

Reciprocity in China–US Judgments Recognition

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ABSTRACT

The conventional wisdom is that China and the United States do not recognize each other’s court judgments. But this is changing. A US court first recognized a Chinese judgment in 2009, and a Chinese court first reciprocated in 2017. This Article provides an overview of the enforcement of US judgments in China and Chinese judgments in the United States, noting the similarities and differences in the two countries’ systems. In China, rules for the enforcement of foreign judgments are established at the national level and require reciprocity. In the United States, rules for the enforcement of foreign judgments are established at the state level and generally do not require reciprocity.

This Article also looks at possibilities for future cooperation in the enforcement of foreign judgments, through a bilateral treaty, a multilateral convention, and the application of domestic law. It concludes that progress in the recognition and enforcement of China–US judgments is most likely to come from continued judicial practice under existing rules and from China’s shifting approach to reciprocity.

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I. INTRODUCTION

Despite recent talk of “trade wars” and “decoupling,” China and the United States remain among each other’s largest trading partners.¹ As one economist recently observed, “it is impossible to decouple the two largest economies in the world.”² With business relations come business disputes. Parties from China and the United States often choose international commercial arbitration to settle their disputes. But not all China–US contracts have arbitration clauses, and not all disputes arise out of contracts. Some disputes inevitably find their way into Chinese or US courts and result in judgments that must be enforced in the other country.

1. According to the U.S. Census Bureau, China is currently the United States’ third largest trading partner for goods, behind Mexico and Canada. See *Top Trading Partners - December 2019*, U.S. CENSUS BUREAU, <https://www.census.gov/foreign-trade/statistics/highlights/top/top1912yr.html> (last visited Sept. 6, 2020) [<https://perma.cc/M553-S4KQ>] (archived Aug. 19, 2020). According to China’s State Council, the United States is also China’s third largest trading partner. See 新闻办就2019年全年进出口情况举行发布会 [The Information Office Held a Press Conference on the Import and Export Situation in 2019], CHINA NET (Jan. 12, 2020), http://www.gov.cn/xinwen/2020-01/14/content_5468996.htm [<https://perma.cc/GWJ8-MJ3H>] (archived Aug. 19, 2020).

2. Yan Liang, *The US, China, and the Perils of Post-COVID Decoupling*, DIPLOMAT (May 8, 2020), <https://thediplomat.com/2020/05/the-us-china-and-the-perils-of-post-covid-decoupling/> [<https://perma.cc/9ZEA-Y472>] (archived Aug. 19, 2020). Even if decoupling continues, it is likely to lead to more disputes in the short term as more contracts are broken.

The conventional wisdom has been that enforcing US judgments in China is difficult.³ The absence of Chinese decisions finding a reciprocal relationship with the United States prior to 2017 also indicates some skepticism, at least among Chinese courts, that Chinese judgments would be enforced in the United States. But recent developments challenge those views. Since the 2009 US federal court decision enforcing a Chinese judgment in *Hubei Gezhouba Sanlian Industrial Co. v. Robinson Helicopter Co.*,⁴ courts in the United States have consistently recognized and enforced Chinese court judgments in the same way as court judgments from other countries. Chinese courts have recently reciprocated, with *Liu v. Tao*⁵ enforcing a US state court judgment in 2017 and *Nalco Co. v. Chen*⁶ enforcing a US federal court judgment in 2018. Whereas the US enforcement of Chinese judgments simply represents the application of existing US rules on the recognition and enforcement of foreign judgments, the Chinese enforcement of US judgments is occurring within the context of rethinking China's traditional approach to reciprocity in the enforcement of foreign judgments.

The legal frameworks governing foreign judgments in China and the United States are quite different. China's rules on foreign judgments are established at the national level by China's Civil Procedure Law (CPL), which provides for the enforcement of legally effective foreign judgments pursuant to international treaties or in accordance with the principle of reciprocity.⁷ Although China has bilateral treaties providing for the recognition of foreign judgments

3. See, e.g., Ronald A. Brand, *Recognition of Foreign Judgments in China: The Liu Case and the "Belt and Road" Initiative*, 37 J.L. & COM. 29, 34 (2018) (noting "the common assumption that it simply is not possible to obtain [recognition and enforcement] in China for a U.S. judgment"); Jerome A. Cohen, *Settling International Business Disputes with China: Then and Now*, 47 CORNELL INT'L L.J. 555, 566 (2014) ("Chinese courts continue to resist enforcement of foreign judgments . . ."); Jason Hsu, *Judgment Unenforceability in China*, 19 FORDHAM J. CORP. & FIN. L. 201, 203 (2013) (referring to "the notoriously difficult enforcement of U.S. money judgments . . . in China").

4. *Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.*, No. 2:06-cv-01798-FMC-SSx, 2009 WL 2190187, at *6 (C.D. Cal. July 22, 2009).

5. Liu Li su Tao Li he Tong Wu (刘利诉陶莉和童武) [Liu Li v. Tao Li & Tong Wu] (Wuhan Interim. People's Ct. June 30, 2017) [hereinafter *Liu v. Tao*]. An English translation by Yuting Xu has been published as an appendix to Brand, *supra* note 3, at 51–56.

6. Nalco su Chen Dawei, (纳尔科诉陈大维) [Nalco v. Chen Dawei] (Shanghai Interim. People's Ct. Sept. 17, 2018) (unpublished) (translation on file with the authors) [hereinafter *Nalco Co. v. Chen*].

7. Zhonghua Renmin Gongheguo Minshi Susong Fa (中华人民共和国民事诉讼法) [Civil Procedure Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991, last amended June 29, 2017), art. 282, translated in <http://cicc.court.gov.cn/html/1/219/199/200/644.html> [https://perma.cc/KD7X-8ZT2] (archived Sept. 6, 2020) [hereinafter CPL].

with many countries, it has none with the United States.⁸ The absence of a treaty between China and the United States brings the principle of reciprocity to the forefront, a principle China's Supreme People's Court (SPC) has traditionally interpreted quite strictly to require prior recognition of Chinese judgments by the legal system in question.⁹

In the United States, the rules on foreign judgments are not established at the national level by federal law but rather by the laws of the fifty states.¹⁰ Thirty-six of those states have adopted one of two uniform acts on foreign judgments, while in fourteen states, common law governs the enforcement of foreign judgments.¹¹ From a Chinese perspective, the US approach to foreign judgments raises a number of important questions. In applying China's reciprocity requirement, should Chinese courts treat the United States as a whole, treat the thirty-six states that have adopted one of the uniform acts as a whole, or treat each US state individually? Should Chinese courts consider federal and state court decisions as equivalent for establishing reciprocity? It is also worth noting that, in contrast to China's approach, a large majority of US states have no reciprocity requirement for the enforcement of foreign judgments, which means that courts in these states will enforce Chinese judgments even if China would not enforce similar US judgments.¹²

Recent developments warrant a fresh look at the relationship between China and the United States with respect to the recognition and enforcement of judgments.¹³ In the United States, there is now more than a decade of case law recognizing and enforcing Chinese court judgments. In China, there are now decisions finding that the United States meets the CPL's strict reciprocity requirement, while the SPC has moved to relax this reciprocity requirement in at least some contexts. Developments at the Hague Conference on Private International Law offer another possible path for strengthening the reciprocal enforcement of China-US judgments. Mutual ratification of the 2005 Hague Convention on Choice of Court Agreements (which both China and the United States have signed but not ratified) or the broader 2019 Hague Judgments Convention would revolutionize the

8. See *infra* notes 17–28 and accompanying text.

9. See *infra* notes 46–47 and accompanying text.

10. See *infra* note 98.

11. See *infra* notes 119–20, 162–63 and accompanying text.

12. See *infra* notes 158–61 and accompanying text.

13. The China Justice Observer has collected 57 cases on the recognition of judgments involving China and 20 other jurisdictions, including the United States. Guodong Du & Meng Yu, *List of China's Cases on Recognition of Foreign Judgments*, CHINA JUSTICE OBSERVER (July 16, 2019), <https://www.chinajusticeobserver.com/a/list-of-chinas-cases-on-recognition-of-foreign-judgments> (last updated Apr. 15, 2020) [<https://perma.cc/TJV2-YFSX>] (archived Aug. 19, 2020). The list includes only six U.S. cases involving Chinese judgments, which is clearly an undercount. See *infra* Part III (discussing U.S. cases involving Chinese judgments).

enforcement of judgments between China and the United States, although neither seems likely in the short term.

This Article proceeds in four main parts. Part II looks at the recognition of US judgments in China, outlining the Chinese framework for the recognition of foreign judgments generally and discussing recent cases involving US judgments. Part III examines the recognition of Chinese judgments in the United States, explaining the rules established by the uniform acts adopted in thirty-six states and by the common law in the remaining fourteen states, as well as how those rules have been applied to Chinese judgments by state and federal courts. Part IV compares the approaches of China and the United States, highlighting their differences with respect to reciprocity while noting other similarities. Finally, Part V evaluates the possibilities for future cooperation. It notes that mutual ratification of the Hague Choice of Court Convention or the Hague Judgments Convention would be highly desirable but remains unlikely, primarily because of disagreements in the United States about how such conventions should be implemented in US domestic law. Part VI concludes that progress in the recognition and enforcement of China—US judgments is most likely to come from continued judicial practice under existing rules and from China’s shifting approach to reciprocity.

