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Significance of International Commercial Arbitration System: from a Perspective of Case Study

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Abstract: *International commercial arbitration is the main form of coping with international commercial disputes after the Second World War. For enterprises, the rational use of international commercial arbitration system can safeguard their legitimate rights and interests; for governments, the establishment of international commercial arbitration system with each country's own characteristics can improve their discourse power in the world economy. This paper will explore the significance of international commercial arbitration system for enterprise management and the government through case study and analysis.*
Key Word: *International commercial arbitration; operation of enterprise; own characteristics; significance*

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I. Introduction

1.1 Background

1.1.1 The development history of commercial arbitration system

Disputes are inevitable in international commercial transactions. Various legal backgrounds or cultural differences may lead to disputes.

Arbitration, as one of the ways to solve commercial disputes, has a long history in the world. As early as the ancient Roman period, the practice of settling commercial disputes by arbitration appeared in human society. However, commercial activities were very limited, and commodity transactions were relatively narrow in space and scale at that time, so the commercial arbitration system failed to be further developed. Until the eleventh century, the city of Venice became a port for the transfer of military goods, thus creating a suitable environment for the development of commodity trading and freight transport rapid, and then giving birth to the origin of the modern commercial arbitration system. In 1347, written records on arbitration appeared in the UK. In 1698, the UK enacted the first arbitration act, but the provisions were relatively simple. In 1807, *French Civil Procedure Code* was enacted, which made special provisions for arbitration [1].

Early arbitration is mainly used to solve domestic debt disputes, and the content is relatively simple. Since the 20th century, many capitalist countries have formulated the legal system of arbitration, which makes arbitration gradually accepted by the world. After the Second World War, arbitration has gradually become the most valued dispute resolution system in the international commercial field and the main way to resolve disputes in international commercial transactions.

1.1.2 Inevitable results of the boom in international trade

The international economy presents a thriving scene. For instance, international trade become more frequent, and a variety of regional and global economic cooperation organizations continue to emerge. However, in this prosperous situation, international trade frictions and disputes are more prominent and urgent to be solved. Therefore, the rational use of the international commercial arbitration system is helpful in promoting global trade and economic growth and avoiding some of the risks caused by trade disputes, which could ultimately promote the normal operation of each nation's economy and stabilize the normal order of the global trading market.

1.1.3 The drawbacks of other existing international commercial dispute settlement systems

At present, in addition to international commercial arbitration, the ways to solve international commercial disputes include litigation and alternative dispute resolution (ADR). However, contradictions are universal, and other existing international commercial dispute settlement systems have many disadvantages [2].

First of all, although the litigation procedure has enforcement power, it is not flexible enough and has the following defects: there are many phenomena of waste of litigation resources in the actual operation; the evidence system is too rigid, and not conducive to practical operation; the principle of second instance final trial leads to too many retrial cases, and so on. Therefore, if the litigants of international commercial disputes choose to settle international commercial disputes by litigation, it will generally be hindered by legal conflicts and the actual implementation of the courts.

Secondly, as another way to solve international commercial disputes, ADR has the advantages of simple procedure and low cost, but it does not have the effect of legal enforcement, so it has certain limitations in the actual operation process.

Thus, with the huge number of limitations of the other two methods, international commercial arbitration, as the main way to deal with international commercial disputes after the Second World War, has important practical significance in the context of current international economic and social development.

1.2. Description of issues

1.2.1 Basic overview of international commercial arbitration

In order to further study the issue of "the significance of the international commercial arbitration system for the operation of enterprises and the establishment of the international commercial arbitration system with each country's own characteristics", the definition of international commercial arbitration should be clarified at first. International commercial arbitration refers to the system in which arbitrators adjudicate the disputes in international economic and trade activities in accordance with the arbitration agreement reached before or after the disputes and the arbitration application of one party. Thus, it can be seen that the international commercial arbitration system is a man-made way of dealing with international commercial disputes with the intervention of an objective third-party. It has four characteristics: foreign-related, flexibility, voluntariness, and finality [3].

1.2.2 The significance of international commercial arbitration system

The system was always invented to regulate the normal operation order of human society. As one of the main ways for the modern international community to deal with international commercial disputes, the international commercial arbitration system cannot just stay at the level of rigid legal provisions. Therefore, when this system was applied into practice, it should be thought that what warning influences it might have on the operation of the enterprises, what active influences it might have on maintaining the normal business order, and what positive influences it might have on building an international commercial arbitration system with each country's own characteristics on the government[4].

