

Brief Analysis of the New Development of Forum Shopping in Cross-Border Civil and Commercial Fields ----Take the Establishment of SICC and CICC as Examples

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Abstract: Taking SICC and CICC as examples, the selection system of judges, litigation procedures and dispute resolution procedures are in line with the fundamental interests of the parties and cater to the international developing trend. although the phenomenon of forum shopping has its rationality and legality, the parties' preference for consensual jurisdiction has restrained the development of forum shopping to some extent. Therefore, the development of international commercial courts readjusts the role of forum shopping in the Jurisdiction Area.

Keywords: Forum shopping;International commercial courts;Consensual jurisdiction

1. Changing attitude towards forum shopping and the justification of its existence

1.1 Clarification of the definition of forum shopping

1.1.1 Controversial definitions

“Any definition of forum shopping confronts a semantic difficulty”. From the perspective of the subject, in the Merriam Webster dictionary, “the practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on a determination of which court is likely to provide the most favorable outcome”. This definition does not clearly indicate whether the court is chosen by plaintiff or by defendant. It is not known whether it is to give the parties more options or just a loophole, but it is undeniable that in a broad sense, the choice of court includes two situations: unilateral choice of court and bilateral choice of court. Unilateral choice of court constitutes forum shopping, which makes a party conducts unilaterally. Bilateral choice of court constitutes is the result of mutual agreement between the two parties, and is a bilateral legal conduct. On the one hand, in the Legal Information Institute (Cornell Law School), “the plaintiff may forum shop, or choose the court that will treat his or her claims most favorably.”

1.1.2 The changing attitudes—from criticism to approval

In the current trend of private international law, most scholars take a negative attitude towards forum shopping. “Very few people would disagree with the idea that international litigation should be fair and that the plaintiffs selection of a forum should not contravene this basic objective”. “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights”, this is the 1948 Universal Declaration of Human Rights.

1.2 The legality of forum shopping

The reason why the phenomenon of forum shopping appears and becomes a common phenomenon in society is closely related to its legal basis in legislation. Generally speaking, international legislation of forum shopping is mainly based on the following three factors: 1) differences in jurisdiction systems of different countries in the world, such as personal jurisdiction, territorial jurisdiction and so on. The inconsistent basis of jurisdiction allows the parties to choose the most favorable court for their own interest; 2) even though each state has the same jurisdictional basis, there are still multiple jurisdictional bases for the same matter; 3) different countries have different understandings and interpretations on jurisdiction. It is precisely because of the differences and diversification of jurisdiction in the international civil field that the parties have the possibility to go on forum shopping.

2. General situation of international commercial courts

2.1 “Courts of piepowder”

The international commercial courts in the modern sense originated from the market and market court which prevailed in some areas of Western Europe in the middle ages. Such courts were called “courts of piepowder”. As a court specialized in dealing with disputes between businessmen, “courts of piepowder” is different from the city courts and ordinary courts at that time in many aspects, such as the composition of court personnel, the scope of jurisdiction, applicable laws, trial procedures and so on. The judges of such courts are mainly composed of businessmen. When foreign businessmen are involved, foreigners are also required to participate in the proceedings as jurors. The cases accepted by such courts are mainly different commercial disputes between foreign businessmen or between foreign businessmen and local citizens, such as debt, contract, infringement, etc.

2.2 Consensual jurisdiction vs. Forum shopping in ICC

On June 30, 2005, the member states of the Hague Association for private international law finally adopted the Hague Convention on the Choice of Court Agreements at the 20th meeting of the Peace Palace in the Hague. The Convention prescribes that it will fully respect the right of both parties to choose the court, allow the parties to weigh the fairness of the court hearing, the convenience of the litigation in terms of language and transportation, the familiarity with the proceeding of choice of the court, the law that may be applicable to the judgment and whether the judgment can be effectively executed, so that the whole dispute settlement process will be in the arrangement of the parties. The jurisdiction by agreement embodies the party autonomy to choose their own way of dispute settlement, which should not be excessively interfered and limited.