II. RECOGNITION OF US JUDGMENTS IN CHINA

For recognition and enforcement of foreign judgments in China, the point of departure is the CPL, which was passed by the National People’s Congress (NPC) in 1991. Article 281 of the CPL outlines the procedure, providing that foreign judgment creditors or foreign courts may apply for recognition and enforcement to the intermediate people’s court with jurisdiction.¹⁴ Article 282 of the CPL lays down substantive requirements for recognition—that the foreign judgment is legally effective, that recognition is supported by an international treaty or the principle of reciprocity, and that the judgment does not violate Chinese public policy.¹⁵ Roughly speaking, recognition and

14. CPL, *supra* note 7, art. 281 (“If a legally effective judgment or ruling made by a foreign court requires recognition and execution by a people’s court of the People’s Republic of China, the party concerned may directly apply for recognition and execution to the intermediate people’s court with jurisdiction of the People’s Republic of China. Alternatively, the foreign court may, pursuant to the provisions of an international treaty concluded between or acceded to by the foreign state and the People’s Republic of China, or in accordance with the principle of reciprocity, request the people’s court to recognize and execute the judgment or ruling.”).

15. *Id.* art. 282 (“Having received an application or a request for recognition and execution of a legally effective judgment or ruling of a foreign court, a people’s court shall review such judgment or ruling pursuant to international treaties concluded or acceded to by the People’s Republic of China or in accordance with the principle of reciprocity. If, upon such review, the people’s court considers that such judgment or ruling neither

enforcement of foreign judgments in China may follow an international treaty path or a domestic law path based on the principle of reciprocity. Because no international treaty on the recognition of judgments between China and the United States currently exists, the recognition of US judgments in China must rely on reciprocity under Chinese domestic laws.

A. Recognition through International Treaties

As of today, China has concluded thirty-nine bilateral treaties on judicial assistance in civil and commercial matters, thirty-five of which provide for the recognition of judgments.¹⁶ These bilateral treaties contain relatively detailed rules on the recognition of judgments, although their provisions have evolved since China concluded its first bilateral treaty with France in 1987.¹⁷ The latest bilateral treaty between China and Ethiopia, for example, closely follows the 2019 Hague Judgments Convention in both form and content and includes provisions on the scope of recognizable judgments,¹⁸ the parties that may apply for recognition and enforcement,¹⁹ the documents that must

contradicts the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and the public interest, it shall rule to recognize its effectiveness. If execution is necessary, it shall issue an order of execution, which shall be implemented in accordance with the relevant provisions of the Law. If such judgment or ruling contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security or the public interest, the people's court shall refuse to recognize and execute the judgment or ruling.”)

16. The 35 countries and the dates the treaties were concluded are: France (1987), Poland (1987), Mongolia (1989), Romania (1991), Italy (1991), Spain (1992), Russia (1992), Turkey (1992), Ukraine (1992), Cuba (1992), Belarus (1993), Kazakhstan (1993), Bulgaria (1993), Egypt (1994), Greece (1994), Cyprus (1995), Hungary (1995), Morocco (1996), Kyrgyzstan (1996), Tajikistan (1996), Uzbekistan (1997), Vietnam (1998), Laos (1999), Tunisia (1999), Lithuania (2000), Argentina (2001), North Korea (2003), United Arab Emirates (2004), Kuwait (2007), Peru (2008), Brazil (2009), Algeria (2010), Bosnia and Herzegovina (2012), Ethiopia (2014), and Iran (2016). The treaty with Iran has not been ratified and is not in force. China has also concluded judicial treaties with Belgium (1987, not in force), Thailand (1994), Singapore (1997), and South Korea (2003), but these treaties do not provide for the recognition of judgments. For more updated information, visit the official website of Ministry of Foreign Affairs. See *Summary Table of the Signing of Judicial Assistance Treaties*, MINISTRY FOREIGN AFF. CHINA, https://www.fmprc.gov.cn/web/ziliao_674904/tytj_674911/tyfg_674913/t1215630.shtml, (last visited Sept. 6, 2020) [<https://perma.cc/5HJR-QE7Y>] (archived Aug. 19, 2020).

17. For detailed analysis, see WENLIANG ZHANG, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CHINA: RULES, PRACTICE AND STRATEGIES 206–27 (2014) [hereinafter ZHANG, RULES, PRACTICE AND STRATEGIES]; King Fung Tsang, *Chinese Bilateral Judgment Enforcement Treaties*, 40 LOY. L.A. INT'L & COMP. L. REV. 1, 10–30 (2017).

18. Treaty Between the People's Republic of China and the Federal Democratic Republic of Ethiopia on Judicial Assistance in Civil and Commercial Matters, China-Eth., art. 21, May 4, 2014, <http://treaty.mfa.gov.cn/tykfiles/20180903/1535957937277.pdf> [<https://perma.cc/8PER-R633>] (archived Aug 19, 2020).

19. *Id.* art. 22.

be submitted,²⁰ indirect jurisdiction,²¹ the recognition procedure,²² grounds for refusing recognition,²³ and the effects of recognition.²⁴ Such bilateral treaties provide a more detailed and modern framework for recognition than the CPL discussed below. China's bilateral treaties ensure reciprocity in the recognition and enforcement of judgments while avoiding the strict reciprocity requirement set forth in China's domestic laws. In fact, the first successful recognition cases in China were brought under such treaties.²⁵

However, the role of such treaties should not be exaggerated. Only a limited number of countries have signed bilateral judicial assistance treaties with China.²⁶ No such treaties exist between China and its biggest trading partners, including the United States, Japan, South Korea, Germany, the United Kingdom, and Australia.²⁷ There appears to be little hope for such treaties between China and these countries, at least in the short term. Consequently, it is unrealistic to expect a bilateral treaty to provide for recognition and enforcement between China and the United States.²⁸

Multilateral conventions provide a potentially more promising path. In recent years, China has been actively participating in the Hague Conference on Private International Law (HCCH). China signed the 2005 Hague Convention on Choice of Court Agreements in

20. *Id.* art. 23.

21. *Id.* art. 25.

22. *Id.* art. 26.

23. *Id.* art. 24.

24. *Id.* art. 27.

25. The earliest recognition of foreign judgments in China occurred in the early 2000s under bilateral treaties. For example, a Foshan court recognized an Italian judgment in 2000, and a Guangzhou court recognized a French judgment in 2005, both under bilateral treaties. In contrast, recognition was denied to all the foreign judgments coming from other countries with no bilateral treaties with China. *See, e.g.*, ZHANG, RULES, PRACTICE AND STRATEGIES, *supra* note 17, at 35–36, 206–07; 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 J. INT'L L. 143–74 (2013) [hereinafter Zhang, *A Call for Special Attention*].

26. *See supra* note 16 and accompanying text.

27. *See* Bin Sun, *The Future of Cross-Border Litigation in China: Enforcement of Foreign Commercial Judgments Based on Reciprocity*, 50 N.Y.U. J. INT'L L. & POL. 1135, 1135–36 (2018) (“[D]ue to the scarcity of treaties on civil and commercial judicial assistance between China and its major trading partners . . . most enforcements of foreign court judgments have to rely upon the principle of reciprocity.”). Among its top fifteen trading partners, China has a bilateral treaty only with Vietnam. *See* Daniel Workman, *China's Top Trading Partners*, WORLD'S TOP EXPORTS (June 18, 2020) <http://www.worldstopexports.com/chinas-top-import-partners/> [<https://perma.cc/A65J-9QWE>] (archived Aug. 19, 2020) (listing China's fifteen top trading partners).

28. *But cf.* Ryan Hutzler, *Building A Different Kind of Relationship—A Suggested Treaty Between the United States and China*, 28 N.Y. INT'L L. REV. 29, 48–52 (2015) (proposing a bilateral treaty limited to judgments rendered under choice of court clauses).

2017,²⁹ and it is likely that China will ratify the 2005 Convention. China may also join the 2019 Hague Judgments Convention, on which it has modeled the judgments provisions of its most recent bilateral judicial assistance treaties as well as its recent Arrangement with Hong Kong. As discussed below in Part V, the difficulty in relying on multilateral conventions comes from the United States, which signed the 2005 Choice of Court Convention but has not ratified it because of disagreements about how the convention should be implemented in US domestic law, disagreements that may arise again in connection with the 2019 Judgments Convention.³⁰

B. Recognition under Domestic Law

In the absence of any international convention or bilateral treaty, recognition of foreign judgments in China must be based on Chinese domestic law under the principle of reciprocity. This domestic law path applies to the recognition of most foreign judgments in China, and practice shows that it is more uncertain than recognition under a treaty.³¹ But because China and the United States have no international treaty providing for the recognition of foreign judgments, this is the path that the recognition of US judgments must follow.

