

Sino–Foreign Recognition and Enforcement of Judgments: A Promising “Follow-Suit” Model?

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Abstract

Due to the upsurge in cross-border transaction, the movement of judgments between jurisdictions has become a hot topic. Unfortunately, China’s legislation and practice in this area has long lagged behind that of other countries, though China is not the only party to blame for the lack of a favourable Sino–foreign recognition mechanism. Encouragingly, in recent years some foreign courts have taken the initiative to recognize Chinese judgments, which Chinese courts have then responded to positively, forming a “follow-suit” circle in practice. A new opportunity has thus arrived for promoting Sino–foreign judgment recognition, and both Chinese and foreign courts should seize it, as it appears to be the most efficient and practical among possible solutions, including future domestic legislation or international treaties.

I. Introduction

1. In the context of globalization, the circulation of goods, capital, people and services is increasing across countries. Against this background, growing importance is attached to the cross-border movement of judgments, which *per se* is now a significant part and indicator of contemporary globalization. Seen in a broad context, the value of the transboundary movement of judgments cannot be exaggerated. The ends of globalization and international civil and commercial communication can be greatly

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served by the free cross-border circulation of judgments, as demonstrated by the European Union's (hereinafter "EU") long-lasting and fruitful endeavours in this area.¹ Today's promotion of private interests, rather than a priority for public interests or so-called sovereignty under any guise, calls for the unimpeded transboundary circulation of judgments, which thus becomes a highly practical matter. Values such as access to justice and legal certainty, which are closely linked with the international movement of judgments, are also growing in importance. All of these developments may explain why for the past several decades the EU and the Hague Conference on Private International Law (hereinafter "HCCH") have been keen to advance their judgments projects.

2. In the field of transboundary circulation of judgments,² efforts have been made on different levels: nationally, regionally and internationally. Lasting, zealous efforts made on the international level have resulted in some, but not enough, achievements.³ It is hoped that on-going endeavours under the auspices of the HCCH may lead to future substantial breakthroughs. The EU sets a good example in promoting regional cross-border circulation of judgments, but its experience may be difficult, if not impossible, for the international community to copy in the long run.⁴ The leadership taken by international organizations in this field is a key factor that may prove indispensable. Nevertheless, individual countries' current beliefs, mutual trust and cooperation contribute to the efficiency or success of the judgments project to a substantial extent, that is, they will play the most important role in efforts to make real breakthroughs in the transboundary recognition and enforcement of judgments ("REJ"), at least in the near future.⁵ To put it differently, any real achievements made

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- 1 See, e.g., Recitals (2) and (3), Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) and Recitals (1) and (2), Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
 - 2 The "judgments" used in the paper means civil or commercial judgments, excluding the divorce judgments which refer to a very different channel for recognition in China.
 - 3 The work and achievements of HCCH, a leading international institution in the field of transboundary circulation of judgments, presents a vivid example.
 - 4 For a succinct explanation of the tendencies observable in the field, see, e.g., Ralf Michaels, Recognition and Enforcement of Foreign Judgments, in: Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2009), para.5.
 - 5 Scholars have long observed the role of individual countries' law and practice in contributing to the deadlock in REJ. See, e.g., Friedrich K. Juenger, *The Recognition of Money Judgments in Civil and Commercial Matters*, 36 *Am. J. Comp. L.* (1988), 1-40.

in this field cannot occur without the in-depth and active participation of individual countries. Mutual trust and true cooperation between individual countries will be key in the cause of the REJ.

3. China,⁶ a rising economic and political power, has been advocating the “rule of law” since its adoption of the reform and opening-up policy. Indeed, on the whole, a favourable legal environment is gradually taking shape in China, though it is not yet satisfactory. In this context, the promotion of REJ in China is improving and, concomitantly, how China treats foreign judgments illustrates its legal reality and tests its judicial determination. Nevertheless, it is a pity that in the past two and a half decades China has made only limited progress in its REJ legislation, as well as its corresponding practice. With minimal successful practice thus far, free REJ in China remains but a lasting hope, while on the international or regional law level, China is getting increasingly involved, although valuable fruits have not yet been reaped here either. However, considering China’s influence in the international community, any regional or global REJ projects would be severely criticized if China’s were not actively and positively involved. The author’s past several papers⁷ have set forth the problems, quandaries and even strategies available in respect of China’s treatment of foreign judgments, but those papers were more analytical. As the free movement of judgments across borders becomes more urgent and necessary,⁸ constructive steps must be taken rather than strategies being repeatedly blamed or offered⁹; that is to say, we

6 The term “China” is employed to denote Mainland China; other jurisdictions of the People’s Republic of China are excluded from discussion in the paper.

7 The two relevant papers are Wenliang Zhang, *Recognition and Enforcement of Foreign Judgments in China: A Call for Special Attention Paid to Both the “Due Service Requirement” and the “Principle of Reciprocity”*, 12 *Chinese JIL* (2013), 143-174; Wenliang Zhang, *Recognition and Enforcement of Foreign Judgments in China: The Essentials and Strategies*, 15 *Yearbook of Private International Law* (2014), 319-347. Nevertheless, the paper is set to explore a new question based on the prior research—ways out for the contemporary Sino-foreign REJ.

8 The relevant efforts made by the EU and HCCH can furnish a good example.

9 Criticisms, blame, doubts or even total repudiation on recognition of judgments between China and other countries can be found. There is vast literature in this regard. See, e.g., Ramon E. Reyes, *The Enforcement of Foreign Court Judgments in the People’s Republic of China: What the American Lawyer Needs to Know*, 23 *Brook. J. Int’l L.* (1997), 241; Nanping Liu, *A Vulnerable Justice: Finality of Civil Judgments in China*, 13 *Colum. J. Asian L.* (1999), 35-98; Mo Zhang, *Civil Litigation in China: A Practical Analysis of the Chinese Judicial System*, 25 *B.C. Int’l & Comp. L. Rev.* (2002), 59; Arthur Anyuan Yuan, *Enforcing and Collecting Money Judgments in China from A U.S. Judgment Creditor’s Perspective*, 36 *Geo. Wash. Int’l L. Rev.* (2004), 758-759; Phil Taylor, *If You Want Your Money, Arbitrate*, *China Law & Practice* (2009), (www.chinalawandpractice.com/Article/2327856/If-you-want-your-money-arbitrate.html, last visited on 15 March, 2017); Patricia J. Blazey and Peter S. Gillies, *Recognition and Enforcement of Foreign*

should not take the reality of the REJ in China for granted or throw the handle after the blade. Due to the absence of Sino–foreign REJ cases, past research in this field has been predominantly based on theoretical assumptions, while this paper seeks to investigate the matter from a practical perspective based on a series of newly emerged landmark cases. In any case, the issue of REJ is currently more of a practical matter, and throughout the paper *empirical* rather than theoretical approaches are mainly employed. Through a review of practical developments to date, the paper will try to map out viable ways to overcome challenges to the REJ in China, especially drawing on a series of cases with far-reaching implications through which Chinese and foreign courts have started to recognize each other’s judgments. Although such cases remain sporadic, they have had a deep influence on Sino–foreign REJ, of which the *status quo* should not be downplayed.

4. A new opportunity for solving the perennial Sino–foreign recognition problems has arrived, and it must be seized. To illustrate this, the following discussion comprises three parts: the second section of the paper presents an updated critique of China’s existing legislation and the judicial structure underpinning the REJ in China, and the third section investigates, through recourse to those recent landmark cases, the phenomenal recognition of Chinese judgments by other jurisdictions, as well as welcome decisions by Chinese courts to follow suit. Based on this response, this section further explores whether a new phase has arrived, whether the time has come to end the Sino–foreign recognition impasse and, if so, how it can be dismantled. The fourth section provides a conclusion.

II. China’s legislation and judicial structure

5. Broadly speaking, there are three channels that foreign judgments¹⁰ can follow to become recognized and enforced in China: domestic rules-based recognition, bilateral treaties-based recognition and international conventions-based recognition.¹¹ However, these three channels are not isolated from one another. Despite the legal primacy of the latter two approaches over the first,¹² the latter two rely heavily on the

Judgments in China, 1 *International Journal of Private Law* (2008), 333-342; Edward Lestrade, *European Union States and the Recognition and Enforcement of Foreign Judgments in China*, 57 *Euro. News* (2008), 1-4. Truly it is hard to deny the reasonableness underlying these stances, but the stances are exaggerated in some respects and above all, they cannot lead to a beneficial resolution of the fundamental Sino–foreign recognition problem.

10 The paper is mainly confined to discuss the recognition of foreign pecuniary judgments or judgments containing pecuniary rulings. Non-pecuniary judgments are not the direct target for investigation in this paper.

11 See e.g., Wenliang Zhang, above n.7, 12 *Chinese JIL* (2013), 149.

12 Chinese domestic laws well establish the priority of international treaties over domestic laws. See, e.g., *Civil Procedure Law of China*, art. 260.

first due to the paucity of relevant treaties and the generality of treaty provisions. Nevertheless, since different approaches may lead to disparate outcomes, the distinction among channels remains important.¹³ The first approach is by far the most predominant in China's REJ practice, while the latter two can be resorted to when relevant treaties or conventions apply, but in fact, they have had only a limited impact thus far.¹⁴

6. China is generally considered to have a civil law tradition.¹⁵ Its REJ legislation is mainly set down in the Civil Procedure Law (hereinafter "CPL"), with other, sporadic specific laws¹⁶ complementing this general law. The overarching CPL was passed in 1991, and until today, its limited provisions on REJ in China remain completely intact.¹⁷ In substance, the relevant laws provide only a general declaration on the receptivity of foreign judgments. No useful conclusion can clearly be drawn on the conditions for or defences to REJ in China. Seen from a practical perspective, the CPL and other laws *solely* provide for an overarching public policy defence and a reciprocity requirement.¹⁸ To make things worse, Chinese law provides no clarification of these two requirements. Undoubtedly, this mechanism is unable to cope with the increasingly complicated REJ practice. Chinese courts, especially the Supreme People's Court (hereinafter "SPC"), have adopted different formal and informal interpretations¹⁹ thereof in the hope of bringing some clarification, an effort that is futile

13 So far, the treaty arrangements provide a relatively solid foundation for REJ in China. Absent such treaty arrangements or the harsh reciprocal guarantee, there would be no successful REJ in China. See, e.g., Guangjian Tu, *Forum Non Conveniens in the People's Republic of China*, 11 *Chinese JIL* (2012), 362.