3. The influence of establishment of international commercial courts on forum shopping

3.1 Conspicuous merits of ICC restricting the phenomenon of forum shopping

3.1.1 Expansion of jurisdiction

Article 1, section 2, of Act No. 110 of the Singapore International Commercial Court stipulates that any party does not have a place of business in Singapore, or the place where the dispute matters are most closely related is located outside the country where the place of business is located, or even as long as both parties to the dispute claim that the dispute matters are related to more than one country, it is in line with the international requirement of the jurisdiction of the agreement of the Singapore International Commercial Court. International Commercial Court abandons the principle of practical connection directly, and takes the “de nationalization of the reverse link” as a principle. Commercial cases that are related to the legal system which is outside Singapore can be regarded as international commercial relations, and thus fall into the scope of the jurisdiction of Singapore International Commercial Court. In addition, the Singapore court also made relatively loose provisions on the requirements of foreign affairs.

3.1.2 Specialization of judges

The professional and international judge team is the guarantee of the successful operation of international commercial court. At present, SICC has 15 international judges, including two from Japan and France, and the rest are all from common law system countries. In order to broaden the scope of legal services in own country and enhance the internationalization of legal services, these international commercial courts show the characteristics of internationalization in the composition of judges. It is not only conducive to the application of foreign laws and other issues in the process of litigation, but also can effectively avoid the concerns of the parties about the unfair judgment brought by the local protection of domestic courts.

3.1.3 Flexibility of procedure

Singapore has broken through many traditional shackles of common law in its international commercial court. The procedural rules of the country are not fully applicable to the proceedings, and the rules and practice guidelines are formulated reference to the London commercial court. There are many innovations in the existing rules of the court, such as that the court can hold a trial in camera; it does not need to apply the evidence rules prevailing in Singapore, but allows the parties to apply evidence rules by free agreement; although party has the right to appeal to the court in principle, the parties can cancel or restrict the right of appeal through contractual agreements, and can apply more simplified rather than traditional evidence disclosure rule. SICC also allows foreign lawyers to appear in court to represent some cases that have no substantial connection with Singapore, and also gives great respect to the party autonomy in the proceedings.

3.2 Potential development of ICC caters to the restrictive developing trend

3.2.1 Application of consensual jurisdiction

In the field of international business, the party autonomy is paid more and more attention, and the consensual jurisdiction system is the concrete expression of the principle of party autonomy in the international civil procedure. Under the consensual jurisdiction

system, both parties can submit the disputes that have occurred to the court of a certain country for trial by written agreement. Under such system, the court to hear the case is chosen by both parties, and both parties rarely raise objections to this jurisdiction.

3.2.2 Appointment of international judges

At present, one of the problems faced by the establishment of International Commercial Court in China is whether it is necessary to introduce international judges to participate in the trial of cases. For example, Article 9 Section 1 of the law of judge of China stipulates that a judge must have the nationality of the People's Republic of China.

Cultivating high-quality judges of international commercial court is the key to the construction of CICC, and it is also an important factor for the sustainable development and improvement of international competitiveness in the future. This is also in line with the objectives of the Supreme People's Court in the "One Belt and One Road Judicial Protection Opinion", that is, "speed up the establishment of a special trial team, expand the international vision of judges, encourage judges to participate in international communication, enhance judges' ability to deal with international affairs, and strive to create a number of international judges in the field of civil and commercial maritime trial. "

3.2.3 Diversity of dispute resolution mechanism

The diversified dispute resolution mechanism of the international commercial court is composed of a variety of dispute resolution methods, procedures and systems (including litigation and non-litigation). In recent years, the diversified dispute resolution mechanism has been greatly developed in the field of commercial dispute resolution around the world. Many states has begun to work on the research of non-litigation dispute resolution mechanism (ADR). Both the CICC and the SICC were established to further the vision of a 'one-stop shop' for dispute resolution. SICC, on the basis of Singapore International Arbitration Center and international mediation center, has built a dispute resolution service mode of litigation, arbitration and mediation in parallel; The three of dispute resolution mechanism are trinity, which links litigation, mediation and arbitration in CICC, is the result of utilizing and developing the traditional diversified dispute resolution methods in China. This mechanism integrates three kinds of dispute resolution methods in one platform, and gives the parties more choices of dispute resolution methods.

4. Conclusion

Nowadays, the phenomenon of forum shopping presents a better developing trend because it can make litigants gain the most favorable result to some extent, which is the reflection of party autonomy. But as long as there are differences in substantive law, conflict of laws and procedural rules of different countries in private international law, the phenomenon of forum shopping will lead to the result of parallel litigation and inconsistent judgements, and so we need to control this phenomenon within a reasonable range. By a series of analyses, forum shopping can be restricted by expanding the scope of consensual jurisdiction. It is not only to improve judicial efficiency and gain the consistency of judgment results, but also promote the smooth development of judicial order in different countries.

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