appear to be decided on Article V(1)(b) alone,

²² Iran Aircraft Industries v. Avco Corp., 980 F.2d 141, 141-148 (1992).

²³ U.N.Doc. E/CONF.26/L.31.

²⁴ European Convention on Human Rights, 6 (1)

they seem to implicitly invoke V(2)(b) as well, indicating that the absence of a proper notice can constitute a violation of the public policy (Strong 2008).

Whereas, the possible redundancy of Article V(1)(b) became a matter of concern to some delegates consequently. The Egypt delegate stated during the drafting process that if the rights of defense were not respected, the defendant could charge that the award was contrary to public policy,²⁵ which implied its attitude that the concept of due process is covered by that of public policy. However, the New York Convention separately lists due process as a ground for refusal, which attaches the great importance to the protection of the rights of the parties. In the context of the New York Convention, therefore, there are some distinctions between the due process defense and the public policy.

In spite of various similarities, the public policy defense is distinct from the due process. While considering the pro-enforcement of the convention, a number of courts believe that the public policy defense to enforcement should be construed narrowly. For example, the Court of Appeals for the Second Circuit of the United States stated that enforcement of foreign arbitral awards may be denied on the basis of public policy only where enforcement would violate the forum state's most basic notions of morality and justice.²⁶ Similarly, the Federal Court of Australia also upheld that it is only those aspects of public policy that go to the fundamental, core questions of morality and justice in the jurisdiction where enforcement is sought which enliven this particular statutory exception to enforcement.²⁷ In other words, the definition of public policy is strict.

Additionally, the grounds for refusal contained in Article V(1) have to be raised by the party resisting enforcement, while Article V(2) sets out the grounds to be examined by courts. That is, the party opposing enforcement does not need to raise an Article V(2) ground for refusal of enforcement, nor does it bear the burden of proof to demonstrate that the requirements for refusal under Article V(2)(b) have been satisfied. The Supreme People's Court of China has stated that courts shall review an award based on the request of the parties if the reviewing ground is stipulated in Article V(1), and that when the parties have not raised a defense under article V(1), there is no legal basis for the court to review the award on this basis and the decision to refuse to recognize and enforce the foreign arbitral award is incorrect.²⁸ On the contrary, as for the public policy, even if the parties did not raise a defense on this ground, the court could still conduct a review.²⁹

On top of that, arbitral awards are generally final, courts therefore cannot re-examine the facts, evidence or application of law in foreign arbitral awards on the grounds set forth in Article V(1) of the New York Convention. Courts usually focus only on whether the form and procedures of the award comply with the statutory requirements, and do not re-examine the substantive content of the award.

However, the review of public policy in various countries is not limited to this. Firstly, from the perspective of the wording of the provision, Article V(2)(b) of the Convention does not set a limitation for the scope of the review, which in fact means the discretionary power given by the legislators to the courts of the Contracting States. Secondly, in terms of the legislative purpose, the purpose of Article V(2)(b) is to balance the relationship between the finality of international commercial arbitral awards and the preservation of public policy in the forum states through granting the courts of the Contracting States the right to review foreign arbitral awards. Thus, in order to achieve this purpose, courts may review both procedural and substantive elements. Article V(1)(b), however, provides for procedural defects, and the court shall only review the award on a procedural basis.

During the drafting process, there are some delegates held that in every country, the legislation on procedure provided that the award could be annulled if the rights of the defense had been contravened.³⁰ The reason for retaining Article V(1)(b) is that in some cases the party raising a defense may not always choose to set aside the award in the State in which the award was made.³¹ If the standard applied to Article V(2)(b) can also be applied to V(1)(b), then the article seems to be a repetition of the former. Eventually, to avoid redundancy, Article V(1)(b) does not replicate this reference, either expressly or implicitly.

Moreover, the application of the law of the forum State raises a problem. It would require arbitrators to conduct endless legal inquiries into the minimum standards of fairness in each country where the arbitral award might ultimately be sorted to enforce, in order to ensure that the enforceability of the awards they rendered. This would pose a serious threat to the procedural economy of the arbitral process, curtailing the superiority of arbitration, which in turn might lead parties to abandon the choice of arbitration as a dispute resolution mechanism on the basis of efficiency considerations.

From the above discussion, it can be concluded that for the proper notice stipulated by article V(1)(b) of the New York Convention, according to Chinese legal provisions and judicial practices, in the absence of an agreement between the parties, the law of the seat of arbitration should serve as the basis for review, specifically the German Code of Civil Procedure applicable to this case. The act of the arbitration tribunal to deliver arbitration documents by mail does not violate the German Code of Civil Procedure. Thus, the claim from Sichuan Rongfeng Import & Export Co., Ltd. are invalid.

