The Development of forum non conveniens in the Chinese Law and Practice

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The doctrine of *forum non conveniens* is an important principle in civil procedure laws and frequently applied by courts in many legal systems, especially those of common law countries. According to this principle, when courts exercise their discretionary power to determine whether to exercise jurisdiction over the factual circumstances of a case, they primarily consider issues of efficiency and fairness to find the most appropriate forum to settle the dispute. If the acceptance of a case would lead to inefficient outcomes and consequences that are contrary to justice, the court may refuse to exercise jurisdiction on the grounds that it is not the appropriate forum.

Unrealized by many international scholars and practitioners,[1] China has been adopting (formally or informally) the doctrine of *forum non conveniens* for more than 30 years, first through a few court judgments, then provided in judicial interpretations issued by the Supreme People's Court of PRC ("SPC"), which is binding for all Chinese courts, and finalized in the 2024 *Civil Procedure Law of PRC*. This article introduces the history of Chinese law adopting the doctrine of *forum non conveniens* in the past years, and the development of China's law revision in 2023.

I. Judicial Practice Before Legislation or Judicial Interpretation

Chinese courts first applied the doctrine of *forum non conveniens* in a series of cases in the 1990s. For instance, in *Jiahua International Limited, Ruixiang Limited v. Yongqiao Enterprise Limited, Zhongqiao National Goods Investment* in 1995,[2] the SPC deemed it inappropriate for the original trial court to accept the case, though the connection factors are sufficient to establish jurisdiction, solely based on the appellants having representative offices and attachable property in the court's location, thus dismissing the two plaintiffs' lawsuits against the two defendants. Furthermore, in the case of *Sumitomo Bank v. Xinhua Real Estate*

Limited in 1999,[3] the Supreme People's Court explicitly applied the doctrine of *forum non conveniens* as a stand rule for the first time, though lacking any provision in Chinese laws back then: since both parties to the case were legal persons registered in Hong Kong, the place of signing and performance of the involved agreement was in Hong Kong, and the parties chose Hong Kong law as the governing law for the agreement, the Supreme People's Court, considering the convenience of litigation, ruled that it was more appropriate for the Hong Kong court to have jurisdiction, and the Guangdong Provincial Higher People's Court should not accept the case.

From these two early judicial practices, it can be seen that the courts correctly focused on whether the court was "appropriate" or suitable to accept the case, just as many foreign courts did, and seeing the "convenience" requirement in the doctrine of *forum non conveniens* as only one side of the coin. However, later legislation and academics misunderstood *forum non conveniens*, many Chinese scholars and practitioners did not realize the point is to determine whether the court is "appropriate" for the case mainly because of its name contains "conveniens", but saw it as a tool to find whether other courts will be more "convenient" or economically efficient for the courts, ignored the fairness and justice requirements in this doctrine.[4]

II. Judicial Interpretations issued by the Supreme People's Court of PRC

In Article 11 of the 2005 *Minutes of the Second National Foreign-related Commercial and Maritime Trial Work Conference*,[5] SPC provided seven conditions for applying *forum non conveniens*, focusing on whether the Chinese court would face "significant difficulties in determining facts and applying laws" and whether a foreign court would be more "convenient" for the trial. In 2014, the SPC issued the *Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the PRC*,[6] which outlined six conditions for applying *forum non conveniens* in Article 532,[7] essentially consistent with Article 11 of the *2005 Minutes*, still focusing on the convenience of the court in hearing the case rather than its appropriateness.

Such a provision on *forum non conveniens* caused four problems in practice.

First, based on the provisions of Article 532(4) of the *2014 Interpretations*, once a case involves the interests of the Chinese state, citizens, legal persons, or other

organizations, the court will rule to exercise jurisdiction over the case. The court over-applies this clause to justify its jurisdiction, without comparing the appropriateness (sometimes even nor the convenience) of Chinese courts with foreign courts, and even if the parties to the case are Chinese nationals or the facts are connected to China, the court tends to rule that it has jurisdiction over the case.

Secondly, due to the lack of clear explanation of the term "convenience" in the *2014 Interpretations*, the court's standards were vague when interpreting and applying *forum non conveniens*. There are cases where the court arbitrarily determines that it is "inconvenient" to hear the case because the applicable law is foreign law and the facts of the case occurred abroad, thus rejecting jurisdiction.[8] This approach not only fails to argue the appropriateness of foreign court jurisdiction but also unduly restricts one's own jurisdiction. Different courts may apply this provision with a scope of discretion either too broad or way too narrow , hence failing to achieve the legislative purpose of "having the most appropriate court exercise jurisdiction".