14 For the discussion of bilateral treaties and international conventions in REJ in China, see, e.g., Wenliang Zhang, *Recognition and Enforcement of Foreign Judgments in China: Rules, Practice and Strategies* (2014), 206-236. The paper is only intended to explore the REJ conducted under the first channel.

15 For a succinct description of China's legal tradition, see, e.g., Jianfu Chen, *Chinese Law: Context and Transformation* (2008), 5-23; Shiguo Liu, *Judicial precedents and legal interpretation*, 2 *Faxue Luntan [Legal Forum]* (2001), 41.

16 For the introduction to such laws, see, e.g., Zhang, above n.14, 50-60.

17 For such limited provisions, see e.g., Zhang, above n.11, 149-152; Wenliang Zhang, 15 *Yearbook of Private International Law* (2014), 324-331. For the introduction, see also Guangjian Tu, *The Hague Choice of Court Convention: A Chinese Perspective*, 55 *The American Journal of Comparative Law* (2007), 350.

18 But some authors read the laws in a quite different way and interpret the provisions mentioned above as an all-inclusive clause, including almost all the conditions or defences popular in other jurisdictions on the REJ. See, e.g., Zhenjie Hu, *Recognition and Enforcement of Foreign Judgments in China: Rules, Interpretation and Practice*, 6 *Netherlands International Law Review* (1999), 294. Such an interpretation is not recommended.

19 One attempted SPC interpretation is quite noteworthy on REJ in China. The SPC is currently undertaking to issue an interpretation, addressing specifically the REJ in

overall. All of the above circumstances contribute to the confusion and unsatisfactory reality surrounding the REJ in China.

7. This legislative stalemate on the REJ has proved to be difficult to break. It would be a disappointment if one *solely* relied on future legislation to overcome the thorny problems underlying the REJ in China. In the near future, new legislation would be the *least* efficient approach to overcoming this predicament, bearing in mind that the CPL has remained totally unchanged on this issue since 1991, and no new legal developments are in sight. Nevertheless, due to China's civil law tradition, new legislation is indeed the most efficient way to elevate the REJ to a new level or stage in China—but this process is far from cost efficient due to the time required. The more than two decades-long standstill on the fundamental Chinese REJ legislation, vis-à-vis the CPL provisions, provides eloquent proof of this. Nevertheless, efforts to introduce new legislation must be made, though they should not be the *sole* focus or method used; other ways to overcome this impasse must be found or prioritized. In contrast, reliance on judicial practice appears to be the most advisable and productive way to handle the deeply rooted Sino–foreign REJ problem. Only quite recently, despite the ongoing stagnant REJ legislation, successful Sino–foreign REJ cases began to appear,²⁰ even if sporadically. From these, clues can thus be drawn for breaking the Sino–foreign REJ impasse.

8. In China, cases are not binding precedents,²¹ but the SPC has been playing a very important role by clarifying its stance on typical cases. The lack of a useful legal system magnifies the SPC's role in REJ. However, this role can be double edged. On several occasions, the SPC has taken a stance concerning the REJ in China that significantly affects or even directs the ensuing judicial practice across the country. Chinese courts, with the SPC in the lead, have taken various opportunities to fill in the blanks left in the abovementioned Chinese REJ laws through their authority to interpret the laws.²² On other occasions, the SPC has chosen to interpret the relevant laws, including the CPL, in a *conservative* way, thus hindering the development of the REJ in China. The conservative role of the SPC is vividly shown in the infamous *Gomi Akira*,²³ which contributed to the Sino–Japanese recognition feud.²⁴ In this case, the

China. But the final rules are to be laid down and the true value thereof is also to be evaluated. For more, see below Part III.B.ii. Recognition of foreign judgments as a direct response.

20 See below Part III.B. Chinese courts' responses, and the consolidation of hope.

21 For the role of cases in China's judicial practice, see, e.g., Shiguo Liu, *Judicial precedents and legal interpretation*, 2 *Faxue Luntan* [Legal Forum] (2001), 41.

22 For more, see, e.g., Guangjian Tu, *The Hague Choice of Court Convention: A Chinese Perspective*, 55 *The American Journal of Comparative Law* (2007), 350–352.

23 For the case, see, e.g., Zhang, above n.11, 153–154.

24 For the formation and lasting deterioration of the Sino–Japanese recognition feud, see, e.g., Zhang, above n.11, 172.

SPC drew on strict *de facto* reciprocity instead of the favourable *presumed* or *legal* reciprocity while the CPL is silent on what its reciprocity actually means,²⁵ and ever since, this has been the most fundamental and frequently cited ground for the non-recognition of foreign judgments in China.²⁶ In the case of this lasting legal stalemate, the role of the courts is further magnified. It is a pity that the SPC has thus far played a conservative role and its positive role has been far from being explored in the REJ. The very recent 2015 “Interpretation of the SPC on Application of the CPL”²⁷ brings no substantial improvements to the REJ field in China. Reliance on new breakthroughs by the SPC is not completely plausible, but upcoming SPC interpretations of REJ in China²⁸ may bring some certainty and improvements.

9. The judicial conservatism or parochialism shown by Chinese courts on the REJ is based on solid ground, but it may be alleviated. For many years, Chinese courts have been reluctant to recognize foreign pecuniary judgments. Thus far, only three foreign judgments have recently been recognized pursuant to the basic channel: China’s domestic rules-based recognition.²⁹ This is a startling reality. Chinese courts used to hold that REJ in China provides nothing beneficial for China or Chinese parties. This narrow-minded ideology features in the conservative Chinese judicial practice. Therefore, the ideological mind-set of Chinese judges or courts offers the best explanation for the enduring judicial conservatism, and it is the fundamental source of Chinese courts’ reluctance to hew new plans or policies to recognize foreign judgments. In fact, Chinese courts’ conservative aims cannot be achieved in many respects.³⁰ Worse, Chinese courts do not actually follow the CPL and other relevant laws closely, which is shown in cases³¹ where Chinese courts have refused to recognize foreign judgments based on grounds not set forth in the relevant Chinese law.

25 For the discussion thereof, see, e.g., Tao Du, *The Principle of Reciprocity and Recognition and Enforcement of Foreign Judgments*, 1 *Huanqiu Falv Pinglun* [Global Law Review] (2007), 110-119. It must be borne in mind that the CPL and other laws are in fact silent on what the “reciprocity” means. So the SPC chose a negative interpretation of the term for REJ purposes.

26 See, e.g., Zhang, above n.11, 152-156.

27 Interpretation of the SPC on Application of the CPL, Fa Shi [2015] No. 5.

28 For more, see below Part III.B.ii. Recognition of foreign judgments as a direct response.

29 These three important cases came in 2013, 2016 and 2017 respectively, and they will be investigated in the latter part of the paper. See below Part III.B.ii. Recognition of foreign judgments as a direct response.

30 For example, in refusing to recognize foreign judgments Chinese parties are usually intended to be protected while in practice the applicants are sometimes just the Chinese parties, whose winning judgments cannot be recognized either. Moreover, such practice cannot bring a stable and confident transaction environment for international communications.

31 For more explanation, see, e.g., Zhang, above n.14, 333-334.

Incentives must be found to encourage Chinese courts to recognize foreign judgments. Therefore, the emerging recognition by Chinese courts of the foreign judgments is indeed quite thought provoking. In the near future, substantial progress can only be attained with Chinese courts' positive involvement. Chinese courts must take an open-minded approach or be mobilized in a positive way. However, the difficulty arises of how to achieve this formidable goal.

10. Broadly speaking, two options exist for resolving this difficulty. First, reliance can be placed on Chinese courts to resolve the problems themselves, and it can merely be hoped that they will catch up with the modern idea of free movement of judgments through gradual self-reflection or self-improvement, probably from the exertion of foreign criticism or even blunt accusations. Second, external constructive measures could be taken to shape or contribute to Chinese courts' formation of an updated understanding of the REJ. The former has been proven inefficient in past practice. For the latter, there is indeed a lot to do. In particular, recent years have seen the emergence of a series of cases in which Chinese pecuniary judgments have been recognized in other jurisdictions, which may well lead to a turning point for the REJ in China. The main point of departure of this paper is an analysis of the arrival of this turning point in the context of such cases so that the opportunity afforded by this turning point can be seized.

III. Emergence of “follow-suit” cases

11. Recent years have seen the emergence of a series of cases of successful Sino–foreign REJ.³² This marks a new and welcome stage in the history of Sino–foreign REJ. It must be borne in mind that the issue of recognition of foreign judgments in China and the issue of recognition of Chinese judgments abroad are two sides of the same coin, with the latter significantly influencing the former and vice versa. Consequently, any consideration of one issue must include the other. The following discussion aims first to illustrate the most important move by the various jurisdictions taking the initiative in recognizing Chinese judgments, and second to analyse some Chinese courts' welcome responses admitting the existence of a reciprocal tie or recognizing judgments from corresponding jurisdictions. Based on this analysis, this part proposes a way to break the Sino–foreign recognition deadlock.

III.A. Foreign courts' recognition of Chinese judgments

12. Foreign courts' recognition of Chinese judgments and Chinese courts' positive responses undoubtedly offer strong hope for solving Sino–foreign recognition problems. Such cases involve countries including Germany, New Zealand, Singapore,

32 See Below III.A. Foreign courts' recognition of Chinese judgments, and III.B. Chinese courts' responses, and the consolidation of hope.

Israel, the United States and Hong Kong SAR.³³ These countries represent both civil and common law jurisdictions in the field of REJ, at least primarily. The following analysis of selected landmark cases will demonstrate the reasoning, logic and attitudes of the foreign courts in those specific cases recognizing Chinese judgments, and in effect, they demonstrate the general *receptivity* of Chinese judgments, which is one of the more important messages for other jurisdictions. A new, promising stage has been set for cross-border circulation of Chinese judgments. This unprecedented situation provides solid ground for this paper's discussion. For the convenience of illustration, a broad distinction is made between the recognition of Chinese judgments by civil law jurisdictions and common law jurisdictions.

