

China's Presumptive Reciprocity on Recognition and Enforcement of Foreign Judgments

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Abstract

China adopts presumptive reciprocity as a new principle for its recognition and enforcement of foreign judgments. It presumes that China is in reciprocal relationship with foreign state unless being proved, especially by refusal precedent, such foreign state denying that. This principle takes important role in the process of China's shift from de facto reciprocity to de jure reciprocity. It's of great value to the judicial efficiency of Chinese courts and overseas protection of China's creditor. However the specific rule of presumptive reciprocity is still vague and unstipulated in law. This article seeks to suggest rules for the application of this principle, by analysing the relevant theory, China's judicial practice and issues comprehensively. This article finds the following applicable rules. A prima facie ascertainment shall be applied before use of presumptive reciprocity in order to exclude those foreign states which are impossible to meet de jure reciprocity. Ascertainment on refusal precedent should be on the basis of that precedent constitutes denial of reciprocal relationship, inequality of reciprocity or review of merits, instead of the mere result of that precedent.

Keywords: Recognition and Enforcement; Presumptive Reciprocity; Prima Facie Ascertainment; Review of Merits

1. Introduction

In bilateral international relationship regarding recognition and enforcement of foreign judgments [abbreviated as REFJ], the principle of reciprocity may be used by states on the condition that no corresponding treaty between them. Reciprocity, in this context and background, refers to such a treatment that requested state will recognize and enforce the judgment made by original state on the same method that original state recognizes and enforces the judgment made by requested state.

With rapid increase of China's investment towards foreign states under the Belt and Road Initiative, it's important for China to get its judgments concerning foreign affairs granted by foreign states. The 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [the Convention] was entered into force on September 1st, 2023, while China is not contracting party of this convention (Hague Conference on Private International Law [HCCH], 2023). Thus bilateral treaty and reciprocity are two main ways to get Chinese judgment granted by foreign states. In this situation, reciprocal relationship is easier to be reached than treaty.

For the purpose to establish reciprocal relationship broadly, China adopted in recent years a new principle called presumptive reciprocity. On the issue of REFJ, China presumes the existence of reciprocal relationship with foreign state unless being proved such foreign state denying the existence of reciprocal relationship with China. In a sense it constitutes a unilateral proposal to establish reciprocal relationship from China.

China takes REFJ important. China Civil Procedure Law [CCPL] got modified in 2024. Provisions regarding foreign affairs especially REFJ is the crucial part being modified. Nonetheless this amendment doesn't create rules for presumptive reciprocity. This principle only appears in official policy and judicial case in a form of principle. Thus the validity and applying method of presumptive reciprocity remain vague. Maybe this vagueness indicates the cautious attitude of China toward this principle.

In the absence of relevant rule entered into force, China's judicial practice is a very important way to formulate and fulfill the theory of presumptive reciprocity. To research the potential problems lies in judicial practice will help understanding and developing this principle.

Considering that Hong Kong, Macao and Taiwan have their own rule on REFJ, China mainly refers to China Mainland in this article.

2. The Adaptability of China's Rules to Reciprocity

Considering the equivalent feature of reciprocity, the domestic rules on REFJ of both requested state and original state need to be considered jointly. Only equivalent rules can allow these two states maintain a reciprocal relationship. Thus it's necessary to discuss whether China's rules on REFJ are acceptable to international community.

The CCPL stipulates the general rules on REFJ. Article 299 is about the method to decide whether to recognize and enforce foreign judgment. In this judicial procedure, firstly the court reviews whether the original state, which made the judgment to be reviewed, has relevant treaty with China, or be in reciprocal relationship with China. If the original state meets either relationship of treaty or reciprocity, secondly the court reviews whether the foreign judgment contradicts the basic principles of Chinese law or violates sovereignty, security and public interest of China. If neither of them is met, the court shall recognize the foreign judgment. And if the recognized foreign judgment needs to be enforced, the court shall then enforce it.

2.1 Definition of Foreign Judgement

The definition of foreign judgment in several domestic rules of these states determines whether their rules are equivalent on scope of application of REFJ.

