DOI:10.26104/NNTIK.2019.45.557



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# КЫТАЙДЫН ЖЕКЕ ЭЛ АРАЛЫК УКУК ЧӨЙРӨСҮНДӨГҮ МУРАСЫ ЖАНА МЫЙЗАМДАРЫНЫН ӨНҮГҮШҮ

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# НАСЛЕДИЕ И РАЗВИТИЕ ЗАКОНОДАТЕЛЬСТВА КИТАЯ В ОБЛАСТИ МЕЖДУНАРОДНОГО ЧАСТНОГО ПРАВА

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# INHERITANCE AND DEVELOPMENT OF THE LEGISLATION OF CHINA'S PRIVATE INTERNATIONAL LAW

*УДК: 340:341.91*

*Жеке эл аралык укук чөйрөсүндө Кытайдын мыйзам чыгаруу ишинин узак тарыхы бар, ал Хань династиясы мезгилинен башталат. Феодализм убагында Кытай жеке эл аралык укук боюнча дүйнөдө алдыңкы орунду ээлеген, ал эми «Хуавэйрэн» деген эскертме дүйнөдөгү мыйзам колдонуунун эң алгачкы нормасы болуп саналат. Кытай Республикасы мезгилинде Укук колдонуу жөнүндөгү регламент дүйнөдө Германия менен Японiядан кийин үчүнчү жазма жеке эл аралык укук катары кабыл алынган Ал Германия менен Япония үчүн жеке эл аралык укуктун дүйнөлүк мыйзам чыгаруу тарыхында ордун ээледи. Кытай Эл Республикасы негизделгенден кийин жеке эл аралык укук боюнча мыйзамда бошток пайда болду. 1978-ж. Кытай жүргүзгөн реформалар жана ачыктык саясаты кытай улутунун жашоого ийкемдүүлүгүн жана күчүн жогорулатты, транс-улуттук кадрларды алмашууга жана экономикалык жактан гүлдөп өнүгүүгө көмөктөштү, жеке эл аралык укук мыйзамдары да өз арымын ылдамдатты. Реформалардын жана ачыктыктын акыркы кырк жылында Кытай жеке эл аралык укуктун салыштырмалуу баарын камтыган укуктук системасын түздү, жана чет өлкө мамлекеттери менен байланышкан жарандык мамилелерди укуктук жөнгө салуу дүйнөдө бекем орун алды.*

***Негизги сөздөр:*** *мыйзам, мыйзам чыгаруу, жеке эл аралык укук, укук колдонуу, реформа, ачыктык, укуктук система.*

*Китайское законодательство в области международного частного права имеет древнюю историю, которое берет свое начало со времен династии Хань. Во времена феодализма Китай занимал лидирующие позиции в мире по международному частному праву, а оговорка «Хуавэйрэн» является самой ранней нормой применения права в мире. В период существования Китайской Республики Положение о применении права было введено в действие как третье письменное международное частное право в мире после Германии и Японии, для которых он занимал особое место в мировой законодательной истории международного частного права. После основания Китайской Народной Республики в законодательстве по международному частному праву возник пробел. Проводимая Китаем в 1978 году политика реформ и открытости повысила жизнеспособность и силу китайской нации, способствовала транснациональным кадровым обменам и экономическому процветанию, законодательство международного частного права также ускорило свои темпы развития. За последние четыре десятилетия реформ и открытости Китай создал относительно всеобъемлющую правовую систему международного частного права, и право регулирования гражданских отношений, связанных с иностранными государствами, которое прочно укрепилось в большинстве стран мира.*

***Ключевые слова:*** *закон, законодательство, международное частное право, применение права, реформа, открытость, правовая система.*