1.3 Significance of the study

1.3.1 Significance of combining theoretical knowledge with research practice

Practice is the only standard to test truth. Law, as the inevitable product of the development of human society to a certain stage, should be applied to solve practical problems to maximize its value. International commercial law, as a law to adjust and resolve international commercial disputes, plays a unique role in promoting international economic exchanges. Therefore, the purpose of learning international commercial law theory is not to remember rigid legal provisions, but to apply legal awareness and legal knowledge to the actual process of international economic exchanges, which makes international commercial law alive.

In summary, through the method of combining theoretical knowledge with practical cases, readers can have a more profound understanding of the background and course of international commercial law and the practical significance of international commercial law.

1.3.2 Combination of world standards and each country's own characteristics

At the international level, the world needs a set of standard international commercial arbitration system, which can facilitate international economic exchanges. However, the current situation of economic development in each country is different, so the international standards are not necessarily suitable for each country. Therefore, each country should explore a set of international commercial arbitration system which is suitable for the current economic situation of its own country.

II. Literature Review

Firstly, Qu (2010) outlines the definition and characteristics of international commercial arbitration law in *the Course of International Commercial Law*, introduced the relevant arbitration institutions, procedures and agreements, and especially introduced the recognition and implementation of foreign arbitration awards. It is affirmed that the international commercial arbitration system is a major way to solve international commercial disputes, which is of great significance to promote the development of the international economy and trade. However, as a course book, it is only a preliminary explanation of related concepts and an introduction to some basic knowledge. The content is not deep enough.

Before deeply analyzing the international commercial arbitration system, two basic definitions should be clarified: efficiency and fairness. Cao (2021) points out that efficiency is one of the core values pursued in the process of international commercial arbitration. However, in reality, the realization of this goal is not optimistic, and the unilateral pursuit of high efficiency has a certain negative impact on procedural fairness. Zhang (2006) states that fairness and efficiency are the two basic dimensions of the value system of international commercial

arbitration, and the organic combination of these two is the endogenous power to promote the development of arbitration. In summary, efficiency and fairness should be taken into account in the arbitration process, which should be implemented in the construction of relevant mechanisms in China in the future.

Nyarko (2019) states that when international commercial disputes occur, people generally prefer arbitration rather than litigation. The main reasons are as follows. Firstly, the arbitration contract has a certain flexibility, allowing both parties to formulate the terms of dispute settlement according to their own preferences and needs. Secondly, although arbitration and litigation are both ways to deal with commercial disputes, arbitration is more simple, convenient, and efficient.

Sabahi et al. (2018) describe the development of some laws in investment and commercial activities and state the reasons for the emergence of international commercial arbitration law and its development situation before and after the Second World War, its positive role in contemporary social legal practice, and its prospects for the future development of relevant laws.

Vahed & Neishabouri (2015) argue that a very important reason why arbitration is favored by people is that the independence and impartiality of arbitrators ensure that the trial process of arbitration is fair. Independence involves the relationship between the arbitrator and the parties, while impartiality takes into account the equal treatment of the parties by the acts of the arbitrator. The lack of the above characteristics will lead to more serious commercial disputes.

Based on the above literature reading, research, and summary, it could be found that the existing literature on the origin, advantages and development of the international commercial arbitration system already have a comprehensive and detailed analysis. However, there are still deficiencies in the enlightenment of the international commercial arbitration system on the business development of enterprises and the establishment of an international commercial arbitration system with Chinese characteristics. Nevertheless, based on the existing literature, the following hypotheses could still be obtained -- making good use of the international commercial arbitration system can provide a great convenience for enterprises to safeguard their legitimate rights and interests; and as for China, the reform of the system is imperative if China wants to adapt to the changes in the international economic situation.

III. Research Methods

International commercial law is a branch of law in humanities and social sciences. Therefore, in the choice of methods, this essay adopts the literature reading method and case analysis method.

Firstly, literature reading is a method of reading relevant papers and understanding the content of them. It could help researchers to gain an overall understanding of some fundamental definitions as well as some previous research outcomes. Therefore, several representative and persuasive pieces of literature are selected for in-depth reading and analysis, aiming to draw on the experience of predecessors.