Article 299 is applied for "legally effective judgment and order made by a foreign court". The definition of "judgment and order" determines the scope of application. Chinese court once enacted rules for court's trial on REFJ in a Minutes ("Minutes of the National Symposium on the Foreign-related Commercial and Maritime Trial Work of Courts," 2022). This Minutes stipulates specifically the "judgment and order" refers to legal documents that made decision on substantial dispute. It shall be verified by substantial content of legal document. Meanwhile, the definition of foreign judgment in the Convention is "any decision on the merits given by a court, whatever that decision may be called." Merits means the substantial rights and obligations of parties, and "substantial dispute" aforesaid should be interpreted as dispute that

determine the rights and obligations of parties. Therefore Chinese law and the Convention share a same definition on foreign judgment.

However, some common law states require the foreign judgment not only legally effective but also final. For example, Canada holds requirement of finality. If the foreign court retains the power to vary or otherwise modify or recall its own judgment, the judgment is not final and is thus not enforceable (Erin Hoult & Daniel Styler, 2018, p.48). Hong Kong also holds requirement of finality. In case *Chiyu Banking Corp. Ltd. v. Chan Tin Kwun*, [1996] 2 H.K.L.R.395 (H.C.), Hong Kong once refused recognizing a judgment of China Mainland on the grounds that the judgment is not final, which is because court in China Mainland is able to retrial the case which was made judgment by the court itself. But later Hong Kong made *The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance* (Cap.645) to recognize and enforce judgment of China Mainland in 2024. Finality of judgment is no longer an issue for China Mainland judgment to be recognized in Hong Kong. Singapore also holds requirement of finality, but China and Singapore is in reciprocal relationship. Requirement of finality is not an absolute reason to refuse recognition of China's judgment in common law states. But it remains a potential risk for China.

2.2 Review Procedure and Refusal Consideration

In the judicial procedure, applicant shall submit written application to the court with jurisdiction, and respondent shall be served by court, both applicant and respondent appear in front of court and make their allegations. Finally the recognition is made by a written order with effectiveness to enforcement. The main text of the order is in the form of "recognize [the code and name of foreign judgment] made by [the name of foreign court] on [the date of foreign judgment]". It means the order won't record the specific content of the main text of the foreign judgment.

The review of treaty is prior than of reciprocity, because treaty may have stipulated the specific rule and scope of review in the case. By directly searching and counting relevant treaties in Treaty Database of China, there are 38 foreign states which enacted civil and commercial judicial assistance treaty with China till 2023. The 38 states include Iran, Ethiopia, Brazil, Algeria, Kuwait, Bosnia and Herzegovina, Greece, Poland, Mongolia, Romania, Turkey, Ukraine, Cyprus, Peru, UAE, Argentina, Tunisia, Morocco, Hungary, Kyrgyzstan, Tajikistan, Russia, Cuba, Kazakhstan, Belarus, Egypt, France, Spain, Italy, Bulgaria, Laos, Lithuania, North Korea, Uzbekistan, Vietnam, Thailand, South Korea, and Singapore. Except treaties with Thailand, South Korea and Singapore, all the treaties aforesaid are with content of recognition and enforcement of judgment. Only if there's no treaty with content of recognition and enforcement will the court start reviewing reciprocal relationship.

Article 300 of the CCPL is the general rule to refuse REFJ, both under treaty and reciprocity. It includes the following conditions: (a) The court of origin has no jurisdiction; (b) The respondent's procedural rights in litigation get harmed; (c) The judgment is obtained by fraud; (d) The judgment is inconsistent with a prior judgment made by Chinese court; (e) The judgment contradicts the basic principles of Chinese law or violates sovereignty, security and public interest of China.

If any of these conditions is met, the foreign judgment will be refused. Comparing with the rules in the Convention and China's relevant treaties, they are in a high similarity. The Convention stipulates that recognition and enforcement may be refused if the defendant was not notified duly; the judgment was obtained by fraud; the judgment is incompatible with the public policy of requested state; the court of origin lacked jurisdiction; or, the judgment is inconsistent with a prior judgment. Considering the persuasive power of the Convention,

China's refusal rule on REFJ can be widely accepted by international community.

All these refusal conditions don't relate to the merits of foreign judgment. However there is one exception in Chinese law, if the main text of foreign judgment includes punitive damages and it's obviously beyond reasonable amount to cover actual loss, court may not recognize or enforce the excessive part of punitive damages.

In a conclusion, it's convincing that China's rules on REFJ are acceptable to international community.

3. China's Policy and Practice Regarding Presumptive Reciprocity

On the basis of the present domestic rules on REFJ, China is confident on advancing the principle of presumptive reciprocity. By analysing relevant policy and practice of China, the progress and obstacle on presumptive reciprocity may be found.