*China's legislation of private international law has a long history, which can be traced back to the Han Dynasty. During the feudalism times, China had held the world's leading position on the legislation of private international law, and the "Huawairen" clause is the earliest rule of application of law in the world. In the period of the Republic of China, The Regulation on the Application of Law had been enacted as the third written private international law worldwide after Germany and Japan, for which it bore a place in the world's legislative history of private international law. After the founding of the People's Republic of China, there was a gap in the legislation on private international law. China's reform and opening-up policy in 1978 has boosted the vitality and vigor of the Chinese nation, promoted transnational personnel exchanges and economic prosperity, the legislation of private international law has also quickened its pace. Over the past four decades of reform and opening up, China has established a relatively comprehensive legal system of private international law, and the law of regulating foreign-related civil relations have stood firm in the forest of nations in the world.*

***Key words:*** *law, legislation, private international law, application of law, reform, openness, legal system.*

DOI:10.26104/NNTIK.2019.45.557



**I. The legislation of private international law in Chinese feudal society led the world (202 BC-1911 AD)**

The profound history of the private international law legislation in China can be traced back to the Han Dynasty. When the Western Han Dynasty was established in 202 BC, the country was weak and was plagued by many internal and external risks with 400 thousand of Huns cavalry in the north that frequently violated the borders and Baiyue in the south that was ready to prey on. In order to ensure the time and space for development, Liu Bang, Emperor Gaozu of Han, resorted to "Heqin"( "Heqin" in the Han Dynasty refers to the marriage between the daughter of the emperor or the royal family and the ruler of Hun, Wusun and other tribes, with the purpose of avoiding wars and border harassments.) and tributes to address the border harassment by Huns and peace talks to demarcate the border with Baiyue. By doing that, the Western Han dynasty gained decades for development.

After the Rule of Wen and Jing, the Han dynasty was prosperous and powerful. In order to completely eliminate the threat of the Huns, the Han formed an alliance with the Darouzhi to attack the Huns. Therefore, Zhang Qian was sent to the Western Regions to contact with Wusun in 139 BC, which made Huns irritated to start attacking the border of Wusun. Confronted by that, the ruler of Wusun required to forge a marriage alliance with the Han Dynasty so as not to engage a war directly with Huns. With the approval of Liu Che, Emperor Wu of Han, Liu Xijun, daughter of Prince of Jiangdu, was designated as the princess to marry Kunmo, the ruler of Wusun.

Kunmo abdicated when he was old, and the throne was taken by his grandson Cenzou. According to the customary law of Wusun, Liu Xijun should marry the newly crowned ruler- Cenzou. However, this kind of remarriage was incest under the Han law, and Liu Xijun refused to remarry Cenzou because she belonged to the Han ethnicity, which meant she must adhere to Han's law. With things unsettled, Liu Xijun wrote a letter to the Emperor Wu of Han and expressed her intention to return. The emperor sent an edict back to her, reminding her of the vital role she played in resisting Huns and requiring her to follow the local customs. Following the local customs can be deemed a rule of application of law, meaning to choose the applicable law in accordance with the principle of territoriality when the transferred marriage happened. In other words, it admitted the territorial principle of Wusun's law and restricted the personal principle of Han's law. After the Han dynasty, this rule of application of law became a habit inherited by the whole Chinese feudal society.

As early as in the Tang Dynasty, there existed written rules of application of law to adjust the general and massive foreign-related civil relationships. The Tang Dynasty was the heyday of Chinese feudal society with unprecedented development and accomplishment in agriculture, handicrafts, commerce, and foreign trade. With many foreign-related civil relations brought by economic and cultural exchanges, it was of a great necessity to adopt legal forms to have them adjusted. In 651 AD, the first edition of *Ming Li* of the *Yong Hui* ***Lü***, stipulated that foreigners from the same country who committed crimes shall be judged by the law or customs of their countries and those from different countries shall be judged by the law of the Tang Dynasty (This legal provision was called the "Huawairen" in China). This provision recognized not only the territorial principle of Chinese laws but also the personal principle of foreign laws in China, which was the earliest written legislation of private international law in China. Zhangsun Wuji was ordered by the emperor to write annotations for the *Yong Hui* ***Lü*** and compile the ***Tang Lü Shu Yi***. In the law, Zhangsun Wuji presented a detailed explanation of "Huawairen" of the *Yong Hui* ***Lü*** and theoretically stated that it recognized the territorial principle of Chinese laws but also the personal principle of foreign laws in China. If disputes happened between the foreigners, the parties should apply to the law of their own country when the parties came from the same country or to the Han's law when they come from different ones [1]. This was the earlier theory of the application of law in the world. In Chinese feudal society, the law system was highly integrated and did not differentiate civil or criminal codes. Therefore, although *Yong Hui* ***Lü*** was a criminal code, the stipulation about "Huawairen" was not only applicable for criminal but foreign-related civil relationships.