Secondly, the case analysis method is a scientific analysis method for in-depth and careful study of representative things to obtain an overall understanding. This method is representative, systematic, profound, and specific. The case comes from the practical process of social life without abstract processing, so it reflects the original process of events objectively, comprehensively, and truly. At the same time, it has certain typicality, so the study of a case can be extended to universality through dialectics, and then universality should be applied to particularity. Therefore, the approach of "case statement - case analysis - case review" will be adopted in the fourth part of this essay, in order to explore the significance of the international commercial arbitration system for enterprise operation and the establishment of an international commercial arbitration system with each country's own characteristics.

IV. Research process : case study

Case 1: The efficiency and fairness of arbitration proceedings are the two objectives pursued by arbitration - Paklito Investment Ltd. v. Klockner East Asia Ltd.

1.1 Case statement

The applicant Paklito Company (hereinafter referred to as Company P) claimed the defective goods sold by the Klockner Company (hereinafter referred to as Company K). Because the items in the sale contract clearly contain the provisions of arbitration in China, so company P submitted written arbitration application to China International Economic and Trade Arbitration Commission (hereinafter referred to as CIETAC).

Both parties hold different opinions on the question of whether the goods' defects are caused by the inherent defects of the product itself or improper storage. According to the relevant arbitration rules, the arbitral tribunal commissioned professional departments to carry out the sample test of the goods and issued a written test report. The report issued by the experts shows that the defects of the goods in this case are inherent defects of the product itself, not caused by improper storage.

After receiving the expert advice report, company K submitted a defense opinion on the content of the report in written form. However, CIETAC made an arbitration award in favor of applicant company P three days later.

Finally, company K failed to consciously perform the relevant rulings, resulting in the failure of the applicant company P to successfully apply to the court with jurisdiction for enforcement. Therefore, the applicant company P appealed to the Hong Kong High Court. However, the High Court of Hong Kong believed that the original judgment should be maintained and refused to implement the decision made by CIETAC.

1.2 Case analysis

The main contention, in this case, is whether the arbitration procedure is justified, that is, whether the principle of fairness of the arbitration procedure has been adhered to. The key problem of this case is whether company K can obtain a fair opportunity to state in this case, and can express their own opinions on the expert's inspection report.

In this case, Company P claims that China's law and the arbitration rules of CIETAC do not provide any right to cross-examination, so CIETAC's award is just and legitimate, and the Hong Kong court should take measures to enforce it. According to Article 44, paragraph 2 (C) of the *Hong Kong Arbitration Ordinance*, the judge of the Hong Kong High Court explained that Company K has the right to express his opinions on the expert report. Furthermore, company K has issued a written statement requesting comments on the report; CIETAC ruled the case too early, ignoring the right of company K to express their views, which shows that the CIETAC's ruling is unfair. Therefore, the Hong Kong High Court decided to refuse to implement the CIETAC ruling.

1.3 Case review

First of all, the arbitration procedure refers to the general term of the steps and rules of activities that the arbitration institution and the parties should abide by in the process of arbitration, which mainly includes the application, acceptance, and trail of arbitration [5].

Efficiency and fairness are the two goals throughout the arbitration process, which requires arbitration institutions to take these into account in the arbitration process [6]. Therefore, while pursuing efficiency, arbitration institutions cannot ignore fairness. Through this case, it can be learned that in order to make a fair arbitration award, it is necessary to ensure that both parties have equal opportunity to participate in the trial of the case and express their views equally. Otherwise, unfair decisions will not be recognized and implemented by the court.

Therefore, the enterprise should always pay attention to safeguarding their legitimate rights and interests, and actively express their views in the process of case trial, in order to avoid unfair trial. At the same time, for CIETAC, it is necessary to adhere to the synchronous improvement of fairness and efficiency of case decisions and to improve its international credibility.

(2) Case 2: Recognition and enforcement of foreign arbitral awards — Norway Sigval Bergesen Ship Company v. Joseph Muller, Switzerland

2.1 Case statement

The Norwegian company Sigval Bergesen (hereinafter referred to as company S) and the Swiss company Joseph Muller (hereinafter referred to as company J) have entered into three contracts. The first two contracts stipulate that Company S fulfills the obligation to transport chemicals from the United States to Europe for Company J, and the third contract is to transport chemicals from Europe to Central America. Each contract contains arbitration clauses, and the disputes that might arise from the agreement will be submitted to the American Arbitration Association in New York for arbitration.