3.2.3 Analysis of Failure to Present the Case

In the said case, Sichuan Rongfeng Import & Export Co., Ltd. Claimed that even if the service complied with the applicable law, it failed to substantively know the arbitration proceeding, and could not actually participate in the arbitration to defend, which still based on the article V(1)(b) of the New York Convention.

The author believes that the spirit of Article V(1)(b) is to guarantee the right to present in the proceedings. In the original draft, this provision was presented as "was not given notice [...] of the arbitration proceedings in due form or in sufficient time to enable

²⁵ U.N.Doc. E/AC.42/SR.6.

²⁶ *Geotech Lizenz AG v. Evergreen Systems, Inc.*, 697 F.Supp. 1248 (1988).

²⁷ *Traxys Europe S.A. v. Balaji Coke Industry Pvt Ltd.*, Federal Court, Australia, 23 March 2012, [2012] FCA 276.

²⁸ (2016) ZuiGaoFaMinTa No.11.(in Chinese)

²⁹ (2014) XiaHaiFaRen No.14.(in Chinese)

³⁰ *Ibid*, para 53.

³¹ U.N.Doc. E/Conf.26.SR.17.

him to present his case”.³² However, the General Assembly ultimately deleted the specific reference to time in the draft, and instead added the phrase “was otherwise unable to present his case.”³³ It means that if a party proves that there were other reasons why he was unable to present his case, the court may also refuse to enforce the award.

In addition, proper notice is to ensure that the parties are fully informed of all stages of the arbitration proceedings and related matters, including the date, place, procedures, evidence and other issues of the hearings. This is to guarantee that the parties are fully informed of the progress of the case and the relevant circumstances during the arbitration process, and that the parties have sufficient time to prepare and organize their evidence and defense, so as to avoid unfair situations due to asymmetric information and to safeguard the parties’ right to defense.

The final resolution of the draft implies that due process requires more to provide the parties with the opportunity to present his case rather than just proper notice, which is ultimately about ensuring that the parties are not deprived of their right to participate fully in the arbitration.

Therefore, to successfully raise this defense, a party must demonstrate that it was deprived of a fundamentally fair hearing or, in other words, that it “was not given the opportunity to be heard at a meaningful time and in a meaningful manner.” (Jennifer and Yasmine Lahlou 2018)

In *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.*, the court determined that the respondent could substantively know or should have known the arbitration proceeding. Its failure to attend the arbitration amounted to a voluntary waiver of rights, which does not constitute a reason to refuse the recognition and enforcement of the arbitral award in question. The court provided two justifications: First, the arbitration tribunal mailed the notice to the company’s registered address, with a contact number for the company’s representative. Furthermore, the High People’s Court of Sichuan Province successfully delivered the No. 04/19 arbitral award to that address. Based on this, the court believes that the tribunal’s service should be considered as reaching the company or to be received. Second, the notice was sent by the Hamburg Chamber of Commerce and Industry, and the mailing date aligns with the time indicated for delivering the hearing notice in the arbitral award. This suffices for presuming that the contents of the mail included the hearing notice.³⁴ Then the following analysis will examine the standards employed by the court to make these determinations.

The analysis will commence by examining the issue of the addressee. In the international community, some countries and arbitration institutions adopt the concept of “deemed service,” a legal fiction whereby a notice is deemed to be received by a party if it is sent to its last known address.³⁵

China has always adopted this method in its judicial practice. In the arbitration ruling of *Russian Season Ltd v. Zhejiang Wuyi Wanlong Door Industry Co., Ltd.*,³⁶ the respondent’s business registration address changed, while the arbitral tribunal sent arbitration notice materials to the respondent’s original registered address. The respondent Zhejiang Wuyi Wanlong Door Industry Co., Ltd. stated that apart from arbitration materials sent in November 2013, it did not receive the notice of the arbitral tribunal’s hearing and the service of the arbitral award mentioned in the arbitral award. Therefore, it was unable for the respondent to present its case without receiving such notice, and claimed that the arbitral award was procedurally illegal and could not be recognized and enforced. The court found that the respondent’s business registration address was the same as the contractually agreed address of the parties, and although the respondent claimed an address change, it neither processed the change registration procedure at the business registration department nor informed the applicant. Furthermore, the court successfully served the legal documents to the address which the arbitral tribunal sent the arbitration notice materials, indicating the service by the arbitral tribunal was valid.