For reciprocity-based recognition of foreign judgments in China, the overarching rules come from the CPL.³² These rules are

29. China signed the Convention on September 12, 2017, but it has not yet ratified it. See *Convention of 30 June 2005 on Choice of Court Agreements*, HAGUE CONF. ON PRIV. INT'L L., <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last updated Apr. 11, 2020) [<https://perma.cc/Q4BX-3Q5J>] (archived Aug. 20, 2020).

30. A few other international conventions ratified by China and the United States will sometimes bear on the recognition of some U.S. judgments in China, including the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the International Convention on Civil Liability for Oil Pollution Damage, and the Montreal Convention for the Unification of Certain Rules for International Carriage by Air. See ZHANG, RULES, PRACTICE AND STRATEGIES, *supra* note 17, at 228–34.

31. See *supra* note 15 (discussing China's recognition practice). Recognition under domestic law requires a showing of *de facto* reciprocity, whereas recognition under a treaty does not. See *infra* notes 43–48 and accompanying text.

32. See CPL, *supra* note 7, art. 282. In the areas of bankruptcy and maritime matters, there are additional laws governing the recognition of foreign judgments passed by the NPC Standing Committee, which have the same authority as laws passed by the NPC itself and complement the CPL. See Qiyi Pochan Fa (企业破产法) [Enterprise Bankruptcy Law] (promulgated by the Standing Comm. Nat'l People's Cong., effective June 1, 2007), art. 5, FALŪ HUIBIAN, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74665/108007/F161827255/CHN74665%20Eng2.pdf> (last visited Aug. 19, 2020) [<https://perma.cc/XV4K-B73A>] (archived Aug. 19, 2020); Haishi Susong Tebie Chengxu Fa (海事诉讼特别程序法) [Special Maritime Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., promulgated Dec. 25, 1999), art. 11, FALŪ HUIBIAN, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92670/108075/F772443886/CHN92670%20Eng.pdf> (last visited Aug. 19, 2020) [<https://perma.cc/DL2U-3PRA>] (archived Aug. 19, 2020).

subject to interpretation by the SPC, either in case-specific interpretations (similar to a state court answering a certified question in the United States)³³ or in general interpretations (similar to regulations issued by an administrative agency in the United States).³⁴ As noted above, the CPL contains only two short provisions on the recognition of foreign judgments, provisions that have not been updated since 1991 because of strong bureaucratic inertia. In substance, the CPL lays down three requirements for recognition: the “legally effective” requirement, the international treaty or reciprocity requirement, and the public policy defense.³⁵ Chinese courts have developed a few additional grounds for nonrecognition, but these are not based in the text of the CPL.

1. The “Legally Effective” Requirement

Legal systems generally require that foreign judgments be final before recognition is granted. The counterpart under the CPL is that foreign judgments must be “legally effective.”³⁶ The Supreme People’s Court’s 2015 Interpretation on the Application of the CPL (2015 SPC Interpretation) affirms the requirement that foreign judgments must be legally effective for recognition purposes,³⁷ but it also leaves unanswered what “legally effective” means. Two basic interpretations are possible. First, a foreign judgment could be considered “legally effective” for purposes of recognition in China if the judgment is considered legally effective under the law of the rendering state. Under this interpretation, a foreign judgment might meet the “legally effective” requirement even if it were still subject to appeal in the rendering state.³⁸ Second, a foreign judgment could be considered “legally effective” for purposes of recognition in China if it meets the CPL’s requirements for a Chinese judgment to be legally effective.

33. For an example of a case-specific interpretation, see *infra* note 46 (discussing the 1995 interpretation of reciprocity requirement in the *Gomi Akira* case).

34. For an example of a general interpretation, see *infra* note 37 (discussing the 2015 Interpretation on the Application of the CPL). See also Aaron D. Simowitz, *Convergence and the Circulation of Money Judgments*, 92 S. CAL. L. REV. 1031, 1035 (2019) (noting that because of China’s “thin legislative background,” the SPC has “broad influence in shaping the interpretation of the relevant law”).

35. CPL, *supra* note 7, art. 282.

36. *Id.*

37. Zuigao Renmin Fayuan Guanyu Shiyong “Zhonghua Renmin Gongheguo Minshi Susong Fa” de Jieshi (最高人民法院关于适用“中华人民共和国民事诉讼法”的解释) [Interpretation of the Supreme People’s Court on Application of the “Civil Procedural Law of the People’s Republic of China”], Fa Shi [2015] No. 5., art. 543 (Sup. People’s Ct. 2015), <http://www.hshfy.sh.cn/shfy/English/view.jsp?pa=aaWQ9MzY4ODU3JnhoPTEmbG1kbT1FT18wNAPdcssPdcssz> (last visited Nov. 1, 2020) [<https://perma.cc/HPP6-WGR9>] (archived Nov. 1, 2020) [hereinafter 2015 SPC Interpretation].

38. This is the approach to finality taken in the United States. See *infra* note 186 and accompanying text.

Article 155 of the CPL explicitly states that Chinese judgments are “legally effective” when they are made by the SPC, or when no appeal is permitted or the period for appeal has elapsed.³⁹ In short, Chinese judgments are “legally effective” only when they can no longer be appealed.

Recent arrangements that China has concluded with Hong Kong and Singapore suggest different answers to the question of how to define “legally effective” for foreign judgments. Under the 2019 Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and the Hong Kong Special Administrative Region, a “legally effective” Hong Kong judgment means a judgment given by any of the courts listed without regard to whether the judgment is subject to appeal.⁴⁰ But a different rule applies between China and Singapore. Pursuant to a nonbinding memorandum between the SPC and the Singapore Supreme Court, the finality and conclusiveness of Singapore judgments “shall be determined in accordance with Chinese law,” and “a judgment subject to or under appeal is not final and conclusive.”⁴¹ Although the term “legally effective” is not used in the memorandum, the finality and conclusiveness of Singapore judgments are nevertheless determined according to China’s “legally effective” standard.

Although the CPL’s “legally effective” requirement remains ambiguous, it has not created practical difficulties for the recognition of US or other foreign judgments in China.⁴² The SPC has not clarified this requirement, and Chinese courts rarely emphasize it. To date, no US judgments have been denied recognition based on this requirement.

39. CPL, *supra* note 7, art. 155 (“Judgments and rulings made by the Supreme People’s Court, and judgments and rulings that may not be appealed against according to the law or that have not been appealed against within the prescribed time limit, shall be legally effective.”).

40. Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region, Jan. 18, 2019, art. 4(2), China-H.K., https://www.doj.gov.hk/eng/public/pdf/2019/Doc3_477379e.pdf (last visited Aug. 20, 2020) [<https://perma.cc/M4N9-W8E4>] (archived Aug. 20, 2020) [hereinafter 2019 Arrangement with Hong Kong] (listing the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court, the District Court, the Labour Tribunal, the Lands Tribunal, the Small Claims Tribunal, and the Competition Tribunal).

41. Memorandum of Guidance between the Supreme People’s Court of the People’s Republic of China and the Supreme Court of Singapore on Recognition and Enforcement of Money Judgments in Commercial Cases, Aug. 31, 2018, art. 7, China-Sing., <https://www.supremecourt.gov.sg/docs/default-source/default-document-library/spc-mog-english-version---signed.pdf> (last visited Aug. 20, 2020) [<https://perma.cc/LCU9-C2JF>] (archived Aug. 20, 2020) [hereinafter 2018 Memorandum with Singapore].

42. In practice, however, it is common for applicants to submit proof that foreign judgments are “legally effective” in the sense of Chinese law.

2. Reciprocity

Reciprocity features prominently in the requirements for recognition and enforcement of foreign judgments under Chinese domestic law. Over the years, reciprocity has been the most frequently cited basis for denying recognition of foreign judgments in China.⁴³ Article 282 of the CPL refers to “the principle of reciprocity,”⁴⁴ and the 2015 SPC Interpretation affirms that, in the absence of an international treaty or “reciprocal relationship,” the application for recognition shall be dismissed.⁴⁵ But neither the CPL nor the 2015 SPC Interpretation defines the reciprocity requirement. Thus, what reciprocity means becomes a matter of judicial practice, and the SPC holds the key to interpreting the requirement.

Since 1995, the leading authority regarding China’s reciprocity requirement has been the SPC’s interpretation in the *Gomi Akira* case, where the SPC had to determine if there was a reciprocal relationship between China and Japan for the purpose of recognizing Japanese judgments in China. The SPC opined that there was no reciprocal relationship between China and Japan and, therefore, that Japanese judgments could not be recognized.⁴⁶ Although the SPC did not clearly state why there was no reciprocal relationship between China and Japan, Japanese courts had not previously recognized a Chinese judgment, and the SPC’s decision was understood to have adopted a *de facto* reciprocity requirement.⁴⁷ All Chinese courts followed the SPC interpretation thereafter.⁴⁸ As a result, unless foreign courts took the initiative to recognize Chinese judgments, Chinese courts would not

43. Zhang, *A Call for Special Attention*, *supra* note 25, at 143.

44. CPL, *supra* note 7, art. 282.

45. 2015 SPC Interpretation, *supra* note 37, arts. 544, 549. There is an exception for foreign divorce judgments. *See id.* art. 544.