In the process of performing the contract, the two sides had disputes. Therefore, company S filed an application for arbitration, claiming to company J for delay costs and port costs. However, company J refused to bear the cost, and sued company S. After trial, the American Arbitration Association ruled that Company J should pay a total of USD 61,406. 09 compensation including interest to Company S. Later, Company S applied to the Swiss court Company J was located for enforcement, which failed. After that, Company S turned to the South District Court of New York to apply for recognition and enforcement of the arbitral award. The South District Court of New York supported Company S's request under the New York Convention. Then Company J appealed and the federal court made a ruling to maintain the original judgment.

2.2 Case analysis

The focus of the dispute is whether the *New York Convention of 1958* could be applied to this case, and the main issue involved is whether the arbitral award can be recognized and implemented in the US courts.

The main basis of company S' request for recognition and enforcement of arbitral awards is the *New York*

Convention of 1958. It was passed by the U.S. Congress in 1970 and joined the second chapter of the *United States Federal Arbitration Law*. It is a convention on the recognition and enforcement of foreign arbitral awards. Therefore, the arbitration award involved in this case can be recognized and implemented only if it meets foreign standards.

The *New York Convention* adopts mixed standards in the definition of foreign arbitral awards, including geographical standards and non-domestic standards. On the one hand, if the country where the arbitration award is made is different from the country where the arbitration award is being recognized and executed, this award shall be deemed as a foreign arbitral award. This is called the regional standard. On the other hand, even if the country where the arbitral award is made and the country where the award is recognized and enforced are the same countries, as long as the award is not judged as a domestic award, the recognition and enforcement are still applicable to this convention. This is called a non-domestic standard.

Thus, the case covers the following two issues.

First of all, whether the arbitration award meets the regional standards? Company J believes that the arbitration award, in this case, was made in New York and applied for enforcement in the United States, so the award does not meet the geographical standards.

Secondly, whether the arbitration award meets the non-domestic standards? Company J believes that the arbitration award, in this case, cannot be regarded as a foreign award according to non-domestic standards. Because the provisions of non-domestic standards in the Convention are intended to enforce " stateless decisions", which refers to the rulings that have theoretically been applied for enforcement in a certain country, but could not obtain de facto enforcement due to some foreign factors.

Therefore, according to the provisions of the United States' domestic law - *American Code*, agreements or rulings that completely involve the relationship between American citizens should not apply to the *New York Convention*. However, if the property involved in the ruling has a reasonable connection with another country, this situation should be excluded. Therefore, the judge believes that the arbitral awards involved in this case can be recognized and enforced in the United States according to the non-domestic standards of the *New York Convention*.

2.3 Case review

This case is the first typical case in which the United States Court extended the interpretation of "the non-domestic award" clause in the 1958 *New York Convention*. The *New York Convention* applies mixed standards to the definition of foreign arbitral awards, including geographical standards and non-domestic standards. In this case, the U.S. court expanded the scope of application of the *New York Convention* by interpreting the clause of non-domestic standards. This not only provides more opportunities for American businessmen, but also dispels the concerns that may arise when foreign businessmen arbitrate in the United States. After the United States joined the *New York Convention*, the United States courts adopted a supportive attitude towards arbitration, which also improved the recognition, credibility and authority of the U.S. international commercial arbitration industry.

3. Case 3: Validity of arbitration clauses selected simultaneously from two arbitration bodies - Qilu Pharmaceutical Factory v. Amtai International Trading Company

3.1 Case statement

On January 5 in 1990, Qilu Pharmaceutical Factory signed a contract with AT&M International Trade Corporation to establish and operate a pharmaceutical company jointly funded by both parties. In the contract, the parties agreed to establish Anping Pharmaceutical Co., Ltd in Pingyin County, Shandong Province. Treaty 54 of the joint venture contract states that all disputes arising from or relating to the execution of this contract shall be settled by friendly consultation between the parties and if the friendly negotiation cannot be resolved, it should be submitted to CIETAC or Stockholm Arbitration Court of Sweden for arbitration.

In the performance of the contract, disputes arose. Qilu pharmaceutical factory filed a lawsuit with the Jinan intermediate People's Court in Shangdong Province. However, the AT&M International Trade Corporation raised objections on jurisdiction.