Some cases supported by the court are generally due to the fact that the incorrect address is a result of the fault of the notified subjects themselves, and the arbitration tribunal fails to fulfill the obligation of reasonable inquiry into the address for service of the notified subject. If the arbitration institution or tribunal or the applicant has fulfilled their duty in accordance with the applicable law, and there is no fault or negligence in the service, then it should be considered compliant with the arbitration rules and the law. As for the consequences resulting from the notified party’s own fault or negligence in failing to properly receive the arbitration documents, these are to be borne by themselves (Lin 2009).

In *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.*, both the postal address and telephone number are displayed in the registration information of Sichuan Rongfeng Import & Export Co., Ltd., and after examination by the court, the address is confirmed to be true. Therefore, in the author’s opinion, the respondent can be deemed to have been aware of a proceeding and therefore had the ability to present the case.

Second, Sichuan Rongfeng Import & Export Co., Ltd. claimed that the post sheet cannot accurately reflect the content of the documents. The author deems that the primary function of the post sheet is to serve as proof of logistics tracking and delivery, rather than as a legal document itself. Moreover, according to Section 179 of the German Code of Civil Procedure, even if the Company refused to accept the mail, the mail is deemed served.³⁷

This kind of practice is in fact a consideration based on the fundamental purpose of the New York Convention. Under the framework of the New York Convention, the due process defense embodies two requirements, one for the arbitral tribunal, which focuses on two aspects: proper notice and the opportunity to be heard; and the other for the parties, which means that the parties should actively exercise their right to be heard. As a result, if a party refuses the opportunity to be heard by the arbitral tribunal, it cannot raise a defense by invoking Article V(1)(b).

³² U.N.Doc. E/2704.

³³ Ibid, para 8.

³⁴ Ibid, para 1.

³⁵ UNCITRAL Model Law on International Commercial Arbitration, art. 3, Jun. 21, 1985, A/40/17.

³⁶ (2016) Zhe 07 XieWaiRen No.2.(in Chinese)

³⁷ German Code of Civil Procedure [Zustellungsreformgesetz], §179 ZPO.

For example, in *Bobbie Brooks Inc. v. Lanificio Walter Bucci s.a.s.* (Sanders 1979), Walter Banci objected to the enforcement on the ground that he was not informed of the arbitral procedure in conformity with the Arbitration Rules of American Arbitration Association, and that therefore the ground for refusal as mentioned in Article V (1)(b) of the New York Convention. While the Court of Appeal of Italy rejected on the basis of the facts that Walter Banci had refused explicitly to participate in the arbitration.

As a result, from the author's perspective, the fact that Sichuan Rongfeng Import & Export Co., Ltd. Did not send personnel to participate in the arbitration with knowledge of the arbitration proceeding is actually the Company itself gave up the opportunity to state the case and thus cannot serve as the ground for the refusal to recognize and enforce the arbitral award. Apart from the defense raised by the respondent, the New York Convention V(2) also stipulates the circumstances under which the court may invoke to refuse the recognition and enforcement.

3.2.4 Article V(2) of New York Convention

Pursuant to Article V(2) of the New York Convention, the court of the country where recognition and enforcement is sought may refuse to recognize and enforce an arbitral award on two grounds: firstly, the subject matter of the difference is not capable of settlement by arbitration under the law of that country; secondly, the recognition or enforcement of the award would be contrary to the public policy of that country.³⁸ Upon examination, the court has deemed that the said case does not fall under any of these two circumstances, and the paper will proceed to analyze these two scenarios in detail.

Initially, in terms of the scope of arbitration, according to the Arbitration Law of the People's Republic of China, marital, adoption, guardianship, support and succession disputes, and administrative disputes that shall be handled by administrative organs may not be arbitrated.³⁹ In *WS China Import GmbH v. Sichuan Rongfeng Import & Export Co., Ltd.*, the disputes between the parties because of payment does not fall within the scope of the above matters.

Subsequently, in the context where the concept of public policy lacks a clear definition, China adheres to a restrictive interpretation principle. Specifically, it only permits the refusal to recognize and enforce foreign arbitral awards when such recognition would violate fundamental legal principles, infringe national sovereignty, endanger national and social public safety, or contravene good morals, thus threatening essential public interests.⁴⁰ Obviously, the said case does not fall within such circumstances.

As the author sees it, throughout the international community, including China, the cases in which the defense proposed based on the New York Convention is supported by the judge are in the minority, which can be explained by exploring the purpose of the New York Convention.