According to some Chinese scholars, the foreign trade and exchanges in the Sui Dynasty were much developed and the regulation about "Huawairen" appeared at that time and was codified in the Tang Dynasty. However, due to the lack of documentation in the Sui Dynasty, no convincing documentation could be found to support that regulation about "Huawairen" was originated in the Sui Dynasty.

The Song Dynasty further promoted the legislation of private international law on the basis of the Tang Dynasty, transplanted the stipulation about "Huawairen" of the *Yong Hui* ***Lü*** to the *Song Xing Tong*, and raised Zhangsun Wuji's explanation into laws [2]. As for the foreign trade relations not regulated by law, they were supplemented in edicts. The Yuan Dynasty inherited the law system of the Song Dynasty. The law of the Yuan

DOI:10.26104/NNTIK.2019.45.557



Dynasty stipulated that marriages between people of the same nationality should be subject to the local law and customs, while marriages between people of different nationalities should be governed by the law of men's side (excluding Mongols) [3]. In foreign-related inheritance, the inheritance between people of different nationalities should be subject to the laws or customs of men's nationality [4].

During the Ming and Qing dynasties, the feudal system of China was in the twilight, and the country closed its door and isolated itself to prevent external risks with the application of law becoming unilateral, which dragged down the progress of what the Tang, Song, and Yuan dynasties achieved in the legation of private international law. Since intermarriage between Chinese and foreigners became more common at the end of the Qing Dynasty, China started to adjusted foreign-related marriage relationships according to bilateral international laws.

Generally, the Chinese feudal society did not present a great number of regulations for adjustment of foreign-related civil relations. Some only concentrated on the field of foreign-related marriage relations and were inherited since then. In the feudal society of China, more than 2,000 foreign-related marriages were made by whether women of Han or of other ethnicities for "Heqin". In the legal relationship of foreign-related marriage, the application of law is based on the principle of territoriality and the law of the place where the marriage is finished. The regulations of the Tang Dynasty for "Huawairen" were inherited and developed in the Song and Yuan dynasties, but gradually declined in the Ming and Qing dynasties. Although the traditional civilization as a whole was gradually deconstructed, it still has a great impact on social and cultural fields in many ways invisibly [5].

**II. The legislation of private international law during the Republic of China had a place in the world (1911 AD-1949 AD)**

The 1911 Revolution ended the feudal society of China and established the Republic of China, embarking on the period of the rule of Beiyang government. Although the political situation was unstable during that time, the achievement of legislation was remarkable. The government changed the binary opposition of inherent law and adopted law at the end of the Qing Dynasty and promoted the integration of traditional Chinese law with modern western law progressively. In terms of the foreign-related legislation, the government enacted the *Regulation on Application of Law* in 1918 inspired by the laws of countries like Japan and Germany, stipulating the law application towards legal relations such as identity, ability, kinship and inheritance. The *Regulation on Application of Law* was the origin of the separate law for China to adjust foreign-related civil relations and played an important role in the development of private international law of China. Moreover, it was the third statute private international law worldwide quite influential following the *EGBGB* (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) of German in 1896 and *Hôrei* of Japan in 1898.

The *Regulation on Application of Law* was the fruit by blending the traditional Chinese system of law and the legal systems of western countries. Profound political, economic, and social reasons could explain why such regulation was issued by the Beiyang government.