3.1 Verification of Reciprocal Relationship

Presumptive reciprocity was put forward firstly in The Nanning Declaration at the second China-ASEAN Justice Forum in 2017. According to the Nanning Declaration, if there is no precedent of refusing to recognize and enforce civil and commercial judgments on the grounds of reciprocity between two states, it's presumed to have reciprocal relationship between them within the scope permitted by their several domestic laws. Then Supreme People's Court reasserted that courts shall adopt the judicial criterion of presumptive reciprocity ("Opinions of the Supreme People's Court on Further Providing Judicial Services and Guarantees by the People's Court for the Belt and Road Initiative," 2019). After these policies, the Minutes was made.

According to Article 44 of the Minutes, reciprocal relationship can be verified in any of the following conditions: (a) China's judgment can be recognized and enforced pursuant to the law of the original state. (b) The original state reached consensus with China on reciprocal relationship. (c) Unilateral commitment for reciprocal relationship has been made through diplomatic way by China or the original state, and no evidence showing that original state ever denied China's judgment by the reason of nonexistence of reciprocal relationship.

The conditions of Article 44b and 44c should be with diplomatic documents thus they are easy to be verified. Such like the case *Power Solar System Co., Ltd. v. Suntech Power Investment Pte. Ltd.* [(2019) 沪 01 协外认 22 号] made by Shanghai First Intermediate People's Court in 2021. In *Power* case Chinese court recognized Singaporean judgment on the grounds of reciprocity. It's because a Memorandum regarding REFJ was signed between China and Singapore.

On contrast, the condition of Article 44a is depending on the domestic law of foreign state. For those foreign states which have no granting precedent to China's judgment, there are two obstacles to ascertain their laws.

Firstly, it's kind of difficult to accurately ascertain the law of foreign state. Secondly, on the circumstance that original state also holds principle of reciprocity, the court's review on whether this state recognizes China's judgment will become a review on whether China recognizes the judgment of this state. Considering the purpose of this review is to judge whether China to recognize, it's a paradox that means become purpose itself.

Presumptive reciprocity shows its value towards these obstacles. For the paradox, court presumes the existence of reciprocal relationship thus it should grant recognition. For the ascertainment, court needs only to review whether the foreign law refuses to recognize,

especially if there's any refusal precedent. The practice of presumptive reciprocity can be legitimated by Article 44a as a way of ascertainment.

3.2 Precedent of Presumptive Reciprocity

Spar Shipping AS v. Grand China Logistics Holding (Group) Co., Ltd. [(2018) 沪 72 协外认 1 号] is a precedent adopting presumptive reciprocity to recognize UK judgment. It was made in 2022 by Shanghai Maritime Court [SMC]. On the basis of neither treaty nor reciprocal precedent exists between China and UK, SMC deemed in its order that: (a) According to UK law, UK doesn't take the relevant treaty as necessary precondition to recognize and enforce foreign judgment in civil or commercial matters, therefore China's civil and commercial judgment can be recognized and enforced by UK court; (b) Respondent failed to prove any legal or de facto obstacle existing on the recognition and enforcement of China judgment in UK court; (c) No precedent that UK court refused to recognize and enforce China judgment on the grounds of nonexistence of reciprocal relationship, and; (d) No other conditions to refuse recognition. Finally, SMC granted the recognition of two UK judgments made by EWHC and EWCA.

The Conclusion of this case implies presumptive reciprocity. The court find that UK and China are under reciprocal relationship while it didn't discuss explicitly the sufficient preconditions in UK law to get recognition.

According to England and Wales law, if neither treaty nor statute grants a foreign state reciprocal treatment on recognition and enforcement, a money judgment can be enforced under common law. The leading case which summarizes the key requirements is *Adams v. Cape Industries plc* (1990) Ch433 (Charles Falconer et al., 2014, p.125). For enforcement, a new case must be commenced in court of England and Wales and this foreign judgment is submitted as evidence. Then the court sees the foreign judgment as a contract debt and makes a summary judgment basically identical to this foreign judgment. The summary judgment is without trial unless being impeached by defendant. A foreign judgment which is final and conclusive on the merits cannot generally be impeached for any error either as to fact or law (Standing International Forum of Commercial Courts, 2020, p.123). Such a summary judgment is without requirement of treaty or reciprocity. China's judgment is able to get enforced under UK common law.