46. Zuigao Renmin Fayuan Guanyu Woguo Renmin Fayuan Yingfou Chengren he Zhixing Ribenguo Fayuan Juyou Zhaiquan Zhaiwu Neirong Caipan de Fuhan (最高人民法院关于我国人民法院应否承认和执行日本国法院具有债权债务内容裁判的复函) [The Reply of the Supreme People’s Court of China Concerning Recognition and Enforcement of Japanese Judgment and Rulings on Credit and Debt], Min Ta Zi No.17 (Sup. People’s Ct. 1995) (China), <http://www.people.com.cn/zixun/flfgk/item/dwjff/falv/9/9-1-7-2.html> (last visited Aug. 20, 2020) [<https://perma.cc/QR7-MEDD>] (archived Aug. 20, 2020) [hereinafter 1995 Reply on Japanese Judgments].

47. *See, e.g.*, Tao Du, *The Principle of Reciprocity and the JRE*, 1 HUANQIU FALU PINGLUN [GLOBAL L. REV.] 110–19 (2007); Yahan Wang, *The Standard to Ascertain Reciprocity in Recognition and Enforcement of Foreign Judgments*, 4 WUDA GUOJIFA PINGLUN [WUHAN U. INT’L L. REV.] 21–24 (2019); Weigong Xu, *The Path to Construct China’s Regime on Recognition and Enforcement of Foreign Judgments*, 2 FA SHANG YANJIU [STUDIES L. & BUS.] 178 (2018).

48. *See* Sun, *supra* note 27, at 1136 (“In judicial practice, Chinese courts generally apply the principle of *de facto* reciprocity, which means that a PRC court will only consider enforcing another state’s court judgment when there is a precedent of a Chinese court judgment having been recognized and enforced by that other state.”).

recognize foreign judgments on a reciprocal basis. China and Japan have continued to be stuck in a bitter reciprocity feud, with neither side willing to break the vicious circle by taking the first step to recognize the other's judgments.⁴⁹ Other countries, by contrast, have taken the initiative to recognize Chinese judgments, including Australia, Canada, Germany, Israel, the Netherlands, New Zealand, Singapore, South Korea, the United Kingdom, and the United States.⁵⁰ Chinese courts have, in turn, begun to recognize the judgments of these countries, and a "follow-suit" model of reciprocity-based recognition has started to work in a fruitful way.⁵¹

In 2009, a US federal court recognized a Chinese judgment for the first time in *Hubei Gezhouba Sanlian Industrial Co. v. Robinson Helicopter Co.*⁵² In 2017, a Chinese court reciprocated for the first time when the Wuhan Intermediate People's Court recognized a money judgment from a California state court in *Liu v. Tao*.⁵³ The Wuhan court held that a "reciprocal relationship of mutual recognition and enforcement" existed between the United States and China based on the prior recognition of a Chinese judgment by a US federal court in California in *Robinson Helicopter*.⁵⁴

Following the landmark decision in *Liu*, in 2018 the Shanghai No. 1 Intermediate People's Court recognized a US federal court judgment from Illinois in *Nalco Co. v. Chen*⁵⁵ on the basis of reciprocity. The Shanghai court stated in its decision that US courts had recognized Chinese judgments many times and thus found a reciprocal relationship for recognition purposes.⁵⁶ Although a federal court in

49. Jie (Jeanne) Huang, *Enforcing Foreign Monetary Judgments in China: Breakthroughs, Challenges, and Solutions in the Context of "One Belt One Road"*, 51 GEO. WASH. INT'L L. REV. 105, 127 (2019) ("JRE between China and Japan has fallen subject to a vicious cycle of mutual refusal").

50. See Du & Yu, *supra* note 13 (listing cases).

51. See generally Wenliang Zhang, *Sino-Foreign Recognition and Enforcement of Judgments: A Promising "Follow-Suit" Model?*, 16 CHINESE J. INT'L L. 515 (2017) (examining the efficiency and practicality of recent Sino-foreign judgment recognition).

52. See *Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.*, No. 2:06-cv-01798-FMC-SSx, 2009 WL 2190187, at *7 (C.D. Cal July 22, 2009).

53. *Liu v. Tao*, *supra* note 5; see also Brand, *supra* note 3, at 30 (noting that *Liu v. Tao* was the first Chinese case to recognize a U.S. judgment).

54. See *Liu v. Tao*, *supra* note 5; see also Brand, *supra* note 3, at 35 (noting that *Liu v. Tao* relied on *Robinson Helicopter* as evidence of a reciprocal relationship). *But see* *Truhe su Lidu Yanhua Jituan Youxian Gongsi* (楚西诉李渡烟花集团有限公司) [*Truhe v. Lidu Fireworks Corporation*] (Nanchang Intermed. People's Ct. 2017), Gan 01 Min Chu No. 354 (2018), <http://wenshu.court.gov.cn/content/content?DocID1/4edfe0de2-ad91-4dd1-b8e8-a7af0021740c> (last visited Dec. 21, 2020) [<https://perma.cc/5YQY-8SGM?type=image>] (archived Dec. 21, 2020) (refusing without explanation to find reciprocal relationship despite the judgment creditor's invocation of *Robinson Helicopter*).

55. *Nalco Co. v. Chen*, *supra* note 6.

56. *Id.* ("Considering that American courts have recognized and enforced the civil and commercial judgments made by Chinese courts for many times, Chinese courts can

Illinois had previously recognized and enforced a Chinese judgment,⁵⁷ the Shanghai court did not rely on that decision as proof of reciprocity. The Shanghai court also did not rely on Illinois's adoption of the 2005 Uniform Foreign-Country Money Judgments Recognition Act, which Nalco's counsel argued was proof of reciprocity.⁵⁸ Instead, the Shanghai Court adopted a broader approach that looked at the practice of American courts in general, without distinguishing either between different US states or between federal and state courts.⁵⁹

Chinese courts' recent treatment of US decisions raises several questions about the application of China's reciprocity requirement. Should a decision from California be taken to establish reciprocity between China and the United States as a whole, or just between China and California?⁶⁰ Should the decisions of US federal courts recognizing Chinese judgments be taken to establish reciprocity with respect to US state courts and *vice versa*? This Article will consider these questions further below.

3. Public Policy

Public policy is a defense for denying recognition of foreign judgments found in many legal systems, although successful motions based on public policy are rare. Under Chinese domestic law, the public policy defense requires that the foreign judgment "neither contradicts the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and the public interest."⁶¹ This defense is loosely phrased and has not been interpreted by the SPC. Parties often raise it as a ground for nonrecognition of foreign judgments in China, but practice shows that these attempts are normally unsuccessful.⁶² Chinese courts do not review the merits of foreign judgments and apply public policy in a very strict manner.

In *Liu*, the Wuhan court considered the CPL's public policy defense, holding that recognition of a US money judgment arising out

recognize and enforce the civil judgment of the American court involved in the case based on the principle of reciprocity.”)

57. See *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, 2015 WL 1977527, at *8 (N.D. Ill. 2015).

58. *Nalco Co. v. Chen*, *supra* note 6 (noting the applicant's argument that "most jurisdictions in the United States have adopted the Uniform Foreign-Country Money Judgment Recognition Act, which is also adopted in the state of Illinois where the United States Court involved is located").

59. *Id.*

60. 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 L. REV.* 31–32 (2013); Brand, *supra* note 3, at 35.

61. CPL, *supra* note 7, art. 282.

62. See ZHANG, RULES, PRACTICE AND STRATEGIES, *supra* note 17, at 159–61.

of a share transfer contract did not run afoul of Chinese public policy.⁶³ In *Nalco*, recognition of a US judgment in a contractual dispute was held not to violate Chinese public policy either.⁶⁴ With the probable exception of US judgments for punitive or exemplary damages, the public policy defense seems unlikely to prevent the recognition of US commercial judgments in China.⁶⁵

4. Other Possible Requirements

The CPL recognition rules do not contain explicit requirements that the rendering court have had jurisdiction or that the judgment debtor have been served with process.⁶⁶ In practice, however, Chinese courts have imposed a requirement of service for the recognition of foreign judgments.⁶⁷ China is party to the 1965 Hague Service Convention⁶⁸ and has made a reservation permitted under the Convention objecting to service of process by mail upon persons in China.⁶⁹ Chinese courts have repeatedly denied recognition of foreign judgments when methods of service were used in the foreign proceedings that are inconsistent with the reservation made by China under the Convention.

63. *Liu v. Tao*, *supra* note 5 (concluding that “recognition and enforcement of this civil judgment does not contradict the primary principles of the law of the People’s Republic of China nor violate State sovereignty, security and social and public interest of the country”).