3.2.5 The Pro-enforcement Bias

The Geneva Convention on the Execution of Foreign Awards of 1927 (or the Geneva Convention) issued by the League of Nations serves as the predecessor of the New York Convention, with the aim to regulate the enforcement of awards that were made pursuant to a valid arbitration agreement. However, although the Geneva Convention was effective in promoting international commercial arbitration, the default of which is also crucial -- it lacked substantive enforcement provisions. Therefore, the United Nations Economic and Social Council created the New York Convention to provide further protection for the integrity of international arbitration awards (Elise 1993).

The pro-enforcement bias, as the purpose rooted in the whole Convention, is embodied in every provision, which can be drawn from the wording of Article V. In legal documents, the word "shall" is usually used to indicate an obligation or requirement, which means a certain behavior or action is mandatory and should be performed or complied with. For example, "shall" is used in Article I(1), requiring that arbitral awards that comply with the requirements of the New York Convention should be subject to the Convention's jurisdiction.

Article V of the Convention, however, uses the word "may". Compared to "shall", "may" expresses a right, an option or a license. It provides an option, indicating that a certain conduct or action is optional but not obligatory to be performed or complied with. This means that, although Article V of the Convention provides seven grounds for a Contracting State to refuse recognition and enforcement of an arbitral award, in certain circumstances the Contracting State may decide to recognize and enforce a foreign arbitral award even if those grounds exist. Just as the Norway delegate said, "it does not impose an obligation on Contracting Parties."⁴¹ Therefore, countries should bear in mind the principle of pro-enforcement when applying the New York Convention in their judicial practice. This is also why in practice there are few successful cases based on these seven grounds.

4. Conclusions

The New York Convention, established to streamline the international recognition and enforcement of arbitration awards, sets forth specific boundaries on the extent to which Contracting States can restrict arbitral awards and arbitration agreements. However, Contracting States have the freedom to adopt more lenient regulations than those outlined in the Convention.

In the context of a legal case deliberated upon by the Supreme People's Court of the People's Republic of China, the focal point revolved around the necessity of providing proper notice as stipulated in Article V(1)(b) of the New York Convention. Despite the proactive enforcement inclination of the New York Convention, parties often raise objections under Article V(1)(b), yet these are typically not upheld by the courts.⁴²

There are many defenses that a party may raise on the basis of article V(1)(b). These defenses are mainly related to the constituent elements of proper notice: addressee, content, and service. The point of contention in the case discussed herein lies in the manner of service.

³⁸ Ibid, para 8.

³⁹ P.R.C. ARBITR LAW art.3, §1 (2017) (China).

⁴⁰ (2016) Liao 02 XieWaiRen No.2.(in Chinese)

⁴¹ U.N.Doc. E/2822/Add.5.

⁴² E.16.V.7 (2016).

A prerequisite to determining whether these defenses are valid is finding a legal basis for reviewing the conduct in question. The New York Convention does not address this issue. In fact, taking into account the legal systems of different countries, the New York Convention intentionally refrains from making specific provisions on this issue, with the aim of harmonizing the differences in the legal systems of different countries, attracting more contracting States and thus minimizing the obstacles to the cross-border enforcement of arbitral awards. As a result, a number of methods to this issue have occurred.

Apart from the law agreed upon by the parties, which embodies the principle of autonomy and rarely questioned by various countries in practice, these methods are mainly divided into three types: first, the law of arbitri, which is widely accepted due to the prevalence of the “seat theory”; second, the law of fori, which is related to the “non-localized arbitration theory”; and third, the establishment of a uniform international standard, which has been proposed by some scholars.

In contrast to countries like the UK and the US, Chinese Constitution does not stipulate the principle of due process. Even though the Constitution defines substantive rights through specific provisions, it does not imply that the exercise of state power shall adhere to due process requirements. And the Arbitration Law of China enshrines fairness and impartiality as fundamental principles, while it does not explicitly outline due process. Within Chinese law, the “statutory process” is the cornerstone of judicial review (He 2008). According to Article 54 of the Administrative Procedure Law of 1989, it has been widely interpreted as procedures clearly defined by laws, regulations, or rules. In the context of arbitration, despite it being a private dispute resolution mechanism based on the parties’ autonomy, it does not operate in a legal vacuum. In arbitration, party autonomy and the *lex arbitri* constitute the “statutory process”, which the arbitration procedure must adhere to (Zhu and Xiao Yongping 2019).

The Supreme People’s Court did not impose mandatory rules on proper notice, while agreed rules or arbitration laws usually allow for any effective method of service, cases of non-compliance with these rules are not common. Overall, China’s approach in this regard is to facilitate the enforcement, aligning with the fundamental purpose of the New York Convention.