SMC also mentioned this common law practice in this case. In a sense the court implicitly agreed the validity of this common law practice without discussing whether such summary judgment constitutes recognition, especially on the circumstance that UK has its registration procedure for recognition of foreign judgments under UK statutory law.

3.3 Obstacles to Presumptive Reciprocity

As aforesaid, presumptive reciprocity has no rules entered into force. It makes presumptive reciprocity lacks legitimacy and applicability. A theoretical foundation can help to build this principle legitimacy. Further by the theoretical guide, a practical way to apply this principle within the structure of current law can be found.

4. Theoretical Analysis on Presumptive Reciprocity

4.1 International Comity

In absence of treaty obligation, one state giving treatment of recognition and enforcement to another is the right not obligation. One state can give such treatment without requirement of

reciprocity. China recognizes foreign judgment on the dispute of divorce without requirement of reciprocity or treaty. Such a unilateral treatment constitutes international comity. Firstly, it benefits the original state for its jurisdiction is guaranteed. Secondly, there's no obligation for requested state to ensure the treatment. Thirdly, the requested state can seek no consideration or commitment from the original state. This treatment is still a comity if requested state requires equivalent reciprocal treatment.

Domestic law and its practice of requested state should be seen as in a blackbox. To recognize a judgment is internal affairs of requested state, which is under jurisdiction and by sovereignty of that requested state. It's not convenient for original state to predict what conclusion would be made. The original state should only anticipate the conclusion because domestic law of requested state is not commitment or obligation to original state. Presumptive reciprocity proposed by Nanning Declaration only requires no precedent of refusing recognition on the grounds of reciprocity. This standard is results-orientated and it doesn't consider the domestic law of the original state.

The fundamental purpose of a state holds principle of reciprocity is not to protect its sovereignty. Wenliang Zhang (2014, p.85) said the reciprocity requirement has a large connection with a generalized distrust of other countries' courts, especially in the circumstance that the prevailing party of judgment is a citizen of the original country while the losing party is a citizen of the requested party. The fundamental purpose is to guarantee the oversea interests by the creditor of original state under judgment can get protected by requested state. John F. Coyle (2014) served an example. USA approved the Semiconductor Chip Protection Act in 1984 to protect the intellectual property of mask works, and a reciprocity clause was included which stipulates that only the foreign state to recognize this new type of intellectual property of USA will USA recognizes that intellectual property of the foreign state. As a response, former European Community adopted legislation to protect intellectual property of mask works in 1989.

4.2 Res Judicata

A judgment which falls into refusal conditions thus being refused shall not be a refusal precedent. Only an outcome of refusal doesn't entitle it to become refusal precedent. This judgment is still entitled procedural right to be recognized despite it is refused in the end. As discussed before, these refusal conditions are all relate nothing with the merits of judgment. The Convention stipulates "no review of the merits of the judgment in the requested State" as general provision. China also follow the principle of no review of merits, despite China doesn't explicitly stipulate so.

The principle of no review of merits can be explained by the doctrine of res judicata, which means once a dispute has been made final judgment, the parties shall not sue for the same dispute again. Res judicata is widely accepted by civil law system and common law system. If a final judgment has been made in one state, the parties shall not be incurred a litigation on same dispute in another state. Hans Smit (1962) thought the principle underlying the doctrine of res judicata provides the only logical and satisfactory explanation for recognition of foreign judgments.

Recognition as a practice of international res judicata protects the rights of both parties in private law. And the refusal conditions can be explained as a review of whether the foreign judgment is a valid final judgment.

The Nanning Declaration sees a refusal precedent only be on the grounds of reciprocity. If a judgment is refused because of a refusal condition relating res judicata, then it's not a refusal precedent on the grounds of reciprocity. It implies that China and ASEAN states seek

a treatment of *res judicata* for their judgments, instead of a treatment of being recognized absolutely.

Therefore, a refusal precedent may refer to a case that original state refuse to grant a treatment of *res judicata* to a judgment of requested state, on the grounds of no relationship for recognition and enforcement exists.

5. Issues and Advices on Judicial Practice

Whether to grant recognition according to presumptive reciprocity is an issue to be decided case by case. However, a granting precedent still has a strong persuasive power to influence the attitude of relevant foreign state. A unified, persistent and reasonable standard to apply presumptive reciprocity is important for it can prevent potential diplomatic risk which arises from judicial practice.