III.A.i. Recognition of Chinese judgments by civil law jurisdictions

(1) Züblin International v. Walker General Engineering Rubber

13. In a 2006 case, *German Züblin International Co Ltd v. Wuxi Walker General Engineering Rubber Co, Ltd*³⁴ (hereinafter "German Züblin"), the Court of Appeal of Berlin (hereinafter "Berlin Court") recognized a Chinese judgment on the invalidity of an arbitral clause. This is a landmark case in the sense that it was the first reported Chinese judgment to be recognized by a German court or any other foreign court. Since Germany has a civil law tradition,³⁵ this case also represents the first recognition of a Chinese judgment by a civil law system. In this case, the recognizing court discussed the rationales underlying the recognition of the Chinese judgment, *inter alia*, the rationale related to the reciprocity requirement,³⁶ which is a salient condition for the REJ in most civil law countries, including Germany. The Berlin Court ruled: (1) the "principle of reciprocity" stipulated under German law does not constitute a barrier for the REJ; (2) it is worthwhile for German courts *to take the first step* [emphasis added] to recognize Chinese judgments; and (3) Chinese courts *might follow German*

33 These are all the countries or jurisdictions with which China has concluded no general bilateral or multilateral arrangements on REJ, and they spread across the civil and common law jurisdictions. For countries with China there are bilateral arrangements on REJ, recognition and enforcement has been seen too, sporadically although. See Zhang, above n.14. The REJ in China under such bilateral arrangements is not investigated in the paper.

34 *German Züblin International Co. Ltd v. Wuxi Walker General Engineering Rubber Co., Ltd*, Judgment of the Court of Appeal of Berlin 18 May 2006, Document number 20 S ch 13/ 04. The judgment is available at: <http://openjur.de/u/273207.html> (last visited on 21 July 2017).

35 *Ibid.*

36 Reciprocity has different implications in the context of the civil law and common law. For an illustration thereof, see, e.g., Michaels, above n.4, paras.7-9. In the U.S., co-existence is seen of application and non-application of the reciprocity requirement, see, e.g., Symeon C. Symeonides, *American Private International Law* (2008), 335-336.

courts [emphasis added] in giving a reciprocal treatment to German judgments in the future. Other grounds for refusal set forth in art. 328 of German Code of Civil Procedure were held to be inapplicable, and the Berlin Court made only a passing comment on them.³⁷

14. Clearly, reciprocity was the focal issue in the case. Germany and China had not signed any treaties addressing the REJ. The Berlin Court's positive initiative recognition of the Chinese judgment was a demonstration of courtesy in the hope of securing reciprocal treatment by Chinese courts. From a practical perspective, one side must always take the first step in providing reciprocal recognition. The Berlin Court had the clear intention to prevent the formation or repetition of a vicious circle due to the "reciprocity requirement". In particular, it must be borne in mind that Chinese courts had previously refused to recognize a German judgment in at least one case, with the lack of reciprocity employed to deny the effects of the German judgment.³⁸ This unfortunate outcome was actually referenced by the judgment debtor. Nevertheless, the Berlin Court did not become entangled in this past misfortune. Instead, it chose to take the first step by recognizing the Chinese judgment in the hope of eliciting future reciprocal treatment by Chinese courts.

(2) *Jiangsu Overseas Group Co Ltd v. Reitman*

15. The case *Jiangsu Overseas Group Co Ltd v. Reitman*³⁹ (hereinafter "*Jiangsu Overseas Group*") arose out of a Chinese judgment⁴⁰ seeking recognition in Israel. On 6 October 2015, a Chinese judgment was recognized for the first time in Israel, by the Tel Aviv District Court (hereinafter "Tel Aviv Court"). Israeli law is based mostly on common law, but it incorporates facets of civil law. In the REJ field, its legal system is more akin to that of a civil law system.⁴¹ This recent case offers another good example of the recognition of Chinese judgments in a country where bilateral or

37 See German Züblin, above n.34.

38 See, e.g., the case of *Petition of Deutsche Bank for the Recognition and Enforcement of a Frankfurt Judgment*. For the summary of the case, Yiming Shen, *Resolution of Disputes between Foreign Banks and Chinese Sovereign Borrowers: Public and Private International Law Aspects* (2000), 159–162. As regards reference to the case by other scholars, see, e.g., Yitong Liu, *Rethinking the Role of the Principle of Reciprocity in the Course of the Recognition and Enforcement of Foreign Judgments with the Berlin Higher Court to Recognize the Judgment of Wuxi Intermediate Court of the PRC as A Case Study*, 3 *Renmin Sifa* [People's Judicature] (2009), 97.

39 *Jiangsu Overseas Group Co. Ltd. v Isaac Reitmann*, The Tel Aviv-Jaffa District Court, Civil File 48946-11-12.

40 *Chu Chenglin v. Itshak Reitmann*, (2009) *Tong Zhong Min San Chu Zi* No. 0010.

41 See, e.g., Talia Einhorn, *Private International Law in Israel* (2009), 331.

multilateral arrangements and prior reciprocal treatment do not exist. The Tel Aviv Court relied on both statutory law and precedents in delivering the ruling. The case was appealed before the Israel Supreme Court, and during the appeal the reciprocity issue was also the core matter, hotly debated. Quite comfortably, on 15 August, 2017 the Supreme Court affirmed the ruling of Tel Aviv Court,⁴² thus announcing the arrival of another jurisdiction where a Chinese judgment has been recognized.

16. Like the Berlin Court in the German *Züblin*, in this case the Tel Aviv Court dwelled *significantly* on the most controversial issue, *reciprocity*,⁴³ which served as a key factor in determining whether the Chinese judgment could be recognized. The Tel Aviv Court pointed out that Sino-Israeli reciprocity was “a furrow that has yet to be ploughed”.⁴⁴ Law experts employed by the two parties were heavily involved, and the Attorney General’s opinion was also elicited, in particular on the reciprocity issue. As civil law countries usually do, Israeli statutory law requires reciprocity for the REJ, “A foreign judgment will not be declared enforceable if it was given in a state the laws of which do not provide for the enforcement of judgments of Israeli Courts.”⁴⁵ Prior to the arrival of the present case, Chinese courts had never considered the recognisability or enforceability of Israeli judgments, and it was unknown whether Chinese courts would accord effects to Israeli judgments. No Israeli courts had ever recognized or refused recognition of Chinese judgments, either. Based on a comprehensive consideration, the Tel Aviv Court chose to take a pivotal step. In its ruling, the Court referred to various precedents, concepts and assumptions including, *inter alia*, (1) the general approach of the Israel Supreme Court supporting *the promotion of cooperation* [emphasis added] between the Israeli judicial system and foreign judicial systems, (2) the burden of proof on the litigant opposing enforcement, (3) the lack of an international treaty on the enforcement of monetary foreign judgements to which both Israel and China are parties and, above all, (d) the mere requirement of proof of a “*reasonable potential*”⁴⁶ [emphasis added] that an Israeli judgement will be enforced by the relevant foreign state rather than the need to prove *de facto* enforcement to satisfy of the reciprocity requirement.⁴⁷ The Israel Supreme Court’s positive stance in

42 *Jiangsu Overseas Group Co. Ltd. v Isaac Reitmann*, the Israel Supreme Court, Civil appeal, 7884/15.

43 See *Jiangsu Overseas Group*, above n.39, paras.34-80.

44 *Ibid.*, para.43.

45 Foreign Judgments Enforcement Law, art. 4(a).

46 See *Jiangsu Overseas Group*, above n.39, para.46.

47 Hadas Peled, *Voluntary Reciprocity: Enforcement of a PRC Court Judgment by an Israeli Court in the Absence of a Governing Reciprocity Agreement*, *Tsinghua China Law Review*, 15 November 2015. The article is available at: www.tsinghuachina.com/nalawupdate.org (last visited on 21 July 2017).

the *Double K Petroleum Products Ltd. vs. Gasprom Transgas Octa Ltd.* was referred to and followed.⁴⁸

17. The Tel Aviv Court considered other REJ requirements, as well. The Chinese rendering court was rightly found to have had international jurisdiction and its judgment to be subject to no appeal, so the Chinese judgment was considered final. Moreover, the monetary nature of the Chinese judgment brought the judgment within the confines of recognition, and Israeli public policy was not infringed by the grant of recognition.⁴⁹ These other requirements were considered easily satisfied, and no strict review of them was made. On the one hand, it can be said that the quality of the Chinese adjudication was affirmed, and its integrity was respected. On the other hand, this case presents another promising example of overcoming recognition dilemmas, *inter alia*, the reciprocity problem underlying the Sino–foreign REJ. It must be stressed that, based on past Chinese courts’ routine practice, absent any prior recognition of Chinese judgments such as in the *Jiangsu Overseas Group*, Chinese courts would not have recognized any Israeli judgments.⁵⁰ For the open-mindedness of the Tel Aviv Court, importance was attached to enforcing the rights of individuals, fairness between parties,⁵¹ the increased development of commercial and reciprocal relationships between the two countries and the demand for increasing certainty.⁵² The fact that no Chinese law or regulation prevents the possibility of Israeli judgements being recognized in China was taken by the Court as satisfying reciprocity.

18. Understandably but equally surprisingly, during the appeal of the case, a Fuzhou (Fujian, China) court refused to recognize an Israeli judgment due to lack of reciprocity between China and Israel,⁵³ which once appeared devastating to the then pending case. Dramatically, the appellant’s adducing of the Chinese unpalatable case was held to be too late since the door had already been closed for new evidence. Finally, the Israel Supreme Court held that the district court was right to find that there is a reasonable potential for Chinese court to enforce an Israeli judgment, which is sufficient for meeting the reciprocity requirement under the Israeli law. It also appears that even if this Chinese judgment would have entered as evidence, the Supreme Court would have ruled the same,

48 See *Jiangsu Overseas Group*, above n.39, para.30.

49 *Ibid.*

50 The absence of any prior recognition of Chinese judgments in Israel would preclude the satisfaction of reciprocity requirement in the REJ in China, which can be deduced from similar cases. See, e.g., *Zhang*, above n.11, 152-156.