64. *Nalco Co. v. Chen*, *supra* note 6 (“Although the respondent Chen Dawei claimed that the judgment involved in the case should not be recognized and enforced, he did not provide sufficient proof that the recognition and enforcement of the judgment involved would violate the basic principles of Chinese laws or jeopardize China’s national sovereignty, security and social and public interests.”).

65. There are early cases in which recognition of foreign divorce judgments in China was denied based on public policy considerations. See ZHENJIE HU, CHINESE PERSPECTIVES ON INTERNATIONAL JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CONTRACTUAL MATTERS: A COMPARATIVE STUDY OF THE RELEVANT PROVISIONS OF CHINESE, SWISS AND US LAW, OF THE EUROPEAN CONVENTIONS AND OF OTHER INTERNATIONAL TREATIES 310 (1999). Public policy may also apply in the service of judicial documents, the taking of evidence, and the refusal of recognition of arbitral awards in China, but such cases are rare. See Xiao Yongping & Huo Zhengxin, *Ordre Public in China’s Private International Law*, 53 AM. J. COMP. L. 653, 664–69 (2005).

66. See Huang, *supra* note 49, at 138 (“[C]urrent Chinese law does not explicitly indicate whether and how Chinese JRE courts should examine the jurisdiction of judgment-rendering courts in cases in which JRE reciprocity has been established.”).

67. See Zhang, *A Call for Special Attention*, *supra* note 25, at 156–60.

68. See Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters art. 1, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163.

69. *Status Table for the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents*, HAGUE CONFERENCE ON PRIVATE INT’L LAW (July 27, 2020), <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> [<https://perma.cc/WQ2K-KTYH>] (archived Sept. 6, 2020).

The 2015 SPC Interpretation has also gone beyond the text of the CPL by adding a new requirement of proof of service in the case of default judgments.⁷⁰ In *Liu*, a case involving the recognition and enforcement of a default judgment, the Wuhan court held that the defendants had been properly summoned when the California state court authorized service by publication in an American newspaper.⁷¹

In *Nalco*, the US judgment was not a default judgment, but the defendant complained that US summary judgment procedures were not consistent with Chinese law and prevented the US court from fully considering the relevant facts.⁷² The Shanghai court rejected the argument, holding that “review of the US court proceedings should be conducted based on the law of the forum state, that is, the law of the United States, rather than the law of China.”⁷³ The Shanghai court noted that summary judgment conforms to US law, and that Chen participated in the US proceeding and did not object to the use of summary judgment procedures.⁷⁴

In addition to the above requirements, there are other defenses to recognition that are not found in the text of the CPL but may be cited in practice. These include lack of parties’ legal capacity, the existence of parallel proceedings, and prior recognition of a conflicting foreign judgment.⁷⁵ So far, these defenses have been seldom used, but they have found their way into some of the new arrangements concluded by the SPC that are discussed below.⁷⁶

C. New Developments in Judgments Recognition

As discussed above, the basic framework established by the CPL and other supplemental laws for the recognition of foreign judgments in China has remained largely unchanged for the past three decades. But the need to improve the international circulation of judgments has prompted the SPC to take action in the area of judgments recognition.

70. 2015 SPC Interpretation, *supra* note 37, art. 543 (“Where the judgment or ruling made by the foreign court is a default judgment or ruling, the applicant shall also provide the proof documents that the foreign court has made legal summon, except that the judgment or ruling bears explicit explanation.”).

71. *See Liu v. Tao*, *supra* note 5.

72. *Nalco Co. v. Chen*, *supra* note 6.

73. *Id.*

74. *Id.*

75. GUANGJIAN TU, PRIVATE INTERNATIONAL LAW IN CHINA 173 (2016).

76. As noted above, the Standing Committee of the National People’s Congress has adopted additional recognition laws on maritime and bankruptcy matters. *See supra* note 32 and accompanying text. These laws duplicate the CPL’s recognition rules, except for one defense applicable to the recognition of foreign bankruptcy judgments, that recognition of foreign bankruptcy judgments shall be denied if recognition would jeopardize the lawful rights and interests of the creditors in China. *See ZHANG, RULES, PRACTICE AND STRATEGIES*, *supra* note 17, at 198. But it does not appear that this defense has been abused.

For several years, the SPC worked on a proposed regulation on the recognition of foreign judgments in China,⁷⁷ but the Standing Committee of the National People's Congress ultimately rejected this proposal on the ground that it would usurp the NPC's legislative power. Despite the failure of this reform effort, the SPC has found other ways to improve Sino-foreign recognition practice.

Under China's Belt and Road Initiative, the SPC takes measures to provide a sound legal environment, which include efforts to promote the recognition of foreign judgments. In 2015, the SPC issued an interpretation entitled "Several Opinions of the Supreme People's Court on the Provision of Judicial Services and Safeguards by People's Courts for the Belt and Road Initiative."⁷⁸ This interpretation provides that people's courts "shall promote the mutual recognition and enforcement of judgments rendered by countries along the 'Belt and Road.'"⁷⁹ With respect to reciprocity, the document further provides that "[i]f a country along the 'Belt and Road' has not signed an agreement on judicial assistance with China, Chinese courts may take the initiative to provide judicial assistance to the litigant from that country in advance, actively promoting a mutually reciprocal relationship and enlarging the scope of judicial assistance."⁸⁰ As acknowledged in a report of the SPC, this was the first time Chinese courts were authorized to take the initiative in establishing reciprocity with other countries.⁸¹

This softer approach to reciprocity was also reflected in the 2017 Nanning Declaration issued at the 2nd China-ASEAN Justice Forum hosted by the SPC. Article 7 of the Declaration recognizes that "cross-border transactions and investments require a judicial safeguard based on appropriate mutual recognition and enforcement of judicial judgments among countries in the region."⁸² With respect to reciprocity, the Declaration states:

77. Regulation of the SPC on Several Issues Relating to Recognition and Enforcement of Foreign Judgments (Sixth Draft) [hereinafter SPC Regulation on Judgments Recognition] (on file with the authors).

78. Zuigao Renmin Fayuan Guanyu Renmin Fayuan Wei "Yidai Yilu" Jianshe Tigong Sifa Fuwu he Baozhang de Ruogan Yijian (最高人民法院关于人民法院为“一带一路”建设提供司法服务和保障的若干意见) [Several Opinions of the SPC on the Provision of Judicial Services and Safeguards to the Establishment of One Belt and One Road], Fa Fa No. 9 (2015).

79. *Id.* ¶ 6.

80. *Id.*

81. *The Supreme People's Court Announces the Status of Judicial Protection of the "Belt and Road"*, SUPREME PEOPLE'S COURT NETWORK (July 7, 2015), <http://www.court.gov.cn/zixun-xiangqing-14899.html> [<https://perma.cc/7JV2-M4SH>] (archived Sept. 5, 2020).

82. The Nanning Declaration at the 2nd China-ASEAN Justice Forum, art. 7, June 9, 2017, <http://cicc.court.gov.cn/html/1/219/208/209/800.html> [<https://perma.cc/RT7S-U48M>] (archived Sept. 6, 2020).

In countries that have not yet concluded international treaties of recognizing and enforcing foreign civil and commercial judgments, if there is no precedent for refusing to recognize and enforce civil commercial judgments on the grounds of reciprocity in the judicial process of recognizing and enforcing the country's civil and commercial judgments, within the scope permitted by the law in China, it can be presumed that there is a reciprocal relationship between each other.⁸³

The presumptive approach to reciprocity also appeared in the draft SPC Regulation on Judgments Recognition, which stated that reciprocity may be presumed to exist based on a common understanding between China and foreign countries.⁸⁴ Although the draft regulation was rejected by the Standing Committee of the National People's Congress, the SPC has subsequently reiterated the presumptive approach in a provision of its 2019 Opinions aimed at promoting China's International Commercial Courts.⁸⁵

The SPC has also sought to update China's rules on the recognition of foreign judgments by signing recognition memorandums with its counterparts in other jurisdictions. In 2018, the SPC and the Singapore Supreme Court signed a Judgments Recognition Memorandum,⁸⁶ which sets forth how Chinese judgments may be recognized in Singapore and *vice versa*. Prior cases had already established *de facto* reciprocity between China and Singapore, but the memorandum introduces detailed recognition rules, including a definition of the finality requirement,⁸⁷ a requirement that the rendering court have jurisdiction,⁸⁸ and refusal grounds not found in the CPL but commonly found in other countries' laws.⁸⁹ In fact, these rules are quite like those set forth in China's recent bilateral treaties. Although the memorandum is expressly stated to have "no binding legal effect,"⁹⁰ it clearly reflects the current attitude of the SPC, and it is notable that the Wenzhou Intermediate People's Court recognized another Singapore commercial judgment on August 2, 2019.⁹¹

83. *Id.*

84. SPC Regulation on Judgments Recognition, *supra* note 77, art. 17(3).

85. Guanyu Renmin Fayuan Jinyibu Wei "Yidai Yilu" Jianshe Tigong Sifa Wufu he Baozhang de Yijian (关于人民法院进一步为“一带一路”建设提供司法服务和保障的意见) [Opinions of the SPC on Further Providing Judicial Services and Guarantees by the People's Courts for the Belt and Road Initiative], Fa Fa No. 29 (2019).