5.1 Presumption and Prima Facie Ascertainment

Reciprocity can be sorted by its requirement as *de facto* reciprocity and *de jure* reciprocity (Ma Mingfei & Cai Siyang, 2019). *De facto* reciprocity requires a precedent which grants recognition and enforcement has been made before by original state. *De jure* reciprocity requires the original state will give reciprocal treatment, regardless whether a granting precedent existed. China adopted standard of *de facto* reciprocity for a long time. After promulgating the Minutes, China shifts to standard of *de jure* reciprocity. Hence, presumptive reciprocity should be construed under standard of *de jure* reciprocity.

Presumptive reciprocity emphasizes the standard of proof. As for Spar Shipping AS case, SMC ascertained the domestic law of UK according to the standard of *de jure* reciprocity on the condition that no UK granting precedent for *de facto* reciprocity. However, the ascertainment of UK law in this case didn't reach the specific rule of the sufficient condition for recognition and enforcement. On the contrary, presumptive reciprocity is applied to reduce the requirement of proof.

Presumptive reciprocity can be only a supplementary and secondary standard to *de jure* reciprocity. It would be dangerous to consider presumptive reciprocity as the sole and decisive standard. Because those states which won't recognize China's judgment but still no refusal precedent has ever happened will pass the test of presumptive reciprocity easily. If a *prima facie* ascertainment on original state law is enough to make sure that original state won't recognize China's judgment, there is no more need to apply presumptive reciprocity to find a refusal precedent. Also, under *de jure* reciprocity, an active ascertainment on original state law is necessary and supposed.

A balance between *prima facie* ascertainment and presumption should be stroked. *Prima facie* ascertainment serves grounds for presumption. The precondition of presumption is the presumed fact should not be impossible. Thus, *prima facie* ascertainment should make sure the REFJ is possible. For the possibility it's obvious that original state should have a judicial procedure for REFJ, and such a procedure doesn't excludes China explicitly. And it should allow the potential risk that China's judgment may be refused finally. Like aforesaid the risk that Chinese judgment may be refused by the requirement of finality.

5.2 Ascertainment of Refusal Precedent

Whether a case constitutes a refusal precedent should be based on the nature of this case, instead of what original state alleges. There may be three types of refusal precedent. First type is that which refused on the grounds of nonexistence of reciprocal relationship. Second type is that which refused on the grounds of refusal conditions but breaks the equality of reciprocity.

Third type is that which reviewed on the merits of recognized judgment. Nanning Declaration didn't mention the second and third types, but it's the due meaning for "recognition" that allowing some refusal conditions and preventing review of merits.

5.2.1 Nonexistence of Reciprocal Relationship

For the first type, there are some exceptional situations which remain the reciprocal relationship need to discuss.

From a view of space, many states have multiple judicial zones within their territory. As a result, the reciprocal relationship may exist between parts of territories of two states. It's more reasonable to judge whether a reciprocal relationship exists between two judicial zones, instead of sovereign states. A judicial zone of state A denying reciprocal relationship with state B should not influence the reciprocal relationship between rest part of state A and state B.

From a view of time, the original state may have both refusal precedent and granting precedent, and the new one should be considered. For example, China once refused to recognize the judgments of Germany and South Korea, but later China granted to recognize the judgments of Germany and South Korea on the grounds of de facto reciprocity, because precedents of recognizing China's judgment were made by Germany and South Korea in the intermediate period (Fan Bingyi, 2021). From the view of Germany and South Korea, the true will of China should be seen from the new granting precedent instead of old refusal precedent.

For the situation that original state denies reciprocal relationship on the grounds that China at first made refusal precedent, it's hard to break the dilemma only based on current legal rules. If China wishes to actively establish reciprocal relationship with such a state, China must grant recognition at first notwithstanding the requirement of Article 44 of the Minutes. It's more a diplomatic issue rather than judicial issue.

5.2.2 Inequality of Reciprocity

On the precondition of having reciprocal relationship between two states, it's still possible that the several scopes of reciprocity of these two states are different. One state may recognize all types of civil and commercial judgments while another state may only recognize monetary judgment. Consequently, the reciprocal relationship may be reached only within a limited scope of judgments.

A refusal precedent which is beyond the limited scope of reciprocity of original state should not become a reason by requested state to deny a judgment within this limited scope of reciprocity. As for whether such a refusal precedent precludes reciprocal relationship which is beyond the scope of reciprocity of original state but within the scope of reciprocity of requested state, it depends on whether the requested state requires an absolute equality on the scope of reciprocity.