3.2 Case analysis

This case concerns the issue of the validity of the arbitration clauses of two or more arbitration institutions. The Supreme People's Court of the People's Republic of China recognized the validity of the arbitration clause that

simultaneously agreed on the two arbitration institutions

At present, China's legal provisions concerning this issue are as follows. If the arbitration agreement stipulates that more than two arbitration commissions can apply for arbitration, the parties can apply for one of them. If the arbitration agreement only stipulates the place of arbitration and there is only one arbitration committee, the arbitration committee should be identified as the arbitration institution selected by the agreement. However, if there are two or more arbitration institutions entitled to arbitration in the agreed place, the parties may apply for arbitration by one of the arbitration commissions. It is worth mentioning that if the parties apply to different arbitration commissions for arbitration, the arbitration commission that is accepted first has the jurisdiction. At the same time, if there is no agreement on the arbitration matter or the agreement is not clear, the parties may negotiate a remedy before submitting the arbitration. The arbitration agreement cannot be found null and void when there is only an agreement on arbitration place without a specific institution.

The arbitration clause in the contract concluded by the parties in this case stipulates that the dispute over the contract shall be submitted to China International Economic and Trade Arbitration Commission or to the Arbitration Institute of the Stockholm Chamber of Commerce of Sweden for arbitration. This clause is clear and enforceable with respect to the agreement of the arbitration institution, so the parties could choose one of the agreed arbitration bodies. According to the principle of "arbitration or trial" in China, one case can only choose one way of resolution between litigation and arbitration, so this dispute should be submitted to arbitration. The court has no jurisdiction.

3.3 Case review

This case is from a perspective of China. Only one dispute settlement could be chosen between arbitration and litigation in China. Therefore, after a clear and enforceable arbitration institution is agreed, the parties should submit the agreed institution for arbitration when disputes arise, and the people' s court in China has no jurisdiction. At the same time, the Supreme People ' s Court has pointed out that it is effective to choose two arbitration institutions at the same time, so both parties only need to choose one of them for arbitration.

V. Conclusion

Through literature reading, case study and analysis, it could be found that the initial assumptions are correct in the overall direction, and the following specific conclusions could be gained.

5.1 The Significance of establishing International Commercial Arbitration System on Business Operation

5.1.1 Clear agreement to avoid ambiguity

The arbitration agreement made by the parties before and after the dispute is an important basis for arbitration institutions to accept applications and hear arbitration cases [7]. Therefore, the clarity of the arbitration agreement may directly affect the jurisdiction and outcome of the case. The choice of the arbitration place is the most critical one. If the choice is improper, it may affect the efficiency of the award and even the inadmissibility of the case.

Accordingly, it is believed that both parties should clearly state the acceptance agency in the contract, and should pay attention to the following points. First, in the choice of arbitration institutions, domestic enterprises are suggested to strive for an agreement to take the domestic arbitration institution as the agreed institution, which could not only reduce the cost, but also facilitate future enforcement. Second, in the agreement, it is better to keep the place of arbitration and place of arbitration agency consistent. In major trading activities, relevant lawyers should be consulted when signing contracts, and specific analysis should be carried out according to specific issues.

5.1.2 Careful Selection on the applicable laws

Arbitration laws or rules used in arbitration are the premises of making an arbitration award. The following troubles are the most likely to be encountered. First, when a dispute occurs, the previously selected arbitration rules have been revised or abolished. Second, the selected arbitration institution applies the arbitration rules of another arbitration institution when hearing a case.

Here are two recommendations. First, it would be preferable to reach an agreement on applying the latest arbitration rules at the time of the arbitration process. Secondly, the arbitration rules of other institutions should not be stipulated in the contract arbitration clause. Additionally, it is worth mentioning that although the relevant laws of many countries have clearly contained the stipulation of "one arbitration as final", such provisions indeed stipulate the right to remedy, which grants the parties the right to request the revocation of arbitration or the request not to enforce the arbitration award. The parties may apply to exercise this right if necessary.

5.1.3 Preparation in advance

The international commercial arbitration system seems to be far away from the enterprise. However, in fact, many multinational trading companies or foreign trading companies will inevitably encounter disputes in commercial transactions. In this case, it is particularly important to prepare for international commercial arbitration in advance. Otherwise, in the real face of arbitration, enterprises may face an awkward situation.

In this regard, enterprises can understand the relevant concepts in advance, such as place of arbitration, location of arbitration institution, and place of arbitration court. At the same time, a professional team of international commercial arbitration lawyers should be provided in advance as a think tank for the occasional needs.

5.2. The significance of establishing international commercial arbitration system with each country's own characteristics

In the world, having a standard international commercial arbitration system is very necessary. However, in terms of economic development, each country has its own characteristics. The international commercial arbitration system with the same regulations with international standard might not suitable for every country, especially for some developing countries. Therefore, it is important for each country's government to establish an international commercial arbitration system with each country's characteristics, which could promote the economic development by settling commercial disputes properly.

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