86. *See* 2018 Memorandum with Singapore, *supra* note 41.

87. *Id.* art. 7.

88. *Id.* art. 9.

89. *Id.* art. 10 (listing fraud, lack of notice, personal interest of the judicial body in the case, lack of proper representation of persons without capacity, and the existence of parallel proceedings or a conflicting judgment, in addition to the public policy defense).

90. *Id.* art. 2.

91. Haiwan Fazhan Jituan Youxian Gongsi su Chen Tongkao (海湾发展集团有限公司诉陈通考) [Oceanside Dev. Grp. Ltd. v. Chen Tongkao] (Wenzhou Intern. People's Ct. 2019).

Most recently, in 2019, the SPC concluded a binding arrangement on reciprocal recognition with the courts of the Hong Kong Special Administrative Region.⁹² As discussed above, its definition of finality differs from the definition in the Singapore memorandum.⁹³ But the arrangement with Hong Kong similarly provides rules for the jurisdiction of the rendering court,⁹⁴ as well as additional grounds for nonrecognition.⁹⁵

Of course, none of the developments discussed in this section apply directly to US judgments. But the softer approach to reciprocity taken towards “Belt and Road” countries and ASEAN members is not strictly necessary with respect to the United States because Chinese courts have already determined that *de facto* reciprocity exists.⁹⁶ Although some of the grounds for nonrecognition found in the arrangements with Singapore and Hong Kong are not found in the CPL, Chinese courts have already applied the requirement of proper service to US judgments,⁹⁷ and it seems likely that they may do the same with other newly accepted defenses like fraud and conflict with another final judgment. Part V of this Article will give further consideration to the future prospects for China–US judgments recognition. But first it is necessary to examine the recognition of Chinese judgments in the United States.

III. RECOGNITION OF CHINESE JUDGMENTS IN THE UNITED STATES

In the United States, the recognition and enforcement of foreign country judgments is governed by state law rather than federal law.⁹⁸ In theory, this means that a party with a Chinese judgment must separately examine the laws of each state in which the judgment debtor has assets. But in practice, the rules governing the recognition

92. 2019 Arrangement with Hong Kong, *supra* note 40.

93. *Id.* art. 4(2); *see supra* notes 40–41 and accompanying text.

94. *See* 2019 Arrangement with Hong Kong, *supra* note 40, art. 11.

95. *See id.* art. 12 (listing lack of jurisdiction, improper service, fraud, parallel proceedings, a conflicting judgment, and a conflicting arbitral award, in addition to public policy).

96. *See supra* notes 53–59 and accompanying text.

97. *See supra* notes 66–71 and accompanying text.

98. *See* RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 cmt. a (AM. LAW INST. 2018). An exception to this rule is the federal SPEECH Act, which governs the recognition and enforcement of defamation judgments in the United States. The SPEECH Act reflects a concern about judgments from the United Kingdom and some other common law countries that find liability for defamation based on speech that would be constitutionally protected in the United States. *See* 28 U.S.C. §§ 4101–4105 (2012); John F. Coyle, *The SPEECH Act and the Enforcement of Foreign Libel Judgments in the United States*, 18 Y.B. PRIV. INT’L L. 245, 247 (2017) (describing origins of the SPEECH Act). It is unlikely to affect the recognition and enforcement of Chinese judgments.

of foreign judgments in the United States are largely uniform.⁹⁹ In part, this is because of the influence of the U.S. Supreme Court's decision in *Hilton v. Guyot*,¹⁰⁰ which established a presumption in favor of recognition while also articulating a number of grounds for nonrecognition that are widely adopted in the United States.¹⁰¹ It is also because most states have adopted one of the two uniform acts that built on *Hilton*, either the 1962 Uniform Foreign Money-Judgments Recognition Act (1962 Uniform Act)¹⁰² or the updated 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Uniform Act).¹⁰³ These uniform acts establish a presumption in favor of recognizing foreign country judgments, subject to limited exceptions discussed below.¹⁰⁴

Significantly, neither of the uniform acts imposes a reciprocity requirement for the recognition of foreign judgments.¹⁰⁵ This means that most courts in the United States will enforce Chinese judgments even if Chinese courts would not enforce similar US judgments. In fact, a number of decisions in the United States have granted recognition and enforcement of Chinese judgments. Although some decisions have also denied recognition and enforcement, those decisions have resulted from the failure of the party seeking recognition to meet one of the requirements for recognition.¹⁰⁶ No court in the United States has held categorically that Chinese judgments should not be recognized and enforced. To the contrary, courts in the United States have consistently rejected the argument that Chinese courts do not provide impartial tribunals and due process.¹⁰⁷

99. The rules have recently been summarized in the Restatement (Fourth) of Foreign Relations Law. See RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 481–490.

100. 159 U.S. 113 (1895).

101. See *id.* at 202–03 (articulating presumption in favor of recognition and exceptions); see also *infra* notes 165–166 and accompanying text (discussing *Hilton*). Ironically, the exception upon which recognition was denied in *Hilton*—“want of reciprocity”—is not widely adopted in the United States today. See *Hilton*, 159 U.S. at 228; see also *infra* notes 158–61 and accompanying text.

102. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS 1962) [hereinafter 1962 UNIFORM ACT].

103. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS 2005) [hereinafter 2005 UNIFORM ACT].

104. See *infra* notes 119–61 and accompanying text.

105. However, six states have added reciprocity requirements to the uniform acts. See *infra* note 158 and accompanying text.

106. See *infra* notes 126, 136, 150 and accompanying text.

107. See *infra* notes 129–31, 155–57 and accompanying text.

A. *Deciding Where to Enforce*

A party that wants to enforce a Chinese judgment in the United States will first have to decide where to bring suit.¹⁰⁸ Generally, the proper place to bring suit will be in a state where the judgment debtor has assets. The U.S. Supreme Court has suggested that the presence of assets by itself is sufficient to give a court personal jurisdiction in an action to enforce a judgment.¹⁰⁹ At least one court in the United States has applied this principle in a decision enforcing a Chinese judgment.¹¹⁰

A party that holds a Chinese judgment will also have to decide whether to file suit in state court or in federal court. In the United States, state courts are courts of general subject matter jurisdiction and may hear all categories of actions, whereas federal courts are courts of limited subject matter jurisdiction and may hear only certain categories of actions.¹¹¹ Because an action to enforce a foreign judgment is governed by state law, federal courts will typically lack “federal question” jurisdiction over such an action.¹¹² Therefore, the

108. A party might also use a Chinese judgment defensively in a lawsuit that is already pending in a court in the United States, arguing that the Chinese court has already decided the question. The general rule in the United States is that “[a] foreign judgment will not be given greater preclusive effect in the United States than the judgment would be accorded in the state of origin.” See RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 487 (AM. LAW INST. 2018). In one case, a U.S. court denied preclusive effect to a Chinese judgment because the defendant had not established that Chinese principles of preclusion would bar the claim. See *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, No. 12 CV 1851, 2015 WL 1977527, at *10 (N.D. Ill. May 1, 2015) (“Because defendants have not established that Chinese principles of *res judicata* bar GMT from moving forward with its trade-secrets claim, this claim may proceed.”). In another case, a U.S. court denied preclusive effect to a Chinese judgment because expert testimony established that Chinese law does not allow a person who was not party to a judgment to take advantage of its preclusive effect. See *Folex Golf Indus., Inc. v. O-Ta Precision Indus. Co.*, 603 F. App’x 576, 578–79 (9th Cir. 2015) (noting that “Chinese law does not recognize the principle of third-party collateral estoppel”).

109. See *Shaffer v. Heitner*, 433 U.S. 186, 210 n.36 (1977) (“Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.”); see also RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 486 cmt. c (“In the case of a proceeding to enforce a foreign judgment, the presence of assets belonging to the person against whom enforcement is sought will satisfy due process.”). This is an exception to the general rule that personal jurisdiction requires the defendant to have minimum contacts with the forum. See *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

110. *KIC Suzhou Auto. Prods. Ltd. v. Xia Xuguo*, 1:05-cv-1158-LJM-DML, 2009 WL 10687812, at *1 (S.D. Ind. Jun. 3, 2009) (enforcing a Chinese judgment).

111. See RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 421 (discussing U.S. rules on subject matter jurisdiction).

112. 28 U.S.C. § 1331 (2012) (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

main way into federal court for a party seeking to enforce a Chinese judgment will be diversity or alienage jurisdiction.¹¹³ The federal diversity statute requires “complete diversity,” making it inapplicable when aliens appear on both sides of a dispute.¹¹⁴ The federal diversity statute also does not apply when an alien brings suit against a US citizen who does not reside in the United States.¹¹⁵ In such cases, the party seeking to enforce a Chinese judgment must bring its action in state court.