The political reason was to improve the legal system to avoid the consular jurisdiction of imperialist countries there, which adversely damaged the national sovereignty by depriving the jurisdiction of China over foreign-related cases. Therefore, it was justifiable that Chinese people strongly opposed to the consular jurisdiction. Besides, successive Chinese governments made great efforts to cancel the consular jurisdiction of imperialist countries in China. To sum up, judging from the efforts of the Chinese government, efforts were mainly made in three aspects: firstly, abolishing the consular jurisdiction by signing a bilateral treaty, secondly, abolishing the consular jurisdiction by expressing request at an international conference, and thirdly, formulating laws and improving the legal system to meet the conditions for the cancellation of consular jurisdiction proposed by western powers, while providing a legal basis for foreign-related judicial adjudication at the same time.

The economic reason was mainly that the gate of the ancient civilizations was forced to open by the ships and guns of the British and French coalition forces and China was forced into the open world economy. From the 22nd year of the Daoguang of Qing dynasty (1842) to the 13th year of the Republic of China (1924), the Qing government and the Republic of China government successively opened 112 commercial ports to the outside world (77 according to treaties and 35 willingly). From the 25th year of Daoguang of Qing dynasty (1845) to the 6th years of the Republic of China (1917), western powers forcibly opened 29 concessions, 5 leased territories, 14 foreign settlements and 15 commercial ports affiliated to railways in China [6]. These areas become the growth point of China's modern economy. The period from 1914 to 1918 is a historical period of great economic development in modern China, with 61.8% of the GDP contributed by traditionally operated smallholder economy, 35.5% by the traditional and semi-traditional

DOI:10.26104/NNTIK.2019.45.557



industrial and commercial economy and 2.7% by the modern industrial economy [7]. The change of economic foundation was the cradle to new social relationships and in order to adjust these, corresponding legal regulations were supposed to be created. Therefore, the promulgation of the *Regulation on the Application of Law* in 1918 is an objective requirement for the development of emerging economies.

The social reason was the demand for private international law in judicial adjudications. The Republic of China inherited the laws of the Qing Dynasty, which, however, did not enact private international law. The courts could process foreign-related civil cases only to rely on legal theories. In order to reverse that situation, the Dali Yuan sorted out some classic cases heard according to law and compiled them as precedents for a legal basis for conducting foreign-related cases. However, only the Dali Yuan adopted the rules of private international law and used it as jurisprudence for adjudications, and this practice should be suspended. Besides, since there were few cases available to be codified as jurisprudence, the court only selected a few cases from 1912 to 1917 to finish the compilation.[8] Foreign-related cases were very diverse in nature with few cases referring to. It was therefore the *Regulation on the Application of Law* that were promulgated on August 5, 1918.[9] Thus, the important reason to introduce *Regulation on the Application of Law* is to meet the needs of judicial trial practice.

During the Republic of China, judges applied legal theories, precedents or the provisions of the *Regulation on the Application of Law* to determine the applicable law in foreign-related civil cases. The High Court in Zhili Province applied the German law according to the *Regulation on the Application of Law* in the case of dispute over goods: German Merchant Jiecheng Foreign Firm V. He Yunxuan on February 22, 1915; determined to apply the international custom in the case of damage compensation: Wang Youshan V. Japanese businessman Jitian fangjiro on April 2, 1915 and decided to apply the contract renewal of Sino-English commercial line in the case of dispute over trademark: Cui Yaquan V. Japan trader Andachun on April 23, 1918. [10] Many cases processed by the Dali Yuan chose appropriate applicable law guided by the principle of *Regulation on the Application of Law.* In the case of Kong Zhaozhang Molesting Wei Wenhan's wife, Shanghai Provisional Court applied *Regulation on the Application of Law* [11]. Advanced foreign legislative concepts were introduced in formulating the *Regulation on the Application of Law*, and the bringing doctrine indeed improved China's legislative capability and narrowed the legal gap between China and advanced countries. Therefore, legal transplantation was successful and should be promoted.