In China’s past judicial practice, it is not an uncommon phenomenon that parties raise defenses based on the same ground, and there were even some intermediate courts mistakenly applying different bases of review. However, the Supreme People’s Court has repeatedly corrected this practice in its replies, making the application of the law of arbitri to review Article V(1)(b) of the New York Convention a rule that has been verified in Chinese judicial practice for many times.

Rongfeng’s defense, on the other hand, implicitly stemmed from the third method, which was not adopted by the Chinese courts. The parties based their defense on the Hague Convention. The Convention clearly stipulates its scope of application in its Article 1, in which, although both China and Germany involved in the case are contracting parties to the Convention and the dispute does belong to the civil or commercial sphere, the Hague Convention only applies to the extra-territorial service of judicial and extra-judicial documents, and cannot be applied to arbitration proceedings. Therefore, service by mail was valid on the basis of German law.

Furthermore, although Rongfeng refused the service of the arbitration documents, many courts are usually not formalistic in their approach to article V (1)(b), but focus on the actual facts and conduct of the parties, consistent with the New York Convention’s purpose of facilitating enforcement.⁴³ In German law, even if a party refuses service, the documents are still deemed to have been served in certain circumstances. Therefore, the court rejected Rongfeng’s request and made a decision to recognize the arbitral award.

The judgment of this case is consistent with the previous practices of Chinese courts in similar cases, further demonstrating the consistency and stability of Chinese court judgments in reviewing the requirement of proper notice. This consistency not only reflects the judicial independence and fairness of Chinese courts, but also provides important reference for the trial of similar cases in the future, contributing to the strengthening of the consistency, stability, and predictability of the application of international treaties.

In fact, the implementation of the New York Convention in China showcases a strong commitment to facilitating international arbitration practices. A pivotal development occurred on August 28, 1995, when the Supreme People’s Court issued the Notice of the Supreme People’s Court on the Handling by People’s Courts of Issues Concerning Foreign-related Arbitration and Foreign Arbitration. This directive established an internal reporting mechanism for cases where courts consider refusing to recognize and enforce foreign arbitral awards. It mandated that intermediate courts must seek approval from the Supreme People’s Court before making final decisions on such matters, thus consolidating the authority to reject foreign arbitration awards within the Supreme People’s Court.

Beginning in 2001, the Fourth Civil Division of the Supreme People’s Court took on the responsibility of overseeing and providing guidance for international commercial and maritime trials nationwide. Through the publication of comprehensive guidelines on these trials, the division has enhanced transparency in the handling of international commercial and maritime disputes. This transparency has been further bolstered by the public dissemination of requests from lower courts to deny recognition and enforcement of foreign arbitration awards, along with detailed responses from the Supreme People’s Court. These initiatives have significantly improved the clarity and understanding surrounding the recognition and enforcement of foreign arbitration awards in China.

At the end of 2013, China introduced the One Belt One Road initiative, a vital strategy for facilitating international cooperation. To ensure the smooth implementation of this strategy, it is essential to have an unobstructed mechanism for judicial relief in the event of international disputes arising from this development. In terms of legal system construction, China has enhanced the effectiveness and efficiency of its arbitration system, improving the level of dealing with foreign investment and international commercial disputes (Liu and Shen Hongyu 2012).

In addition, China has strengthened cooperation and communication with the international community, participating in international arbitration and dispute resolution mechanisms, enhancing its influence and status in the field of international arbitration. These measures indicate that China is committed to building a more open and transparent legal environment, providing a more stable and reliable legal guarantee for international commercial activities. As China’s influence on the international stage continues to grow, its positive attitude towards the application and enforcement of the New York Convention is expected to further strengthen,

⁴³ Ibid.

potentially promoting a more widespread and in-depth implementation of the convention in China, facilitating the convenience and development of international trade and investment. Given this context, we have grounds to expect that China will enhance its framework for recognizing and enforcing foreign arbitration awards. Indeed, China is presently actively exploring new measures regarding the recognition and enforcement of foreign arbitral awards (Gan and Yang Shudong 2017).

In summary, the Chinese government and judicial institutions have been aware of the importance of the New York Convention in promoting international trade and investment, and are therefore committed to strengthening the implementation and enforcement of the convention. China is continuously accumulating experience and resolving the issues and challenges encountered in the application of the New York Convention, taking a series of measures to promote its implementation domestically. It can be seen that the overall trend of the application of the New York Convention in China is developing towards a more positive and effective direction.

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