51 See *Jiangsu Overseas Group*, above n.39, para.35.

52 See *ibid.*, para.77.

53 Astonishingly, in its decision refusing to recognize the Israeli judgment the Fuzhou court did not refer to the Tel Aviv Court’ recognition of the Chinese judgment in 2015, and it is thought that this fact wasn’t actually brought up before the Fuzhou court. It is very likely that the ruling of the Fuzhou court could have been quite different if this fact had been pleaded.

especially in light of the Singapore and German decisions, despite that the reasoning of the Tel Aviv Court seems to indicate that any prior non-recognition of Israeli judgments by Chinese courts based on Chinese reciprocity practice would have negatively borne on the outcome of this case.⁵⁴ The positive and forward-looking gesture shown by the two Israeli courts saved the *Jiangsu Overseas Group* from sliding into the Sino-Japanese recognition mire, and a vicious circle was thus avoided. These all contributed to the resolution of the Sino-Israeli recognition stalemate, which is undeniably exemplary for civil law jurisdictions sticking to reciprocity.

III.A.ii. Recognition of Chinese judgments by common law jurisdictions

(1) Hubei Gezhouba Sanlian Industrial Co, Ltd et al. v. Robinson Helicopter Company

19. In a 2009 case, *Hubei Gezhouba Sanlian Industrial Co, Ltd et al. v. Robinson Helicopter Company*⁵⁵ (hereinafter “*Hubei Gezhouba Sanlian*”), the United States District Court for the Central District of California, on remand, ruled for two Chinese corporations, recognizing a Chinese pecuniary judgment. The ruling came after an appeal and remand procedure⁵⁶ before the United States Court of Appeals for the Ninth Circuit, which later on affirmed the recognition ruling by the district court.⁵⁷ Thus, the recognition decision also reflected the stance of the federal appellate court. The case attracted widespread attention due to its potential to encourage mutual recognition of judgments between U.S. and Chinese courts.⁵⁸

20. Unlike the German *Züblin*, the American courts involved in this instant case did not get entangled with the *reciprocity* problem, as reciprocity is not held as a

54 Nevertheless, the Tel Aviv Court once held positively in a 2012 case that the existence of a Russian precedent refusing the recognition of an Israeli judgment on the ground of lack of reciprocity was not decisive. See Bélig Elbalti, *Reciprocity and the recognition and enforcement of foreign judgments: a lot of bark but not much bite*, 13 *Journal of Private International Law* (2017), 195.

55 *Hubei Gezhouba Sanlian Industrial Co., Ltd. et al., v. Robinson Helicopter Company*, 2009 U.S. Dist. LEXIS 62782.

56 *Hubei Gezhouba Sanlian Industrial, Co., Ltd., a company located in Hubei Province, People’s Republic of China and Hubei Pinghu Cruise Co., Ltd., a company located in Hubei Province, People’s Republic of China, Plaintiffs - Appellants, v. Robinson Helicopter Company, Inc., a California corporation, Defendant – Appellee*, 287 Fed. Appx. 599; 2008 U.S. App. LEXIS 15625.

57 *Hubei Gezhouba Sanlian Industrial, Co., Ltd., a company located in Hubei Province, People’s Republic of China and Hubei Pinghu Cruise Co., Ltd., a company located in Hubei Province, People’s Republic of China, Plaintiffs - Appellees, v. Robinson Helicopter Company, Inc., a California corporation, Defendant – Appellant*, 425 Fed. Appx. 580; 2011 U.S. App. LEXIS 6428.

58 See, e.g., Qisheng He, *The Recognition and Enforcement of Foreign Judgments Between the United States and China: A Study of Sanlian V. Robinson*, 6 *Tsinghua China Law Review* (2014), 30.

universal requirement for REJ in the U.S. Instead, other commonly cited grounds for attacking foreign judgments were raised and then reviewed by the requested American courts. The grounds of refusal reviewed in the present case mainly comprised service of process, the finality of the Chinese judgment, the limitation period, and so on. After a careful examination, the courts found all of these grounds inapplicable. In particular, service of process was regarded to have been properly effectuated, and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter “Hague Service Convention”) was appropriately followed.⁵⁹ Based on the nature of the Chinese judgment, it was taken to be final, conclusive and enforceable under Chinese law, and Chinese statute of limitations was found to have been exhausted during the period for appeal.⁶⁰ Significant jurisdictional requirements were also considered satisfied.⁶¹ Indeed, the American judgment debtor had previously submitted to the jurisdiction of the appropriate civil court in China and promised to abide by any final judgment rendered accordingly in order to win the American court’s ruling on *forum non conveniens* in its favour. And, the debtor’s move had been granted.⁶² This submission to some extent guarantees the overarching requirement for recognizing foreign judgments, namely, the jurisdiction threshold. Moreover, the generous submission made by the judgment debtor to obtain a stay of the prior American proceedings might mask its original expectation that American courts would not recognize *any* resulting Chinese judgments. In this vein, the American courts did a good thing in countering the dishonesty or disturbing strategies. The other grounds for refusal reviewed by the American courts in the case were mainly those well known in individual countries, the Uniform Foreign Money-Judgments Recognition Act⁶³ and other relevant laws or precedents furnishing the authority to adjudicate the case,⁶⁴ with no harsh requirements observed.

21. In this case, the American courts made no unfair or blunt accusation or expression of doubt or bias against the Chinese applicants or Chinese legislation or the judiciary; quite to the contrary, on the whole, the American courts recognized both Chinese law and the judiciary. The Chinese judgment was taken to have been rendered under a system that provides impartial tribunals or procedures compatible with the requirements of due process of law.⁶⁵ Above all, the finality of Chinese judgments was recognized, and the long criticized or even biased judicial supervision under

59 Both the United States and China are signatories to the Hague Convention.

60 See Hubei Gezhouba Sanlian, above n.56, para.12.

61 Ibid, para.21.

62 Ibid, para.2.

63 UFMJRA (1962).

64 See Hubei Gezhouba Sanlian, above n.56, paras.18 & 19.

65 Ibid, para.22.

Chinese law⁶⁶ was not taken with prejudice as disturbing the finality of Chinese judgments. Moreover, the Chinese court's reference to the Hague Service Convention was deemed proper. It is hard to discern any abnormally harsh requirements imposed on the recognition of the Chinese judgment. Instead, the judgment debtor in the case was placed under a heavy burden to block the recognition of the Chinese judgment, which is a policy favourable to the circulation of foreign judgments. Certainly, this case marks a significant and commendable move towards the recognition of Chinese judgments by common law courts. The American courts' positive step in the *Hubei Gezhouba Sanlian* was similarly seen in the recognition by St. Louis County Probate Court of a Chinese judgment on estate succession,⁶⁷ which confirmed the validity of the Chinese judgment and accorded all the formalities and credence, that is, full faith and credit, to the Chinese judgment.⁶⁸

(2) *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd*

22. The 2012 case of *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd*⁶⁹ (hereinafter "*Giant Light Metal Technology*") concerned the recognition and enforcement of a Chinese judgment in Singapore. The Chinese party, Giant Light Metal Technology (Kunshan) Co Ltd, being the winning plaintiff in the Chinese proceedings, moved to have the Chinese judgment recognized against a Singaporean party, Aksa Far East Pte Ltd. The paucity of Singaporean case law in this area forced the requested court in the case—the High Court of Singapore—to conduct intensive research and draw substantially from the English common law on the REJ. It is the first reported Chinese judgment to have been recognized in Singapore.

23. The requested High Court reviewed the Chinese party's application for recognition, predominantly based on prevailing English legal precedents and mainstream academic authorities.⁷⁰ In recognizing the Chinese judgment, the Court examined two main issues in detail: the international jurisdiction of the Chinese court and the enforceability of the judgment, with reciprocity having no role to play. To examine the acceptability of the international jurisdiction exercised by the Chinese court for recognition purposes, reference was made to Singaporean private international law. The judgment debtor was considered by the High Court to have voluntarily submitted to the jurisdiction of the Chinese court in the 2008 proceedings, and accordingly,

66 See, e.g., Liu, above n.9.

67 In Re: Zhang Xiaojing, Deceased Scottrade Account No. 88987828, Probate Division, Circuit Court, Saint Louis County Missouri, 15 December 2009. The document is on file with the author.

68 Ibid.

69 *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd*, [2014] SGHC 16.

70 The most cited classic by the High Court is Lawrence Collins etc. ed., Dicey, Morris and Collins on *The Conflict of Laws* (15th ed., 2012).

the Chinese judgment was made by court with international jurisdiction.⁷¹ Thus, the Chinese judgment was regarded as satisfying the jurisdiction threshold of paramount importance in common law. Thereafter, the Court considered the enforceability of the judgment, the second key issue in this case. As common law clearly establishes, only pecuniary or money judgments may come under another country's enforcement purview.⁷² However, the Chinese judgment in this case contained parts that went beyond a purely pecuniary nature, and the defendant thus challenged its enforceability. The requested court nevertheless held that the defendant's obligation to pay the sums in the Chinese judgment was enforceable in Singapore despite the fact that other parts of the Chinese judgment were not pecuniary and therefore unenforceable in nature.⁷³ Regarding other possible requirements or defences, the High Court stated briefly, "the Defendant did not raise any objection that the PRC Judgment was not final and conclusive on its merits, allege any impropriety on the part of the Plaintiff in the PRC Court when obtaining judgment in their favour, nor raise any other defences to recognition and enforcement of the PRC Judgment."⁷⁴ Moreover, the judgment debtor was pressured to provide proof of any ground for refusal. A clear policy of promoting the recognition of Chinese judgment was adopted. Based on the above consideration, the Chinese judgment was declared recognizable.

24. The *Giant Light Metal Technology* sets another good example for the recognition and enforcement of Chinese judgments in common law jurisdictions. In this case, the High Court referenced numerous academic authorities and relevant English precedents, largely due to the paucity or inadequacy of Singaporean private international law. Anyway, the High Court chose to follow a very *positive* track in addressing the REJ issue and making a generous and welcome gesture towards the Chinese judgment. Above all, no bias or doubts were accepted against the Chinese legal and judicial systems on the whole. All the specific requirements or defences considered by the High Court, following common law tradition, are grounds accepted worldwide. This move undoubtedly paves the way for circulation of Singaporean judgments in China, especially those of Singapore International Commercial Court whose judgments may greatly demand the recognition and enforcement in China.