**III. The legislation of private international law during the People's Republic of China stands proudly in the family of nations (1949 AD-2020 AD)**

**A. Regulating foreign-related civil relations by administrative regulations（1949 AD-1978 AD）**

The People's Republic of China was founded on October 1, 1949. China realized regime change, embarking on the historic transformation from legal order of semi-feudal and semi-colonial to new democratic and socialist legal order. At the beginning, China attached great importance to the construction of the legal system. For example, the *Marriage Law* was enacted in 1951 and China's first *Constitution* was enacted in 1954. From 1966 to 1976, China launched the Great Proletarian Cultural Revolution, bringing Chinese economy on the verge of collapse. In this period, there was no social basis for regulating the law applicable to foreign-related civil relations. Besides, the laws that had been enacted were put on the shelf and existed only in name only.

From the founding of the People's Republic of China to the period before reform and opening up, China's foreign-related civil disputes happened occasionally, and were mainly concentrated in the field of foreign-related marriages. With regard to foreign-related marriage relations, China has mainly adopted administrative regulations and took administrative means to solve them. In addition, China and the Soviet Union concluded the *Sino-Soviet Consular Treaty* in 1959, article 20 of which provides the application of law for inheritance, "Any property left on the territory of the other party after the death of a citizen of either party, both real property and personal property shall be dealt with in accordance with the law of the country where the property is located".

**B. Regulating foreign-related civil relations in various legislative forms (1979 AD-2020 AD)**

In 1978, China carried out the policy of reform and opening up with economic development as the top priority of all work, transforming from planned economy to market economy. Over the past 40 years, international trades and cross-border personnel exchanges have become an indispensable growth mode for China's economic development. China has stepped up the efforts to formulate laws to regulate foreign-related civil relations. Since 1978, China's legislation of private international law has inherited the legal traditions, borrowed, transplanted and absorbed the legislative experience of foreign private international law of other

DOI:10.26104/NNTIK.2019.45.557



countries, integrated with the international community. In various aspects of foreign-related civil relations, it has been fully developed and flourished, which contributes to the localization of private international law.

In theory, it is believed that private international law consists of rules of foreigners' civil legal status, rules of the application of law, international uniform substantive rules, the rules of international civil litigation and international commercial arbitration in China. Also, China has carried on legislation in the above four aspects.

In terms of legislation in civil legal status for foreigners, laws stipulate that foreigners enjoy citizen treatment in China, and personal rights and property rights are protected by Chinese laws, such as *Law of Chinese-Foreign Equity Joint Ventures* in 1979, the *Constitution of the People's Republic of China* in1982, *Law of the People's Republic of China on Foreign Capital Enterprise* in 1986, the *Patent Law* in 2000, *Law of Chinese-Foreign Contractual Joint Ventures* in 2000, the *Copyright Law* in 2001, the *Trademark Law* in 2001, and so on. The *Nationality Law* in 1980 prescribes legal issues such as the acquisition and the loss of Chinese nationality.

China began to legislate the law of application of law in 1985. The *Law of Economic Contracts involving Foreign Interest* in 1985 stipulates the law application of foreign-related contracts; the *Inheritance Law* in 1985 stipulates the law application of foreign-related inheritance; *General Principles of the Civil Law* in 1986 stipulates the law application of civil rights capacity, real property, contract, tort, marriage, maintenance and inheritance. Furthermore, laws have stipulated the law application of foreign-related civil relations in numerous fields, such as the *Adoption Law* in 1991, the *Maritime Law* in 1992, the *Civil Aviation Law* in 1995, the *Auction Law* in 1996, the *Contract Law* in 1999, the *Trust Law* in 2001 and so on. The *Law of the Application of Law* in 2010 comprehensively prescribes the law application of the private international law system and foreign-related civil relations in each field, and then the legislation of China's private international law has entered upon a new historical stage.