Generally, every state has different exclusive jurisdictions over certain types of cases, and a foreign judgment which is in contradiction with exclusive jurisdiction won't be recognized. Also, they have different limitation periods for the procedure of recognition and enforcement. This inequality is obvious and predictable because the boundary of reciprocity of every state is stipulated by their laws. But the boundary indicates only the maximum possibility of scope of reciprocity. Reciprocal relationship may be independently reached in a part of that scope of reciprocity.

5.2.3 Review of Merits

Review of Merits should be seen as substantial refusal to recognition. It's evident that merits are reviewed if court trials the merits again. No matter whether an amendment is made

to the conclusion of foreign judgment, the parties lost the right of res judicata and spend unnecessary time and costs any way.

Considering the purpose of reciprocity of requested state is to ensure the party who won a case in requested state can be protected the same way by original state, if the party who lost a case in requested state initiates a new litigation in original state, and the party who won submits the previous judgment of requested state as evidence for his pleading in new litigation, does that relate to recognition? If the answer pleading failed and a new judgment was made, the purpose of reciprocity failed. Such situation may constitute a refusal precedent.

In Spar Shipping AS case SMC also discussed case Spliethoff's bevrachtungskantor BV v. Bank of China Limited [2015] EWHC 999 (Comm) with considerable paragraphs. Spliethoff case was submitted by applicant as evidence in Spar Shipping AS case to prove that UK had precedent to recognize China's judgment. In Spliethoff case, the defendant submitted two Chinese judgments as evidence for its pleading, EWHC recognized these two judgments but plaintiff won the litigation in the end. SMC found Spliethoff case not a precedent because of the following reasons. Firstly, both the parties and the object of litigation are different between Spliethoff case and the case which made aforesaid two China's judgments. Secondly, there's no evidence to show that recognition in answer pleading, instead of a formal procedure for recognition, also constitutes recognition in the definition of recognition and enforcement of foreign judgment.

5.3 Burden of Proof

According to presumptive reciprocity, respondent is anticipated to prove the existence of refusal precedent or the nonexistence of reciprocal relationship. It minimizes the applicant's burden to prove the existence of reciprocal relationship and the court's duty on ascertainment. On this point, presumptive reciprocity shows great value on evidence and ascertainment. American Law Institute also proposes in its model law that the debtor of foreign judgment shall be responsible to prove the original state won't recognize and enforce USA judgment (LIU Ya-jun & CHEN Wan-shu, 2020).

If so, what's the balance of responsibility among applicant, respondent and court on evidence and ascertainment? Court takes responsibility to ascertain applicable foreign law according to Chinese law. Ascertainment of reciprocal relationship pursuant to Minutes also belongs to ascertainment of foreign law. Parties may provide foreign law but that's just supplementary and unnecessary to court's duty on ascertainment.

Both prima facie ascertainment and presumption shall be the duty of court. To find a refusal precedent is not a passive obligation incurred by court but an active right for respondent. Prima facie ascertainment needs a unified standard on the minimum possibility that Chinese judgment may be recognized. For a foreign state which has no granting precedent, it's extremely hard to demand court to make sure whether Chinese judgment can be recognized absolutely or not. It's hard to prove something will happen, especially something relating judicial sovereignty of foreign state. So an ascertainment based on possibility and presumption is practical and necessary to de jure reciprocity.

6. Potential Influence on Foreign Relations

Major western states and most former Comecon states are under treaty or reciprocity with China. However, no evidence to show some important states, such like Japan and India, are under treaty or reciprocity with China. Let alone most third world states. Considering the Belt and Road Initiative, the judicial assistance on recognition and China's oversea interests are disproportional.

Seen from a broad perspective, the reciprocity requirement as a precondition for the recognition and enforcement has already faded and lost its popularity around the world (Wenliang Zhang, 2014, p.86). This trend benefits Chinese judgment to get recognized unilaterally by those states which have no reciprocal requirement. Despite that, it's still necessary for China to hold principle of reciprocity. Presumptive reciprocity seems best option to enlarge reciprocal relationship.

A great portion of those states not under treaty or reciprocity with China are Commonwealth states. China has granted reciprocal treatment to some common law states including UK and Singapore. And they two recognize the foreign judgment by a new summary judgment under the common law theory that the foreign judgment as a debt independent of the debt on which the foreign judgment is based. Such summary judgment is in high possibility being adopted by those rest commonwealth states. For those states which also adopt summary judgment, they may have more confidence that they can pass the test of China's presumptive reciprocity.