(3) *Yang Chen v. Jinzhu Lin*

25. *Yang Chen v. Jinzhu Lin*⁷⁵ is a 2016 appeal case in which a New Zealand court for the first time recognized a Chinese monetary judgment. It is the Court of Appeal

71 See *Giant Light Metal Technology*, above n.69, para.52.

72 *Ibid*, para.63.

73 *Ibid*, para.57.

74 *Ibid*, para.18.

75 *Yang Chen v. Jinzhu Lin*, The court of Appeal of New Zealand, CA334/2015, [2016] NZCA 113.

of New Zealand⁷⁶ that delivered this landmark decision. The case originated out of a 2014 case⁷⁷ in which the applicant Yang Chen sought to have the Chinese judgment recognized and enforced before the High Court of New Zealand, which, encouragingly, upheld the principal part of the Chinese monetary judgment but omitted recognition of the portions on interest. On appeal, the Court of Appeal of New Zealand ordered the Chinese judgment to be enforced to its full value together with the interest accrued thereto.

26. In this case, the Court of Appeal initially reiterated the general enforceability of foreign judgments from other civilised nations based on the principle of comity, with Chinese judgments being no exception.⁷⁸ As regards the REJ requirements, it held that enforcement in New Zealand can only be resisted on a limited number of grounds, including in this case.⁷⁹ Two issues were mainly considered. The first was whether the rates of interest in the Chinese judgment needed to be retested, and the second related to a question of penalty rates and public policy, that is, whether the 30 per cent penalty rate shocked the conscience of a reasonable New Zealander. In addressing these issues, no review was made of the merits of the Chinese judgment,⁸⁰ and the penalty rates in the Chinese judgment were not taken as an infringement of the public policy of New Zealand.⁸¹ The comity issue emerging in this instant case was somewhat distinct from the prominent reciprocity requirement observed in civil law jurisdictions, as it seeks to actively *promote* rather than erect a barrier to the REJ.

27. In this case, the Court of Appeal adopted a *positive* line of reasoning and showed an open mind towards the Chinese judgment. Absent any bilateral judgment arrangements, there had been no prior recognition of New Zealand judgments by Chinese courts, and the New Zealand Court took the initiative in recognizing the Chinese judgment. In examining the conditions for or defences to recognition of the Chinese judgment, the Court of Appeal followed the worldwide trend of simplifying and promoting the recognition procedure. Moreover, no unnecessary examination was conducted and no extra or superfluous requirements were imposed. Last but not least, the Court of Appeal also showed confidence and trust in Chinese legislation and the judiciary on the whole, as well as in the specific Chinese judgment.

76 As a former British colony, the New Zealand legal system is heavily based on English law although the primary sources of New Zealand law are statutes. In general, this decision bears more similarities to the stance taken by the common law jurisdictions.

77 Yang Chen v. Jinzhu Lin, [2014] NZHC 1727.

78 See Yang Chen v. Jinzhu Lin, above n.75, para.18.

79 Ibid, para.19.

80 Ibid, para.20.

81 Ibid, paras.21 & 22.

III.A.iii. The logic and implications underlying the cases

28. In this part, typical cases have been investigated to present the foreign courts' forward-looking stance in recognizing Chinese judgments. These cases signal a promising start that is in stark contrast to past practice and strikes a forceful blow to the long-held misunderstanding, suspicion or even indictment of Chinese legislation and the Chinese judiciary, as well as its judgments.⁸² Different REJ systems from two law families operate in the aforementioned countries and impose distinct requirements on the REJ. The countries impose diverse REJ requirements. Nevertheless, countries of the same law family apply the same or similar sets of requirements. The abovementioned cases demonstrate that Chinese judgments, similar to those of other jurisdictions, can equally be recognized in both civil and common law countries, though a new phenomenon. In short, adjudication by Chinese courts has already been respected in a number of countries. Now, the issue of core concern should be *how* Chinese judgments are recognized or enforced in other jurisdictions, rather than *whether* they are recognizable or enforceable in general. So, it would be overbroad if an investigation were still conducted into the quality of Chinese adjudication or the possibility, *per se*, of the receptivity of Chinese judgments as a whole. Regarding the issues of international jurisdiction and due process guarantees, the core concerns of global REJ, Chinese courts' adjudication has been positively tested in these landmark cases. To put it another way, an attack on the Chinese legal system or judicial system as a whole is untenable, parochial and outdated for recognition purposes.

29. The cases discussed above represent two groups of countries with either a civil law or common law tradition taking the initiative in recognizing Chinese judgments. The two legal families' differences in recognizing Chinese judgments require further discussion and a separate analysis. So far as civil law countries are concerned, *reciprocity* is the main, if not the sole, concern, which was true for both the German and Israeli law and practice considered above. The issue that deserves the most attention is thus civil law courts' application of the reciprocity threshold.⁸³ For the Israeli courts, there had been neither non-recognition nor non-refusal by Chinese courts of Israeli judgments, and there had also been no precedents of recognition or non-recognition of Chinese judgments in Israel. The "reasonable potential" of enforcement of an Israeli judgement was taken to be sufficient to meet the reciprocity requirement. Moreover, the positive gesture of the Tel Aviv Court, as well as the leading Israel Supreme Court, operated as the underlying force in the recognition of the Chinese judgment. No discrimination against the Chinese judgment or its judiciary or its legislation can be seen.

30. The German *Züblin* was in a state of real difficulty, as Chinese courts had bluntly refused to recognize German judgments due to China's stance that no

82 Reyes, Liu, Zhang, Yuan et al., above n.9.

83 For a thorough investigation into the threshold, see Elbalti, above n.54, 184-218.

reciprocal relationship existed between the two countries. The Israel Supreme Court was almost placed under the same embarrassment due to the concurrent Chinese court's refusal of recognition of an Israeli judgment⁸⁴. The Berlin Court's choice to not strike back but to look to the future avoided a vicious recognition circle. The Israel Supreme Court would have followed the same positive path. If the Japanese approach⁸⁵ had been taken, no recognition would have been made of the Chinese judgments, and the Sino-German or Sino-Israeli recognition impasse would have remained and consequently worsened. The German and Israeli Courts' general forward-looking approach is advisable and open minded, and the approach taken by the two courts is the one that deserves to be advocated for strongly, in particular to those countries firmly applying a reciprocity requirement for the REJ or stuck in a reciprocity-centred recognition deadlock. So a recommendable example is set for those civil law countries applying the reciprocity requirement. Besides the well-known reciprocity hurdle, other requirements were also examined but did not feature in either of the two cases. Both the Israeli and German courts involved showed confidence and trust towards Chinese legislation, its judiciary and its judgments. In any case, no salient injustices or taints were seen or held to exist in the Chinese judgments, underpinning the arrival of recognition for them.

31. In common law jurisdictions, *reciprocity* is not a concern in REJ⁸⁶; instead importance is placed on such requirements as international jurisdiction, the finality of judgments and due process. As is shown in the cases investigated above, all the common law courts involved deemed these recognition requirements to have been satisfied by the Chinese judgments. The circulation of Chinese judgments in the mentioned courts or jurisdictions encountered no special barriers. What's more, no bias against the Chinese legal or judicial system as a whole, an outdated ground, can be seen. In other words, Chinese adjudication was fairly recognized. The common

84 See the paper, above para.18.

85 The Sino-Japanese quarrel over the recognition issue is really a bitter one. Due to the Gomi Akira and the inappropriate stance taken by the SPC against the case, Japanese courts from then on totally repudiate Chinese judgments and Chinese courts also follow the same way. Very recently, in the prominent Case of Shuqin Xia where a Chinese applied for the recognition of a Chinese judgment, the requested Japanese court refused to recognize the Chinese judgment due to the alleged lack of reciprocity between the two jurisdictions, which was later affirmed by the Japanese Supreme Court in 2016. For more of the Sino-Japanese recognition quarrel, see, e.g., Zhang, above n.11, 153-155.

86 But common law jurisdictions also talk about reciprocity; for more discussion of classification thereof, see, e.g., Zhang, above n.14, 85-86. See, e.g., Huangbin Ge, et al., Building A "Peaceful and Cooperative" International Environment for Rule of Law-To analyse and make suggestions on the Nanjing Court's recognition of a Singaporean judgment, *Renmin Fayuanbao* [People's Court Daily], 11 August, 2017.

law courts involved did not identify or expect the reciprocal treatment of their judgments in China. Rather, the proper exercise of international jurisdiction and qualified adjudication by Chinese courts fundamentally contributed to the grant of recognition in these cases. The ability of Chinese courts to render justice well was affirmed and given due respect by the common law courts. In a word, there should now be no general barriers preventing the recognition of Chinese judgments in common law jurisdictions, in sharp contrast to the past when common law courts denied the underlying quality of Chinese judgments.⁸⁷ So, a new stage has been set.

III.B. Chinese courts' responses, and the consolidation of hope

32. The cases investigated above all involve the recognition of Chinese judgments in the past several years, presenting a new and promising landscape for circulation of Chinese judgments in other jurisdictions. It is believed that more countries will follow this trend. Undoubtedly, as will be demonstrated in the following discussion, this is a first and remarkable step towards resolving long-standing Sino-foreign recognition difficulties. Absent a reliable bilateral or multilateral recognition mechanism, mutual efforts and trust are of great necessity in promoting the REJ. It has been observed that the Chinese judiciary or legal system lags behind others in the REJ field, but it is not the only side deserving of blame. The resolution of the reciprocity impasse for the REJ in China is a thought-provoking matter. The abovementioned courts have already taken a very positive step, which is demonstrated to have greatly contributed to the recognition by Chinese courts of judgments from the countries involved.