International uniform substantive rules include international treaties and international customs. China takes the mode of adoption to apply international treaties. The international treaties which China has joined are an integral part of Chinese law. China has concluded and acceded to a series of international treaties and agreements which accelerate its integration into the international community. These treaties can be divided into bilateral treaties, multilateral treaties and procedural treaties. On May 4, 1987, China and France signed the first *Sino-French Civil and Commercial Judicial Assistance Treaty*. By July 2019, China has concluded judicial assistance treaties, assets return and sharing agreements, extradition treaties and treaties against "three evil forces" of terrorism, separatism and extremism with 78 countries. There are 163 treaties (131 of which have entered into force), of which 20 are legal mutual assistance treaties with features of civil and commercial law (18 of them have entered into force).[12] China has signed bilateral investment protection agreements with more than 130 countries and free trade agreements with 10 countries. In these agreements, there are no shortage of clauses for dispute resolution and the application of law.

International customs, formed in long-term international trade practice, have clear contents, which can be a rule of conduct in determining relationship of the parties' rights and obligations. China recognizes the legal effect of international customs. However, the application of international customs is limited in a scope. Under the premise that there is no provision in international treaties and in domestic legislation, it is applicable through parties' choice and designation of administrative organs and industrial organizations. In order to maintain the stability of the economic order, judges may enforce international customs in the course of judicial trials.

China joined the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* in 1986, the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* in 1992, and the *Convention on the Service of Civil or Commercial Judicial and Extrajudicial Documents in Civil or Commercial Matters* in 1992, and the *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters* 1997. These conventions are procedural treaties. Procedures of foreign-related civil litigation, foreign-related maritime litigation, and foreign-related commercial arbitration have been stipulated that civil disputes with Chinese companies and citizens can be resolved through litigation or arbitration, in the Chinese laws such as China's 1994 *Arbitration Law*, 1999 *Maritime Procedure Law*, and 2012 *Civil Procedure Law*.

The State Council of the People's Republic of China and its ministries and commissions have issued a series of foreign-related administrative regulations in accordance with China's relevant legislation and realities to regulate foreign-related civil relations. The legislatures and governments of all provinces, municipalities and autonomous regions across China have also formulated local laws of the application of law for foreign-related civil relations and corresponding administrative regulations based on local conditions. The administrative

DOI:10.26104/NNTIK.2019.45.557



regulations promulgated by the State Council and its ministries and commissions are applicable throughout the country, and the local laws and regulations formulated by the legislatures and governments of all provinces, municipalities, and autonomous regions have legal force within respective jurisdictions.

According to the needs of judicial practice, the Supreme People's Court of China has promulgated a series of judicial interpretations with contents of private international law, and made specific official replies to the application of law in specific foreign-related civil cases. The relevant legal applicable provisions in these judicial interpretations and official replies are the basis for resolving foreign-related civil disputes. In the absence of legislation of private international law, the Supreme People's Court adopts judicial interpretation to complement. A large number of judicial interpretations made by the Supreme People's Court are not only aimed at the new situations and problems encountered in judicial practice, but the summarization in judicial practice with strong practicality, pertinence and operability. These judicial interpretations not only provide guidelines for the courts to handle foreign-related civil and commercial cases, but also provide experience for the development and improvement of the legislation of the law of the application of law for foreign-related civil relations in China. It can be said that the judicial interpretations have creatively enriched and perfected China's law system of the application of law for foreign-related civil relations [13].

On September 7th, 2013, Chinese president Xi Jinping proposed to work together to build the "Silk Road Economic Belt" during a speech at Nazarbayev University in Kazakhstan. In September and October 2013 when he visited Central Asian and Southeast Asian, Xi Jinping raised the major initiatives of jointly building the "Silk Road Economic Belt" and the "21st Century Maritime Silk Road". The construction of the "Belt and Road" has become a major issue and a key task. In the 7 years since its implementation, the "Belt and Road Initiative" has received positive responses from more than 100 countries and regions, and China has signed cooperation agreements with more than 40 countries. These cooperation agreements play a guiding role in the application of law for foreign-related civil relations.