Although federal courts apply different rules of procedure than state courts do, they apply the same substantive law on the enforcement of foreign judgments. The U.S. Supreme Court held in *Erie Railroad Co. v. Tompkins* that “[e]xcept in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state.”¹¹⁶ Under the *Erie* doctrine, when federal courts apply state law, “the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court.”¹¹⁷ Only the decisions of state supreme courts are technically binding on federal courts exercising diversity jurisdiction, but lower state court decisions are given weight in predicting how the state supreme court would rule.¹¹⁸ Thus, state court decisions regarding the recognition of foreign judgments are good indications of what federal courts would do, and federal court decisions regarding the recognition of foreign judgments are good indications of what state courts would do.

B. *The Uniform Acts*

Most states in the United States have adopted one of two uniform acts to govern the recognition and enforcement of foreign judgments. The 1962 Uniform Act is currently in force in eleven states.¹¹⁹ The 2005

113. 28 U.S.C. § 1332(a)(2) (2012) (“The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of a State and citizens or subjects of a foreign state . . .”).

114. *See Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 596 (2004).

115. *See Chen v. Sun*, 1:13-cv-00280 (ALC) (KNF), 2016 WL 270869, at *4 (S.D.N.Y. Jan. 21, 2016) (dismissing an action to enforce a Chinese judgment against a U.S. citizen domiciled in Shanghai for lack of subject matter jurisdiction).

116. 304 U.S. 64, 78 (1938).

117. *Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 109 (1945).

118. *King v. Order of United Commercial Travelers of Am.*, 333 U.S. 153, 160–61 (1948).

119. The eleven states are Alaska, Connecticut, Florida, Maine, Maryland, Massachusetts, Missouri, New Jersey, New York, Ohio, and Pennsylvania. *See Foreign-Country Money Judgments Recognition Act 1962*, UNIFORM LAW COMMISSION, <https://www.uniformlaws.org/committees/community-home?CommunityKey=9c11b007->

Uniform Act is an updated version of the same act, and it follows the same general pattern, although it adds two additional grounds for nonrecognition discussed below. Twenty-five states and the District of Columbia have adopted the 2005 Uniform Act.¹²⁰

The uniform acts apply only to foreign money judgments—that is, to judgments that grant or deny recovery of a sum of money.¹²¹ The uniform acts do not apply, however, to judgments for taxes, to fines or penalties, or to judgments involving domestic relations.¹²² To be entitled to recognition, a foreign judgment must be final, conclusive, and enforceable under the law of the country that rendered the judgment.¹²³ US courts have found that Chinese judgments meet this requirement when they are no longer subject to appeal in China.¹²⁴ The party seeking to enforce a foreign judgment has the burden of establishing that the foreign judgment exists and falls within the scope

83b2-4bf2-a08e-74f642c840bc (last visited Sept. 5, 2020) [<https://perma.cc/8L97-JAL5?type=image>] (archived Sept. 5, 2020).

120. The twenty-five states are Alabama, California, Colorado, Delaware, Arizona, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, and Washington. See *Foreign-Country Money Judgments Recognition Act 2005*, UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?communitykey=ae280c30-094a-4d8f-b722-8dcd614a8f3e&tab=group_details (last visited Sept. 5, 2020) [<https://perma.cc/A3VP-KC4Q?type=image>] (archived September 5, 2020).

121. 2005 UNIFORM ACT, *supra* note 103, § 3(a)(1); 1962 UNIFORM ACT, *supra* note 102, § 1(2); see also *Beijing Zhongyi Zhongbiao Elec. Info. Tech. Co. v. Microsoft Corp.*, No. C13–1300–MJP, 2013 WL 6979555, at *4 (W.D. Wash. 2013) (denying recognition of Chinese judgment granting injunction).

122. 2005 UNIFORM ACT, *supra* note 103, § 3(b); 1962 UNIFORM ACT, *supra* note 102, § 1(2). Judgments that fall outside the scope of the uniform acts may still be enforced as a matter of comity. See *In re Stephanie M.*, 867 P.2d 706, 716 (Cal. 1994) (noting that Mexican guardianship decree might be recognized as a matter of comity).

123. 2005 UNIFORM ACT, *supra* note 103, § 3(a)(2); 1962 UNIFORM ACT, *supra* note 102, § 2.

124. See *Anyang Xinyi Elec. Glass Co. v. B & F Int'l (USA), Inc.*, No. CV 15–00862–BRO (AJWx), 2015 WL 12859716, at *4 (C.D. Cal. 2015) (“In China, a judgment is finalized once the time to appeal expires and no appeal has been filed.”); *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, No. 12 CV 1851, 2015 WL 1977527, at *7 (N.D. Ill. 2015) (“GMT agrees that the judgment of the Chinese intermediate court is final and enforceable in China, as it cannot be appealed there.”); *Beijing Zhongyi Zhongbiao*, 2013 WL 6979555, at *4 (denying recognition because Chinese judgment was on appeal); *Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.*, No. 2:06-cv-01798-FMC-SSx, 2009 WL 2190187, at *5 (C.D. Cal. 2009) (“The PRC Judgment became final, conclusive, and enforceable under PRC law based on the nature of the PRC Judgment and the exhaustion of the time period for appeal.”). A foreign judgment may be considered final, conclusive, and enforceable even if it is subject to appeal. See 1962 UNIFORM ACT, *supra* note 102, § 2. The critical question is what effect the appealability of the judgment has under the law of the country that rendered the judgment. See RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 reporters’ note 4 (AM. LAW INST. 2018). As discussed above, in China a judgment is not considered final if it is still subject to appeal. See *supra* note 39 and accompanying text.

of the relevant uniform act.¹²⁵ This is generally easy to do, although in one case a US court denied enforcement of a Chinese judgment because the party seeking enforcement failed to produce an authenticated copy of the judgment.¹²⁶

The uniform acts provide that foreign judgments falling within their scope are entitled to recognition unless one of the grounds for nonrecognition applies.¹²⁷ Once the party seeking enforcement has shown that a foreign judgment exists and meets the requirements of the act, the burden shifts to the party resisting enforcement to establish a ground for nonrecognition.¹²⁸ The grounds for nonrecognition in the two uniform acts are largely the same, although the 2005 Uniform Act adds two additional grounds (discussed below) relating to the integrity and the fairness of the specific proceeding that produced the foreign judgment.

1. Mandatory Grounds for Nonrecognition

Both of the uniform acts provide that recognition of a foreign judgment must be denied if the foreign judicial system “does not provide impartial tribunals or procedures compatible with the requirements of due process of law.”¹²⁹ This ground for nonrecognition is *very* difficult to establish. One court has observed that “a judgment debtor must meet the high burden of showing that the foreign judicial system as a whole is so lacking in impartial tribunals or procedures compatible with due process so as to justify routine nonrecognition of the foreign judgments.”¹³⁰ Parties resisting the recognition of Chinese judgments have sometimes argued that China does not provide

125. See RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 485(1).

126. *Ningbo FTZ Sanbang Indus. Co. v. Frost Nat'l Bank*, 338 F. App'x 415, 417 (5th Cir. 2009) (“FTZ admits that it failed to meet the statutory requirements of the Texas Recognition Act because it did not and has not provided an authenticated copy of the Chinese default judgment.”).

127. 2005 UNIFORM ACT, *supra* note 103, § 4(a) (“Except as otherwise provided in subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this [act] applies.”); 1962 UNIFORM ACT, *supra* note 102, § 3 (“Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties . . . [and] is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.”).

128. See RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 485(3). A few states require the party seeking enforcement to prove that none of the mandatory grounds for non-recognition (lack of impartial tribunals and lack of jurisdiction) applies. See *id.* § 485 reporters' note 2 (discussing cases).

129. 2005 UNIFORM ACT, *supra* note 103, § 4(b)(1); 1962 UNIFORM ACT, *supra* note 102, § 4(a)(1).

130. *DeJoria v. Maghreb Petrol. Expl., S.A.*, 804 F.3d 373, 382 (5th Cir. 2015); see also *Soc'y of Lloyd's v. Ashenden*, 233 F.3d 473, 476 (7th Cir. 2000) (holding that this ground for recognition requires that foreign procedures be “fundamentally fair” and not that they be the same as U.S. procedures).

impartial tribunals or fair procedures, but courts in the United States have consistently rejected such arguments.¹³¹

The uniform acts also require that recognition of a foreign judgment must be denied if the foreign court lacked personal jurisdiction or subject matter jurisdiction.¹³² Courts in the United States generally will not second-guess a foreign court's determination that it had personal jurisdiction and subject matter jurisdiction under its own law.¹³³ But courts in the United States will look to see whether the foreign court had personal jurisdiction according to US standards.¹³⁴ The uniform acts themselves set forth bases of personal jurisdiction that will be considered to meet US standards, providing that a foreign judgment may not be denied recognition on the basis that the foreign court lacked personal jurisdiction if any of these bases for jurisdiction existed.¹³⁵ Chinese judgments have sometimes been denied recognition on the ground that the Chinese court lacked personal jurisdiction under US standards.¹³⁶ But generally, courts in the United States have found no problem with the jurisdiction of Chinese courts.¹³⁷

131. See *Huizhi Liu v. Guoqing Guan*, Index No. 713741/2019 (N.Y. Sup. Ct., Jan. 7, 2020) ("Plaintiff's submissions demonstrate that the Chinese legal system comports with the due process requirements and the public policy of New York. . ."); *Qinrong Qiu v. Hongying Zhang*, No. CV 17-05446-JFW, 2017 WL 10574227, at *3 (C.D. Cal. 2017) (concluding that "the Chinese court was an impartial tribunal"); see also *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, No. 12 CV 1851, 2015 WL 1977527, at *7 (N.D. Ill. 2015) ("GMT does not allege that the Chinese judicial system as a whole is biased and incompatible with principles of basic fairness."); *Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.*, No. 2:06-cv-01798-FMC-SSx, 2009 WL 2190187, at *6 (C.D. Cal. 2009) ("RHC has not presented any evidence, nor does it contend, that the PRC court system is one which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.").