33. In response to the above emerging cases, Chinese courts have made promising gestures towards judgments from those specific jurisdictions. This positive move by Chinese courts is embodied not only in the reciprocal treatment of foreign judgments in specific cases, but also in a deepening consideration of the Chinese approach to the

87 Hong Kong courts' past practice presents a good illustration. In fact, as to the recognition of Chinese judgments in Hong Kong, the most difficult problem was the problem of the finality of Chinese judgments, a *quality* accusation. Because of the existence of the "trial supervision" procedure, the Hong Kong courts routinely believed that the finality of Chinese judgments was not satisfied. See, e.g., Jie Huang, *Conflicts Between Civil Law and Common Law in Judgment Recognition and Enforcement: When Is the Finality Dispute Final?*, 29 *Wis. Int'l L.J.* (Spring 2011), 70; Likun Dong, *The Issue of 'the Finality of Judgment' in the Course of Recognition and Enforcement of Judgments between the Mainland and Hong Kong*, 9 *Falv Shiyong [Journal of Law Application]*, 2004; Nanping Liu, *A Vulnerable Justice: Finality of Civil Judgments in China*, 13 *Colum. J. Asian L.* (1999), 35-98; Philip St John Smart, *Finality and the Enforcement of Foreign Judgments under the Common Law in Hong Kong*, 5 *Oxford U. Commw. L.J.* (2005), 301. In a sharp contrast, in the very recent case *Wu Zuocheng v. Liang Li and others* [2016] HKCFI 261, the finality of a Chinese judgment was well recognized and the Chinese judgment was relatively easily registered.

REJ. Regarding the latter, in 2015 the SPC issued a judicial interpretation on aiding the implementation of China's "Belt and Road Initiative", which, for the first time, touches on the initiative granted to Chinese courts on reciprocal REJ under certain strict conditions.⁸⁸ The SPC's contemplated new rules on REJ in China⁸⁹ is another significant move, a positive response to China's judicial practice. This is a small but significant step. Although the Chinese legislature continues not to pay sufficient attention to the recognition issue, the Chinese judiciary can to some extent break the deadlock. The following investigation reveals Chinese courts' "follow-suit" attitude, a key move towards breaking the Sino-foreign recognition stalemate.

III.B.i. Satisfaction of deeply embedded reciprocity

34. As the relevant practice repeatedly shows, the reciprocity requirement is the most difficult and controversial hurdle to overcome for the REJ in China. If the requirement is met, there will be a very high success rate for recognition.⁹⁰ Following the abovementioned cases, Chinese courts have taken and interpreted, implicitly or explicitly, the recognition by foreign courts of Chinese judgments as satisfying the reciprocity requirement. The positive initiative in recognizing Chinese judgments has begun to materialize as reciprocal treatment by Chinese courts. The first remarkable case is the 2010 *Hukla Matratzen GmbH v Beijing Hukla Ltd* (hereinafter "*Hukla Matratzen GmbH*"),⁹¹ in which the judgment creditor, a German corporation "Hukla Matratzen GmbH", with Stefano Buck as the trustee in its bankruptcy, applied for the recognition and enforcement of an Offenburg judgment numbered 20460/07. To resolve the well-known and long-standing difficulty of satisfying "principle of reciprocity" in China, the applicant referred to the aforesaid German *Züblin*—the first case in which a Chinese judgment was recognized in Germany. Although the applicant raised the "principle of reciprocity" and maintained that the reciprocity requirement under Chinese law was met by the German *Züblin*, the requested Chinese court, the Beijing No. 2 Intermediate People's Court (hereinafter

88 Art. 5, Several Opinions of the SPC on the Provision of Judicial Services and Safeguards to the Establishment of One Belt and One Road, Fa fa [2015], No. 9, 2015. Under the judicial interpretation, Chinese courts are set to promote the judicial cooperation between China and the jurisdictions along the Belt and Road, including the REJ. In particular, it is clearly mandated that in the case of no Sino-foreign bilateral treaties on judicial cooperation, reciprocal relations may be advanced by Chinese courts' initiative rendering of judicial cooperation, based on the intention of judicial cooperation between China and the foreign side, the foreign side's commitment of awarding judicial reciprocity to China and so on.

89 See Regulation of the SPC on Several Issues Relating to REJ, below n.107.

90 See, e.g., Zhang, above n.11, 160-163.

91 *Hukla Matratzen GmbH v. Beijing Hukla Ltd*, The No. 2 Intermediate People's Court of Beijing Municipality (2010) Er Zhong Min Tezi No. 13890.

“Beijing No. 2 Court”), avoided addressing this issue in its decision. Despite the fact that the application was ultimately denied based on the “due service requirement”, the bypassing of the reciprocity threshold in the present case is outstanding. To be more specific, Beijing No. 2 Court did not act as usual; Chinese courts, including Beijing No. 2, routinely take the reciprocity requirement as the first and foremost concern for REJ in China. Indeed, a large percentage of cases refusing REJ have been based *merely* on a lack of reciprocity.⁹²

35. From the language of the Beijing No. 2 Court’s decision and the prior routine handling of the REJ cases by Chinese courts including the Beijing No. 2 Court, it can be deduced that the “reciprocity requirement” was probably regarded to be satisfied in this case, although this point was not directly addressed.⁹³ Therefore, the recognition of a Chinese judgment in the German *Züblin* resulted in a positive response, and it amounted to a “profitable investment”. Before the delivery of the decision, the requested Chinese court sought the opinion of the SPC on this case; in reply, the latter opined that as the German judgment was not legally effective due to the *improper service* of the judgment, a re-application for recognition could be instituted if service were made in accordance with the Hague Service Convention—without mentioning the reciprocity issue,⁹⁴ in marked contrast to its reply in the *Gomi Akira*.⁹⁵ The reciprocity hurdle started to erode in the case, and the SPC and Beijing No. 2 Court indirectly affirmed the existence of reciprocity between Germany and China. This is indeed a very welcome and long-awaited step. The only pity in this case is that recognition was denied based on improper or illegal service of the German judgment,⁹⁶ which could have been remedied. It can be confidently expected that there will be recognition of German judgments when such other requirements are, relatively easily, met. Therefore, the *Hukla Matratzen GmbH* can be taken as the first landmark case in which a foreign court’s initiative in recognizing a Chinese judgment was considered to satisfy the reciprocity hurdle for the REJ in China.

92 See, e.g., Zhang, above n.11, 152-156.

93 Ibid, 166.

94 Reply of the Supreme People’s Court on Request for Instructions on Re Application for Recognition (and Enforcement) of Judgment 20460/07 of the Offenburg Court in the Federal Republic of Germany, the Supreme People’s Court, (2010) Minsi Tazi No. 81.

95 Reply of the Supreme People’s Court on whether the People’s Courts of the PRC should Recognize and Enforce Japanese Judgments Concerning Claims and Obligations, (1995) Min Tazi No. 17. In this case, the SPC held that Japanese judgments should not be recognized or enforced due to the lack of a reciprocal relationship.

96 Fairly speaking, the Chinese court’s denial of recognition based on the service illegality was well founded in this case since China made a clear reservation under the Hague Service Convention on service by post, which was nevertheless employed by the German rendering court.

III.B.ii. Recognition of foreign judgments as a direct response

36. In response to the recognition by foreign courts of Chinese judgments, Chinese courts have taken a further step to positively identify *reciprocal* recognition of judgments from specific countries. *Squarely* based on the prior German *Züblin* and the *Giant Light Metal Technology*, respectively, two Chinese courts have recognized a German judgment and a Singaporean judgment on a *reciprocal* basis. This is a new encouraging development after the 2010 *Hukla Matratzen GmbH*. These two cases are ground breaking, and they strongly demonstrate Chinese courts' very positive responses to foreign jurisdictions' initiative in recognizing Chinese judgments.

(1) Reciprocal recognition of a German judgment

37. On 30 July 2012, Sascha Rudolf Seehaus, acting as the trustee in a German bankruptcy proceeding, applied for recognition of a German bankruptcy judgment delivered by Montabaur Regional Court in 2009 (hereinafter "*Sascha Rudolf Seehaus*"). In the judgment, Sascha Rudolf Seehaus was nominated as the trustee of the bankrupt SP Management GmbH, with the bankruptcy estate ordered to be handed over to him, and the authority to administer the bankruptcy proceedings was granted to him as trustee. Upon examining the German judgment, the requested Chinese court—the Wuhan Intermediate People's Court (hereinafter "*Wuhan Court*")—ruled in a very brief way without much reasoning or arguments that the German judgment did not infringe the basic principles of Chinese law, state sovereignty, security and social and public interests. However, particular attention was paid to the formation of a reciprocal relationship between China and Germany. Considering that the Court of Appeal of Berlin had recognized a Chinese judgment on 18 May 2006 (namely German *Züblin*),⁹⁷ the Wuhan Court held that there was a reciprocal relationship between Germany and China (in terms of REJ), and thus it could recognize the German judgment on a reciprocal basis as sanctioned by the CPL.⁹⁸ Consequently, the German judgment was recognized on 26 December 2013.⁹⁹ What's more, the Wuhan Court applied no other defences, with no hint of any bias against the foreign judgment; instead, it noted the satisfaction of the other recognition requirements in a passing comment.

97 For the discussion of the case, see above III.A.i. *Züblin International v. Walker General Engineering Rubber*.

98 Despite the positive move made by the Wuhan Court, the irregularities may be observed in its application of the relevant Chinese rules on REJ in China. In fact, China's Bankruptcy Law 2006 (art. 5) provides for a *direct* legal basis for recognition and enforcement of foreign *bankruptcy* judgments, while this specific legal basis was completely omitted in the case though there appears to be no substantial differences between this law and the CPL regarding the REJ in China.

99 (2012) E Wuhan Zhong Minshang Wai Chuzi No. 16.

38. As the first case¹⁰⁰ in which a foreign judgment was recognized in China without the assistance of a bilateral or multilateral treaty arrangement, the perennial reciprocity problem that has lasted for more than two decades in China has finally found a means of resolution in this 2013 case, and the long-debated reciprocity issue was encouragingly tested in a positive way. Undoubtedly, this is a great step forward in the history of Chinese courts' recognition of foreign judgments. Through an explicit reference to the German *Züblin*, the Wuhan Court found that the reciprocity requirement under Chinese law had been satisfied, instead of tangling with the reciprocity requirement or interpreting it in a twisted manner to block recognition of the German judgment. This case accounts for a step *forward* after the *Hukla Matratzen GmbH*. The forward-looking gesture by the Wuhan Court was vividly shown. This unprecedented decision sets a very good example for how Chinese courts should treat foreign judgments in the future. It can thus be fairly said that the foreign courts' recognition of Chinese judgments (or the German *Züblin* discussed here) is paying off. Above all, the vicious circle surrounding Sino–foreign recognition practice seems to have been broken for the first time in practice, and a virtuous circle appears to have formed between China and Germany. This result completely conforms to the very expectation of the Berlin Court in the German *Züblin*.