**IV. Modernization of China's legislation of private international law**

China spared no efforts on the legislation of private international law, remarkable achievements have been gained with the establishment of preliminary private international law system, which enables it modernization as a result.

**A. Establishment of a multi-level vertical legislative system of private international law**

The vertical legislative system of private international law in China can be divided into six levels. The first level is the National People's Congress, which is responsible for formulating the *Constitution*, constitutional laws and basic laws. Those laws set out the basic principles of China's foreign economic relations policy, international economic cooperation and foreign-related civil relations. The second level is the Standing Committee of the National People's Congress, which is responsible for formulating general laws. The National People's Congress meets in session once a year while China has a heavy legislative task, so that the National People's Congress delegates some of its legislative work to the Standing Committee, therefore, China's private international law legislation is mainly completed by the Standing Committee of the National People's Congress. The third level is the administrative regulations formulated by the State Council and the functional departments of the Central Government, which are the basis for the administrative means to meditate foreign-related civil and commercial relations. The fourth level is the judicial interpretation of the norms of private international law or the written reply to specific foreign-related civil and commercial cases made by the Supreme People's Court authorized by the National People's Congress, which are mainly used to guide the judicial practice. The fifth level is the people's congresses of provinces, autonomous regions and municipalities, which are responsible for formulating local laws in their administrative regions. The sixth level is the special economic zones, development zones and free trade zones approved by the State Council, which have priority to carry and try and enjoy some lawmaking authority so they can formulate laws for implementation in the region. If the laws are consistent with China's national conditions, they can be implemented nationwide.

**B. The formation of the legal system for regulating foreign-related civil relations**

China's legislation of private international law has been gradually improved and a system of private international law has been formed with adjustments on rules of application of law in various fields. The civil legal status of foreigners in our country is stipulated in the *Constitution*, and the *Civil Procedure Law* and relevant administrative regulations also provide specific provisions on the civil rights and lawsuit rights of foreigners. The *arbitration law* stipulates the rights and obligations of arbitration parties .The scope of *Law of the*

DOI:10.26104/NNTIK.2019.45.557



*Application of Law* includes the areas of nationality, domicile, habitual residence, civil rights capacity and civil acts capacities of natural persons, real rights, contracts, tort, instruments, maritime commerce, aviation, marriage, adoption, guardianship, fostering, succession, trusts, agency, personal rights, civil rights and lawsuit rights of legal persons, intellectual property rights, declaration of death etc. More than 20 departments, such as the *Maritime Law*, have stipulated the application of laws to the special civil relations concerning foreign affairs in their respective fields. According to incomplete statistics, more than 160 laws, regulations, judicial interpretations and local laws and regulations in China provide various private international law norms as many as 480 articles. These laws constitute the legal system for foreign-related civil relations, and provide the basis for solving foreign civil disputes.

**C. The legislation regulating foreign civil relations shows its character in three ways: mainly in separate laws, supplementary in chapters, at least in scattered provisions**

Initially, China's legislation of private international law can be found only in scattered provisions, namely, the applicable provisions of foreign civil relations laws were stipulated in separate laws or codes. Article 2 of the *Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures* in 1979 stipulates that "All the activities of an equity joint venture shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China", which is an example of such a legislative model, together with both the *Law on Economic Contracts involving Foreign Interests* and the *Law of Succession* in 1985. In 1986, this legislation model was improved based on the chapter mode, which means a chapter or a volume in the code or separate laws shall be written, where the application of foreign civil relations can be regulated. In the second half of the 20$^{th}$ century, the trend of international private law legislation in form of code came into mode in the international society. Keeping pace with this trend, China started its own process. In 2010, the transformation from scattered and chapter-base to separate law-base was to be seen in *Law of the Application of Law*, the structure of mainly in separate laws, supplementary in chapters, as least in scattered provisions was finally formed.