Thirdly, no matter whether in common law jurisdictions or civil law jurisdictions, when applying the doctrines of *forum non conveniens* or *lis pendens*, the foreign courts upholding the jurisdiction is an important consideration for domestic courts to reject the exercise of one's own jurisdiction. However, Chinese courts have repeatedly exercised jurisdiction over cases even when foreign courts have already taken the cases or even delivered judgments, causing parallel litigation and multiple judgments.[9]

Finally, when the legal requirements in Article 532 of the *2014 Interpretations* is met, the absolute rejection of the lawsuit is too rigid and inflexible , leaving no room for the court's discretion in different cases. If the foreign court refuses to exercise jurisdiction, the parties who were rejected by Chinese courts must re-file the lawsuits, which may lead to an increase in costs and a significantly delay of justice.

III. The Development in the 2024 Civil Procedure Law of PRC

In response to the problems in practice, the *Civil Procedure Law of the PRC* which came into effect on 1 January 2024, introduced *forum non conveniens* in Articles 281 and 282.[10] Article 281 is about to find the more convenient court to hear

the case, and Article 282 proposes five conditions for the application of *forum non conveniens*, which to some extent resolves the previous practical dilemmas and responds to the criticisms from the academia.

First, Article 282(1) of the 2024 *Civil Procedure Law of PRC* restricts the determination of "convenience" to cases where "*it is evidently inconvenient for a people's court to try the case and for a party to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People's Republic of China*", avoiding the situation where courts determine that the doctrine of *forum non conveniens* should be applied merely because the parties agree to apply foreign law or there is evidence situated or disputes occurred abroad, thereby excessively narrowing jurisdiction.

Secondly, the new law deleted the over-broad exclusion standard in Article 532 (4) of the *2014 Interpretations* by stating that "*the national interest, or the interest of any citizen, legal person or any other organization of the People's Republic of China*", instead, Article 282 (4) provides that "*not involving the sovereignty, security, or public interest of the People's Republic of China*", avoiding the situation where Chinese courts exercise jurisdiction merely because the parties are of Chinese nationality or the case facts are connected with China, and narrowing the exclusion from vague "national interest" to clearer "national sovereignty, security, or public interest", thus better balancing the "fairness" requirements within the doctrine of *forum non conveniens*.

Lastly, Article 282 paragraph 2 adds that after the Chinese court applied the *forum non conveniens* exception to dismiss the action, if the foreign court refuses to exercise jurisdiction or does not take necessary measures to hear the case or does not conclude the case within a reasonable period, the Chinese court shall accept the case, safeguarding the procedural rights of the parties. This new provision resolves the problem reflected in Article 532 of the *2014 Interpretations* and relevant practice where the party can only start over the action before the people's court.

IV. Conclusion

Generally speaking, the 2024 *Civil Procedure Law of PRC* represents a successful improvement, it shows the balance of fairness and convenience in the new rules and serves the requirements of *forum non conveniens*. However, it still has room

for further refinement to align more closely with the original intent of *forum non conveniens*.

On the one hand, in most common law jurisdictions, the fairness requirement of finding the most appropriate forum also includes the potential for oppressive or vexatious litigation, abuse of judicial process, or "real injustice" to the parties if the case is heard by the domestic court, rather than public interest provided in Article 282(4). A better approach seeks to identify the most appropriate forum for achieving justice in every single case.

On the other hand, due to the misunderstanding of finding the most "convenient" forum, even though Articles 281 and 282 consider both convenience and fairness requirements, they fail to synthesize these aspects into a single requirement of "appropriateness". This leads to a fragmented consideration of "convenience" and "fairness" by the courts when applying the provisions, rather than understanding them as two sides of the same coin in the service of finding the most appropriate forum.