(2) *Reciprocal recognition of a Singaporean judgment*

39. On 9 December 2016, the Nanjing Intermediate People's Court (hereinafter "Nanjing Court") recognized for the *first* time in China a Singaporean pecuniary judgment delivered on 22 October 2015 by the High Court of Singapore, which had ruled for KolmarGroupAG, a Swiss corporation, against a *Chinese* corporation, Sutex Group (hereinafter "*KolmarGroupAG*").¹⁰¹ With the Singaporean judgment, the High Court of Singapore awarded KolmarGroupAG USD \$350,000.00, plus interest of SGD \$4137.90. In the REJ proceeding before Nanjing Court, the judgment debtor, Sutex Group, admitted the validity of the service of process in the Singaporean proceedings, as well as receipt of the Singaporean judgment. Based on these facts, the Nanjing Court recognized the Singaporean judgment by *merely* citing art. 282 of the CPL and holding that Sino–Singaporean reciprocity existed due to the 2014 *Giant Light Metal Technology*.¹⁰² The Nanjing Court conducted no examination of other possible REJ requirements or defences.¹⁰³

100 By the Sino–foreign bilateral arrangements on judicial assistance, China had indeed recognized foreign judgments in at least two cases. See, e.g., Zhang, above n.11, 160–163.

101 KolmarGroupAG v. Sutex Group (2016) Su No. 1 Xiewai No. 3.

102 See above III.A.ii. *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd*.

103 See KolmarGroupAG, above n.101.

40. The *KolmarGroupAG* is the second landmark case in which a foreign judgment was recognized in China absent any bilateral or multilateral treaty arrangement but *squarely* based on a reciprocal tie. Following the 2013 *Sascha Rudolf Seehaus*, this case was the second positive “follow-suit” response by Chinese courts to foreign courts’ initiative in recognizing Chinese judgments. The requested Chinese court, the Nanjing Court, *directly* identified the establishment of a reciprocal tie between China and Singapore due *solely* to the single 2014 *Giant Light Metal Technology*. This case can be distinguished from the *Sascha Rudolf Seehaus* by the fact that it provided recognition of a pure *pecuniary* judgment; likewise, it encountered no extra barriers. The most significant message sent and confirmed by the case is that Chinese courts are *undoubtedly* willing and ready to recognize foreign judgments, on the condition that foreign courts have taken the initiative in recognizing Chinese judgments. As Chinese courts routinely do, particular importance was clearly shown to the reciprocity requirement in this case, with the service requirement having some significance, while other possible REJ requirements or defences were hardly touched on,¹⁰⁴ or rather they are considered easily met.

(3) *A suspected or promising future?*

41. It may be questioned whether other Chinese courts will follow what the Wuhan and Nanjing Courts have *positively* done in the 2013 *Sascha Rudolf Seehaus* and the 2016 *KolmarGroupAG*, and whether their exemplary model or experience can be copied. In any case, one thing is quite certain: Chinese courts will be pressed to consider the reciprocity requirement in a quite different way than before when requested to recognize judgments from jurisdictions whose courts have taken the initiative in recognizing Chinese judgments. With more foreign courts recognizing Chinese judgments, Chinese courts have increasingly realized the importance of recognizing foreign judgments. It is strongly believed that most Chinese courts will follow the two courts’ practice or the Beijing No. 2 Court in the *Hukla Matratzen GmbH*, and Chinese courts will be incentivized to recognize foreign judgments, just as the Wuhan and Nanjing Courts were, in order to ensure that more Chinese judgments are recognized abroad. The *KolmarGroupAG* is a further illustration of Chinese courts’ willingness to recognize foreign judgments, and it greatly strengthens the belief that a Sino-foreign reciprocal tie can be effectively established through foreign courts’ initiative in recognizing Chinese judgments. In any event, the Nanjing Court can be considered to have followed the practice of the Wuhan Court, while they both in fact followed the *positive* step of the Beijing No. 2 Court. In the wake of such cases, it is far from advisable for Chinese courts to further interpret reciprocity in a twisted and negative way.¹⁰⁵

104 Ibid.

105 Cf., e.g., He, above n.58, 31-32. The landscape for reciprocity has dramatically changed, and indeed it should not be an issue of concern for jurisdictions that accept the principle of recognition. See, e.g., Elbalti, above n.54, 184.

42. Indeed, pursuant to the popular *exequatur* procedure around the globe, reciprocity is not the only, or rather, the paramount requirement for REJ. However, as is shown in the past Chinese judicial practice reciprocity attracts the *most*, if not, entire emphasis, with other commonly cited requirements left behind. Such practice has been fairly criticized,¹⁰⁶ and it is submitted that China's future legislation and practice must also directly address such an overdue problem. In any case, it is not that Chinese courts have recognized more judgments than necessary, but that it is only the first stage for them to start to accept foreign judgments. In this vein, Chinese courts' responsive recognition of foreign judgments, on a reciprocity basis, must be encouraged, though the other requirements have been far from being appropriately applied. The reciprocity founded on a "follow-suit" model must be promoted.

43. Perhaps the only thing that could offer more definite assurance is for the SPC to issue a clear opinion on reciprocity in a new, positive way, with the Wuhan and Nanjing Courts' approach being at least followed or even further advanced. The SPC is currently moving forward with this task; it has prepared draft rules in this regard and a relatively positive stance on reciprocity can be expected. According to the newest version of the SPC rules on the REJ in China,¹⁰⁷ reciprocity can be considered to have been met under any of the following three circumstances: the prior recognition of Chinese judgments, the recognisability of Chinese judgments under equal circumstances by foreign legislation, or a unilateral commitment by foreign countries and the existence of a consensus on judicial cooperation between China and a foreign country. The draft rules are rather a confirmation of the "follow-suit" model. Even after the SPC issues this positive clarification, foreign courts' initiative to recognize Chinese judgments can still be of great significance in building or strengthening mutual trust. It is believed that this model will dominate the solution of Sino-foreign REJ impasse, if there is any. Future Chinese legislation, for example amendments to the CPL, will further affirm, rather than deviate from, the improving Chinese judicial practice. To conclude, a one-sided mentality for the resolution of Sino-foreign recognition stalemates must be discarded due to the promising Sino-foreign REJ taking shape based on a "follow-suit" model in the wake of the *Sascha Rudolf Seehaus* and the *KolmarGroupAG*: for all it is a win-win outcome.

III.C. An advisable way out found?

44. It is quite noteworthy that in recent years Chinese judgments have increasingly been recognized in other jurisdictions. This is a striking phenomenon compared with

106 See, e.g., Ge, above n.86.

107 Art. 17, Regulation of the SPC on Several Issues Relating to REJ (Draft, 6th version), June 2017. The document is on file with the author.

the circumstances of the past.¹⁰⁸ Undoubtedly, the phenomenon strikes a forceful blow to suspicions or accusations surrounding the quality of Chinese judgments or the underlying Chinese legislation or judiciary. On the one hand, it can be said that Chinese courts are addressing a growing number of foreign-related disputes, followed by more and more foreign-related judgments rendered by Chinese courts. On the other hand, we cannot deny the fact that over the years China has gradually updated its legislation and adjudication, so it meets with increasing respect and acceptance by other countries. An ambiguous but virtuous circle appears to be forming step by step.

45. The recognition issue is always a matter of concern for both the requested and the adjudicating states. To solve perennial Sino-foreign recognition impasses, it would be somewhat silly or inefficient if only the Chinese were expected to find a way out, though the current Chinese stance on REJ is far from palatable. Of course, it is also too conservative for Chinese courts to stick to the traditional attitude awaiting foreign courts' first step to recognize Chinese judgments. Past practice eloquently shows that those cases in which Chinese judgments have been recognized by foreign countries have had a significant influence on Chinese courts' practice regarding the REJ in China. The tremendous roadblock of the *reciprocity* requirement in Chinese judicial practice is seemingly met by judgments in specific countries, from both civil and common law jurisdictions. For common law courts, though they have no intention to establish reciprocity by recognizing Chinese judgments, their imitative recognition of Chinese judgments equally produces the same kind of effect in terms of satisfying the reciprocity required by Chinese courts. Practice has repeatedly shows that Chinese courts have already echoed these foreign courts' initiatives and made very *positive* responses following suit.¹⁰⁹ These responses are encouraging though still sporadic. The long criticized vicious circle appears to have been broken.

46. The foregoing discussion reveals that a "follow-suit" circle has begun to be established in Sino-foreign REJ. Foreign courts' initiative in recognizing Chinese judgments in the last few years has made a major breakthrough in exporting Chinese judgments abroad. Meanwhile, hope of expanding the Sino-foreign circulation of judgments has been intensified by Chinese courts' response of treating foreign judgments in a positive way. It is very likely that the "follow-suit" circle now formed will *repeatedly* be followed and strengthened in the coming years; any side would not like to break this circle, although the task of building it appears to fall more to foreign

108 A few years ago, we rarely learnt of any recognition by foreign courts of Chinese judgments; instead, we heard more about the accusation of Chinese legislation or judiciary and its judgments. See, e.g., n.9. It is only a recent scene for us to see the recurrent recognition of Chinese judgments abroad. In the meantime, Chinese courts used to deny the REJ in China and the Sino-Japanese recognition dilemma represents the peak of the stalemate.