**D. Reform in the legislation structure**

The Reform of the legislation structure ended the former scatted one, which was replaced with General Principles, Specific Provisions and Annexes instead in the *Law of the Application of Law*. The General Principles formulate the basic principles and systems with other basic issues on foreign civil relations together, which summarize the whole law and gives itself the core role. Thanks to its highly abstract condensation, the General Principles can foresee with sufficient conditions, providing massive space for the judicial interpretation, solid foundation for the judicial discretion, insurance for the law stability, enhancement for the law's improvement and adaption capability and more precise definitions of laws. With the guidance of the General Principles, the Specific Provisions stipulate specific application rules in various fields on foreign civil relations, where the law principles get interpreted in specific rules, which can be directly applied into the practice. The Principles can also be applied when omissions in legislation occur or new foreign civil relations come into being. And in the Annexes, the effective dates, terminology explanations and all related relations with other relating regulations are defined, but the substantive contents on rights and obligations are not involved.

**E. Learning from the legislative experience of other countries, combining laws of both the foreign and the local, transplanting as well as making innovation**

On the basis of learning, absorbing and transplanting the latest achievements of private international law legislation, China insists on the combination of foreign and local laws, transplantation and innovation. In this way, China's private international law legislation will be able to compete with the private international law legislation of developed countries within a relatively short period of time. On the whole, most provisions of private international law developed in China are consistent with the regulations of private international law prevailing in the world while some of the provisions in China are innovative on the premise of localization.

There are several innovations in the *Law of the Application of Law*, e.g. the principle of party autonomy was raised as the basic principle of law application, lex personalis has been changed from lex patriae to the law at the habitual residence, the principle of party autonomy has been introduced for the application of rights over movables, which enables the involved parties to choose applicable laws based on an agreement, all of which are unique worldwide for the first time. This represents the development and surpassing of the Chinese legislation of international private law, which is a significant contribution to the international society as well.

**F. Efficient combination of conflict justice and material justice**

Conflict justice is the basic requirement of the application of law in foreign civil relations, the

DOI:10.26104/NNTIK.2019.45.557



application of law should be predictable and consistent with the judgment results [14]. Material justice emphasizes the fairness of the application of law, pursues the objectification, individualization and concretization of the application of law in the specific foreign civil relations, and conforms to the specific needs of purpose [15]. The *Law of the Application of Law* skillfully combines the conflict justice and the material justice. It is committed to the certainty and predictability of the application of law, while seeking the justice, and striving to achieve the material justice of a case. First, the party autonomy doctrine is stipulated in the general provisions of the *Law of the Application of Law*, which provides conditions of flexibility and justice for the law application. Second, specific provisions of the *Law of the Application of Law* stipulate the complex connect points for most of the cases, which enrich the number of laws to be chosen. By scientifically choosing rules for the law application, the balance of conflict justice and material justice can be achieved. Third, the connect points of subjectivity and objectivity are used in combination with emphasis on different legal relations, which reflects the flexibility of legal choice. Finally, the important embodiment of the value orientation of the *Law of the Application of Law* from conflict justice to material justice is to strengthen the respect for the rights of the weak, especially the protection of the weak groups, to effectively protect the interests of the weak groups through the improvement of the system, where the human care contained in the legislation of the modern law of application of law stands out, and the value orientation is outlined to a high degree of civilization[16].

**Conclusion.**

China's private international law has experienced a laborious legislative process, with the scholastic academic styles abandoned and practical needs prioritized. Away from completely copying laws of the former Soviet Union, it has now developed, by incorporating the essence of all countries' legislations based on Chinese conditions, instead of worshipping everything foreign, to the point where a private international law system with Chinese characteristics has been established. With the development of China's economy and the advancement of China's laws, it is the natural orientation and magnificent target for China's legislation of private international law to formulate a private international code based on China, facing the world and independently codified.

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