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[1] The latest article regarding the *forum non conveniens* in Chinese law is published in 2024, gave a description of the development from judicial practice to legal provisions, but lacked theoretical analysis and comment on the reasons and consequences of the transformation of such development. Before that, only 2 articles were devoted to the practice of *forum non conveniens* in China until 2014. See Liang Zhao, *Forum Non Conveniens in China: From Judicial Practice to Law*, 11 The Chinese Journal of Comparative Law 1 (2024); Chenglin Liu,

Escaping Liability via Forum Non Conveniens: ConocoPhillips's Oil Spill in China, 17 U. PA. J.L. & Soc. CHANGE 137 (2014); Courtney L. Gould, *China as a Suitable Alternative Forum in a Forum Non Conveniens Motion*, 3 TSINGHUA CHINA L. REV. 59 (Fall 2010).

[2] Supreme People's Court (1995) Jing Zhong Zi No. 138 Civil Ruling.

[3] Supreme People's Court (1999) Jing Zhong Zi No. 194 Civil Ruling.

[4] Chinese theories and laws translated *forum non conveniens* as "Bu Fang Bian Fa Yuan", which means "a court that is not convenient to settle the dispute". Prof. Dr. Dr. CHEN Weizuo insists that it should be named as "Fei Shi Dang Fa Yuan", which means "a court that is not appropriate to settle the dispute".

[5] Fa Fa [2025] No. 26.

[6] Fa Shi [2015] No. 5.

[7] The number of which later changed to Article 530 after the judicial interpretation was revised in 2022, but the content remained unchanged. Article 532 stipulated that: "*Where a foreign-related civil case falls under all the following circumstances, the people's court may render a ruling to dismiss the plaintiff's action, and inform the plaintiff to institute an action in a more convenient foreign court. (1) The defendant raises a claim that the case shall be subject to the jurisdiction of a more convenient foreign court, or raises an objection to jurisdiction. (2) The parties do not have an agreement specifying the jurisdiction of a court of the People's Republic of China. (3) The case does not fall under the exclusive jurisdiction of a court of the People's Republic of China. (4) The case does not involve the national interest, or the interest of any citizen, legal person or any other organization of the People's Republic of China. (5) The people's court has great difficulties in the determination of facts and the application of laws since major facts of disputes in a case do not occur within the territory of the People's Republic of China, and the laws of the People's Republic of China do not apply to the case. (6) The foreign court has jurisdiction over the case and it is more convenient for it to try the case.*"

[8] *Schott Solar Holdings Ltd. v. Schott Solar Investment Ltd.*, Shanghai No. 1 Intermediate People's Court Civil (Commercial) First Instance No. S17, 2014.

[9] See e.g. *Chen Huanbin et al. v. Chen Weibin et al.*, Beijing Second Intermediate People's Court (2015) Civil (Commercial) Final No. 6718; *Value Financial Services Ltd. v. Century Venture Ltd.& Beijing De Shi Law Firm*, Supreme People' Court (2014) Civil Final No. 29.

[10] Article 281 provides that: *"After a people's court accepts a case in accordance with the provisions of the preceding article, if a party applies to the people's court in writing for suspending the proceedings on the ground that the foreign court has accepted the case prior to the people's court, the people's court may render a ruling to suspend the proceedings, except under any of the following circumstances: (1) The parties, by an agreement, choose a people's court to exercise jurisdiction, or the dispute is subject to the exclusive jurisdiction of a people's court. (2) It is evidently more convenient for a people's court to try the case.*

If a foreign court fails to take necessary measures to try the case or fails to conclude the case within a reasonable time limit, the people's court shall resume proceedings upon the written application of the party.

If an effective judgment or ruling rendered by a foreign court has been recognized, in whole or in part, by a people's court, and the party institutes an action against the recognized part in the people's court, the people's court shall rule not to accept the action, or render a ruling to dismiss the action if the action has been accepted."

Article 282 provides that: "*Where the defendant raises any objection to jurisdiction concerning a foreign-related civil case accepted by a people's court under all the following circumstances, the people's court may rule to dismiss the action and inform the plaintiff to institute an action in a more convenient foreign court: (1) It is evidently inconvenient for a people's court to try the case and for a party to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People's Republic of China. (2) The parties do not have an agreement choosing a people's court to exercise jurisdiction. (3) The case does not fall under the exclusive jurisdiction of a people's court. (4) The case does not involve the sovereignty, security, or public interest of the People's Republic of China. (5) It is more convenient for a foreign court to try the case.*

If a party institutes a new action in a people's court since the foreign court refuses to exercise jurisdiction over the dispute, fails to take necessary measures to try the case, or fails to conclude the case within a reasonable period after a people's court renders a ruling to dismiss the action, the people's court shall accept the action."