109 See, above III.B. Chinese courts' responses, and the consolidation of hope.

courts' initiative. This "follow-suit" circle is a "good-to-better" circle. In stark contrast, a "bad-to-worse" circle or a deadlock circle, exemplified by the long Sino-Japanese recognition feud,¹¹⁰ must be avoided. Though Japanese courts have seldom refused recognition of foreign judgments in general, there have nevertheless been several cases in the last couple of years in which Chinese judgments have not been recognized because of lack of *reciprocity*.¹¹¹ *Instead of* taking the initiative in recognizing Chinese judgments, Japanese courts rejected them due to Chinese courts' prior non-recognition of Japanese judgments. This somewhat vengeful approach has undoubtedly contributed to and strengthened the Sino-Japanese Recognition deadlock. Japanese courts' choice to bite back is no less parochial or narrow-minded than past Chinese practice. The approach that Japanese courts have followed with Chinese judgments is *squarely* opposite to the model that is practised by the German and Israeli courts and also advocated in this paper.

47. It is of great value to ask whether it is advisable to promote the Sino-foreign circulation of judgments through the "follow-suit" model. One may question the certainty or reliability of the approach.¹¹² Indeed, such a circle is formed only on an automatic or spontaneous basis without any formal guarantee. The contemplated SPC rules on REJ in China¹¹³ may indeed bring some certainty or clarity. Nevertheless, the strong reciprocal tie established in practice should be quite reliable and, for the time being, it is the most advisable way to break the Sino-foreign recognition impasse. Any other attempts to break the recognition deadlock would largely be in vain; moreover, only this model furnishes timely resolution. Bilateral or global treaty negotiations cannot lead to any substantial breakthroughs in Sino-foreign recognition arrangements in the near term, and an advisable way out can only be found through the practical "follow-suit" model.

48. First, no guarantee is absolute. Even if a seemingly well-designed legal arrangement were worked out in the long run, it could be deviated from in judicial practice, intentionally or not. That is to say, a Sino-foreign legal arrangement, bilateral or global, on the REJ would not *per se* be sufficient.¹¹⁴ Needless to say, it may prove far more difficult to reach such an arrangement, for example, between China and the big

110 See Zhang, above n.11, 172.

111 See, e.g., Yasuhiro Okuda, *Verbürgung der Gegenseitigkeit als verfassungswidrige Voraussetzung für die Anerkennung und Vollstreckung ausländischer Urteile in Japan*, 42 *ZJapanR/J.Japan.L.* (2016), 61-73.

112 For example, one may wonder whether Chinese courts will turn to other reciprocity-related grounds or other defences to negatively echo the foreign courts' initiative recognition of Chinese judgments. In this regard, see, e.g., He, above n.58, 31-32.

113 See Regulation of the SPC on Several Issues Relating to REJ, above n.107.

114 But the values of such arrangements are also clear. See, e.g., Zhang, above n.14, 206-207. Scholars have long noticed the matter. See, e.g., Percy R. Luney,

world powers. Practice holds the key, and Chinese and foreign courts' positive practice should be demanded most. Second, courts are in a much better place to respond to the demands of reality; that is to say, they are more aware of whether and how to recognize foreign judgments. For China, this is far more pertinent in the sense that the relevant Chinese legislation on the REJ has remained stagnant since the CPL was passed in 1991, while Chinese courts have been repeatedly tested on this matter over the past three decades. The *Sascha Rudolf Seehaus* and *KolmarGroupAG* show that Chinese courts can act positively on the REJ even if they have been negative in applying the reciprocity requirement in the past. Third, Chinese courts have the leeway to treat foreign judgments in a positive way, since the CPL provides only a very general structure on the REJ and seemingly imposes no harsh requirements.¹¹⁵ Chinese courts erected the strict reciprocity hurdle *per se*, as the CPL never confined reciprocity to a stringent *de facto* reciprocity.¹¹⁶ Facing the new contemporary reality and challenges, Chinese courts in effect have discretion to interpret the CPL in a positive and constructive way, which offers a good platform for Chinese courts to make real progress in REJ. Past Chinese courts' practice also reveals that they are usually quite generous and do not become entangled in the satisfaction of recognition requirements except for the reciprocity hurdle. Therefore, to have Chinese courts fully mobilized in Sino-foreign REJ is preferable. Last but not least, in comparison with the Chinese legal stalemate, efficiency can be attained if Chinese courts are relied on to break the recognition deadlock. Legislative abandonment or a soft reciprocity stance in an updated Chinese CPL is possible, but it would be far from cost-efficient. All such considerations show that the "follow-suit" circle based on Sino-foreign courts' mutual trust and reciprocal treatment is the most advisable means to end Sino-foreign recognition impasses, which will be further proved by the future SPC rules on REJ in China.

IV. Conclusion: Predicting the Future

49. Our era of globalization witnesses the rising significance of the cross-border circulation of judgments. However, the achievements made in this field have fallen far short of our expectations. Accordingly, effectively moving foreign judgments between jurisdictions presents a great, though not insurmountable, task. In the short run, we have only a gloomy picture of the likelihood of countries working together towards a truly *global* recognition scheme. If a *bilateral* recognition arrangement can be successfully sought between China and other countries, practice shows that this effort can be

Traditions and Foreign Influences: Systems of Law in China and Japan, 52 *Law and Contemporary Problems* (1989), 129-150.

115 See above II. China's Legislation and Judicial Structure.

116 See the CPL, art. 282.

rewarding in the sense of promoting Sino–foreign REJ.¹¹⁷ However, as of today, only a limited number of countries have concluded such bilateral treaties with China¹¹⁸ and, in the near future, there is little hope for agreement to such treaties, in particular, between China and the big powers, between which a relatively free REJ mechanism is nevertheless needed most.¹¹⁹ On the positive side, countries are now making positive gestures to treat foreign judgments based on *domestic* law. It is a pity that China lags behind mainstream global practice, as absent bilateral or multilateral arrangements, foreign judgments are still rarely recognized in China. The root of this can be found in both Chinese legislation and the judiciary, with the traditionally conservative or somewhat parochial stance¹²⁰ of Chinese courts playing the greatest contributory role in this roadblock. But this is not to say that the Chinese judiciary or legislature is the only institution to blame for this embarrassment. In other words, the disentanglement of the impasse surrounding the Sino–foreign REJ requires foreign jurisdictions to make endeavours too, and the “follow-suit” approach of incentivizing Chinese courts has proven very effective in breaking this perennial stalemate. The list of countries taking the initiative to recognize Chinese judgments is expanding, but the pace of expansion can be accelerated.

50. Specifically, foreign courts must *directly* face or respond to the concerns of Chinese courts. Past Chinese judicial practice indicates that the *reciprocity* hurdle is the first and foremost concern, and the passing of it clears most, if not all, roadblocks on the way to the REJ in China. This paper’s empirical study shows that in recent years foreign courts have seized the initiative to respect Chinese adjudication and recognize its judgments; this is a new, landmark phenomenon. To China, the paramount significance of such positive moves lies rightly in the satisfaction of the *reciprocity* requirement. The exemplary *Sascha Rudolf Seehaus* and the *KolmarGroupAG*, decided by the Wuhan and Nanjing Courts, respectively, offer a vivid, promising example. More Chinese courts will follow this trend. To the outside

117 Except for the *Sascha Rudolf Seehaus*, the limited number of recognition of foreign judgments in China was significantly assisted by the existence of the Sino–foreign bilateral treaties containing the REJ arrangement. A very recent case is the *Application by Przedsiębiorstwo Przemysłu Chłobniczego Fritar S.A., Poland for the Recognition and Enforcement of a Polish Judgment*, Ningbo Intermediate People’s Court of Zhejiang Province, [2013] Zhe Yong Minquezi No. 1. Under the case, the Polish judgment was recognized predominantly based on the Sino–Polish treaty on civil and commercial judicial assistance containing the REJ arrangement. For two other prominent Sino–foreign bilateral treaties-based REJ in China, see Zhang, above n.11, 161–162.

118 See, e.g., Zhang, above n.14, 206.

119 For general analysis of the purposes of reaching bilateral treaties on REJ, see, e.g., Michaels, above n.4, para.13.

120 See also Guangjian Tu, *Private International Law in China* (2016), 169.

world, such positive moves send a very clear message: that Chinese adjudication is reliable and Chinese courts are willing to follow foreign courts to form a *reciprocal* tie. The initiative by some foreign courts to recognize Chinese judgments can be confidently said to pay off and, therefore, foreign courts are strongly advised to start or further strengthen a “follow-suit” circle, whose values will be affirmed in the coming SPC rules on REJ in China. Once the *reciprocity* impasse and the issue of mutual trust are resolved in practice, a promising future can reasonably be expected, although caution is required regarding other possible grounds of refusal employed by Chinese courts.¹²¹ The need remains to establish a more updated and systematic legal system on REJ in China, but positive and beneficial interaction between Sino-foreign judiciaries can break the deeply rooted stalemate in a far more efficient manner, which is exactly what is now urgently required. This is the advisable way to welcome a new Sino-foreign REJ relationship. Constructive interaction between Chinese and foreign courts is exemplary for resolving the current Sino-foreign recognition dilemma. To conclude, mutual trust and foreign courts taking the initiative to recognize Chinese judgments, with Chinese courts’ following suit, signals the arrival of a new Sino-foreign recognition era. A breakthrough in the Sino-foreign recognition impasse has arrived through practice, and both sides are strongly advised to seize it.

V. Postscript

51. While this paper was in press, the Wuhan Intermediate People’s Court, the same court recognizing a German judgment in *Sascha Rudolf Seehaus*, delivered judgment in *li Liu v. Li Tao & WuTong* [(2015) E Wuhan Zhong Minshang Wai Chuzi No. 00026], recognizing a pecuniary judgment of Los Angeles Superior Court. In this case, the Wuhan Court ruled in favor of the existence of reciprocity between US and China due to the prior recognition of a Chinese judgment by a US court, namely the judgment in *Hubei Gezhoubu Sanlian*. Because the reciprocity requirement was met, the Los Angeles judgment was easily recognized. This case follows the same vein of logics and gesture in *Sascha Rudolf Seehaus* and *KolmarGroupAG*, and marks the latest success of the “follow-suit” model.

121 Commentators have observed that Chinese courts rarely consider other refusal grounds which are far from being the central concern of Chinese courts; even if other refusal grounds were considered, it is very seldom that Chinese courts would apply them. However, special attention should be paid to the due service requirement, which may play a very prominent role. See, e.g., Zhang, above n.11, 161-162; Qisheng He, Yuwai Songda Zhidu Yanjiu [Studies on Service of Process Abroad] (2006), 241-252.