6.1 Situation of Canada and Australia

In Australia, there are two way to enforce foreign judgments in common law practice. The judgment creditor can sue for the judgment amount as debt in Australian court. He can also bring a new action in Australian court on the original cause of action of the foreign judgment, and the foreign judgment becomes an estoppel which prevents the judgment debtor to raise any defense (Beverley Newbold & Tamlyn Mills, 2018, p.23). The first way is a summary judgment while the second way is somehow a fresh new case.

In Canada, except province of Quebec which is under civil law regime, a foreign judgment would be recognized and enforced under common law. An action on a foreign judgment is often commenced by a statement of claim for the amount of the judgment, and can be pursued by way of a motion for judgment (Erin Hoult & Daniel Styler, 2018). They all adopt summary judgment as the way to enforce foreign judgment, which is similar like the common law practice of UK.

6.2 Situation of India

As for India, according to Article 44A of the Indian Civil Procedure Code 1908, India will execute decrees passed by Courts in reciprocating territory as if it had been passed by the District Court. "Reciprocating territory" means foreign state and region which is declared by notification in the Official Gazette by Indian government. Hong Kong is a reciprocating territory to India. But China Mainland is not a reciprocating territory. It's similar like the recognition under statutory law of UK.

For the judgments made by those states not reciprocating territory to India, a new case should be initiated in India, and the foreign judgment will be submitted as evidence. But, such an action is treated as though it were any other suit filed before an Indian court, with parties having the right to lead evidence and advance arguments on the merits of the claim (Amar Gupta & Ananya Kumar, 2023). It's not similar like the summary judgment of UK which has no review on merits. India may not be able to pass the prima facie ascertainment, thus presumptive reciprocity may not be applied.

6.3 Situation of Japan

According to Japanese law, to recognize a foreign judgment requires "mutual guarantee exists", which means the requirement of reciprocity (Masahiro Nakatsukasa, 2018, p.111).

Japan was once refused by China firstly on recognition of a Japanese judgment, and then

Japan refused recognition of a Chinese judgment (张先春, 2021). Consequently, China and Japan aren't in reciprocal relationship which they could be. As discussed before, it's hard to solve the dilemma within current law or by the principle of presumptive reciprocity. Both Germany and Japan require reciprocal relationship as their precondition to recognize foreign judgment. Germany was once denied by China firstly on recognition too, but Germany still recognized China's judgment in the case Vgl. Urteil des Kammergerichts Berlin vom 18.05.2006, Aktenzeichen 20 Sch 13/04. In this German recognition, German court indicated that it should consider that if one party grants recognition at first, whether the other party will follow to grant recognition. China should also consider whether Japan will follow. If there's no substantial obstacle between China and Japan to establish reciprocal relationship, China may grant recognition at first, as an exception to presumptive reciprocity.

7. Conclusion

Presumptive reciprocity makes it easier to establish reciprocal relationship with those states which have no precedent of recognizing China's judgment. As consequence, the right of Chinese creditor is more possible to get protected worldwide.

In the judicial procedure of recognition in China, parties' burden of litigation is reduced. Parties' civil rights on the aspect of *res judicata* get respected better. Also court's duty on ascertainment is reduced too. It enhances the judicial efficiency on REFJ in China. Presumptive reciprocity is subject to *de jure* reciprocity. Presumption must be considered with *prima facie* ascertainment collaterally and constrained by it. A minimum standard of *prima facie* ascertainment needs to be found.

Refusal precedent should be interpreted and considered broadly rather than only a case refusing recognition on the grounds of nonexistence of reciprocal relationship. Review of merits and inequality of reciprocity are also possible to become reason to constitute a refusal precedent. Also, a refusal precedent should not have power to deny all the reciprocal relationship. Refusing recognition by requested state should be equivalent in a way to the refusal precedent of original state.

Although the rule of presumptive reciprocity is still vague, presumptive reciprocity has been implemented into review of recognition. The issue of recognition and enforcement is indeed both judicial issue and diplomatic issue. And this practice ensures the room for diplomatic consideration. China should not consider presumptive reciprocity as a mere legal standard, but also consider it as a flexible diplomatic tool to actively alter the situation of reciprocal relationship with foreign states.

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