132. 2005 UNIFORM ACT, *supra* note 103, § 4(b)(2)–(3); 1962 UNIFORM ACT, *supra* note 102, § 4(a)(2)–(3).

133. See *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1326 (S.D. Fla. 2009) ("Of course, comity will ordinarily require United States courts to defer to foreign courts on the interpretation of their own jurisdictional statute.").

134. See *Bank of Montreal v. Kough*, 612 F.2d 467, 471 (9th Cir. 1980) (noting that a court will apply "American principles of jurisdictional due process").

135. 2005 UNIFORM ACT, *supra* note 103, § 5; 1962 UNIFORM ACT, *supra* note 102, § 5.

136. *Folex Golf Indus., Inc. v. O-Ta Precision Indus. Co.*, 603 F. App'x 576, 578 (9th Cir. 2015) (unpublished) (concluding that the Chinese court lacked jurisdiction because the defendant had not been properly served with process).

137. See *Qinrong Qiu v. Hongying Zhang*, No. CV 17-05446-JFW, 2017 WL 10574227, at *3 (C.D. Cal. Oct. 27, 2017) (concluding that the Chinese court "had subject matter jurisdiction and personal jurisdiction"); *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, No. 12 CV 1851, 2015 WL 1977527, at *7 (N.D. Ill. 2015) ("GMT admits in its answer to DNZ's counterclaim that the Chinese court had both personal and subject-matter jurisdiction.").

2. Discretionary Grounds for Nonrecognition

In addition to these “mandatory” grounds for nonrecognition, which require the court to deny recognition, each of the uniform acts contains other grounds that are often referred to as “discretionary.” In practice, if a court finds that one of these grounds has been established, it will refuse to recognize the foreign judgment unless the court finds that the issue should have been raised and corrected in the foreign proceeding.¹³⁸

Both uniform acts provide that a court need not recognize a foreign judgment if the defendant did not receive notice of the foreign proceeding in sufficient time to enable it to defend.¹³⁹ Although notice is generally given through service of process, this ground for nonrecognition is concerned with whether the defendant received actual notice rather than with whether the rules governing service of process were followed.¹⁴⁰ As the Ninth Circuit Court of Appeals noted in affirming a district court’s decision to recognize a Chinese judgment, the district court’s finding that the defendant “received sufficient actual notice of the PRC action” was sufficient, regardless of “any technical non-compliance” with the Hague Service Convention.¹⁴¹

Both uniform acts provide that a court need not recognize a foreign judgment if the judgment was obtained by fraud.¹⁴² On the other hand, if the fraud could have been detected and raised in the foreign proceeding or on appeal in the foreign legal system, a US court may exercise its discretion to enforce the foreign judgment despite the allegation of fraud.¹⁴³ Both uniform acts also contain a public policy exception, providing that the foreign judgment need not be enforced if the judgment or the cause of action on which it is based is repugnant to the public policy of the state or of the United States.¹⁴⁴ However, “[t]he test for public policy is . . . a stringent one. A difference in law, even a substantial one, is not sufficient.”¹⁴⁵ As the Ninth Circuit has

138. RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 484 cmt. b (AM. LAW INST. 2018); *see also id.* § 484 reporters’ note 1 (discussing cases).

139. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(1); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(1).

140. RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 484 cmt. c.

141. *Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co.*, 425 F. App’x 580, 581 (9th Cir. 2011).

142. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(2); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(2).

143. RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 484 cmt. d.

144. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(3); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(3).

145. RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 484 cmt. e.

noted, “few judgments fall in the category of judgments that need not be recognized because they violate the public policy of the forum.”¹⁴⁶ The uniform acts also provide that a foreign judgment need not be recognized if it conflicts with another final and conclusive judgment.¹⁴⁷ When considering conflicts between two US judgments, courts in the United States give effect to the judgment that came later in time.¹⁴⁸ The Restatement (Fourth) has adopted the same rule to resolve conflicts involving foreign judgments.¹⁴⁹ In one decision, a US court denied recognition of Chinese and Japanese judgments on the ground that they conflicted with both earlier and later judgments from Thailand.¹⁵⁰

Both uniform acts provide that a court need not recognize a foreign judgment if the proceeding in foreign court was contrary to an arbitration clause or choice of court clause.¹⁵¹ This ground for nonrecognition is likely to be denied, however, if the party resisting enforcement did not raise the forum selection clause as a defense in the foreign proceeding.¹⁵² And both uniform acts provide that a court need not recognize a foreign judgment if jurisdiction is based only on service of process and the foreign court was a seriously inconvenient forum.¹⁵³ This ground is unlikely to apply to the recognition of Chinese judgments in the United States because China, unlike the United States, does not base personal jurisdiction solely on service of process.¹⁵⁴

The 2005 Uniform Act added two grounds for nonrecognition that are not found in the 1962 Uniform Act: that there are substantial doubts about the integrity of the rendering court¹⁵⁵ and that the

146. Naoko Ohno v. Yuko Yasuma, 723 F.3d 984, 1003 (9th Cir. 2013).

147. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(4); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(4).

148. *See* Treinies v. Sunshine Mining Co., 308 U.S. 66, 76–78 (1939).

149. RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 484 cmt. f.

150. *See* UM Corp. v. Tsuburaya Prod. Co., 2016 WL 10644497, at *6 (C.D. Cal. 2016).

151. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(5); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(5).

152. *See, e.g.,* Iraq Middle Mkt. Dev. Found. v. Harmoosh, 947 F.3d 234, 239 (4th Cir. 2020) (rejecting conflict with an arbitration clause as a ground for non-recognition because the challenging party did not raise it in the foreign proceeding); *Dart v. Ballam*, 953 S.W.2d 478, 482 (Tex. App. 1997) (rejecting conflict with a forum selection clause as a ground for non-recognition because the challenging party did not raise it in the foreign proceeding).

153. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(6); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(6).

154. The CPL distinguishes between general and specific jurisdiction, but there is no provision providing for jurisdiction based on service of process. *See* CPL, *supra* note 7, arts. 21–34, 265–66. In Chinese law, service of process informs the parties of the suit but has no jurisdictional implications. *See generally id.* arts. 84–92, 265–66.

155. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(7).

specific proceeding in foreign court was not compatible with due process.¹⁵⁶ In contrast to the ground, discussed above, that the foreign judicial *system* does not provide impartial tribunals or procedures compatible with due process, these two grounds allow a US court to focus on defects in the specific foreign proceeding. But US courts have been reluctant to apply these grounds for nonrecognition to Chinese judgments. In one recent case involving a Chinese judgment, the court observed: “This kind of ‘retail’ inspection is generally disfavored, as it frustrates the very purpose of the Recognition Act: to provide ‘a streamlined, expeditious method for collecting money judgments rendered by courts in other jurisdictions.’”¹⁵⁷

3. Reciprocity

Significantly, the uniform acts do not contain any reciprocity requirement, which means that most courts in the United States will recognize a judgment from another country even though that country would not recognize a comparable judgment from the United States. In adopting the uniform acts, six states have added either a mandatory or a discretionary reciprocity requirement: Arizona, Florida, Maine, Massachusetts, Ohio, and Texas.¹⁵⁸ But all of the states that have case law applying the reciprocity requirement seem to apply it in a forgiving way. They do not look to see if the foreign country has previously

156. *Id.* § 4(c)(8).

157. *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, 2015 WL 1977527, at *8 (N.D. Ill. 2015) (quoting *Soc’y of Lloyd’s v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000)).

158. *See* ARIZ. REV. STAT. ANN. § 12-3252(B)(2) (2015) (providing that the 2005 Uniform Act does not apply to a judgment that “[o]riginates from a foreign country that has not adopted or enacted a reciprocal law related to foreign-country money judgments that is similar to this chapter”); FLA. STAT. ANN. § 55.605(2)(g) (West 2018) (“An out-of-country foreign judgment need not be recognized if . . . [t]he foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state.”); ME. REV. STAT. ANN. tit. 14, § 8505(2)(G) (2020) (“A foreign judgment need not be recognized if . . . [t]he foreign court rendering the judgment would not recognize a comparable judgment of this State.”); MASS. GEN. LAWS ANN. ch. 235, § 23A (West 2020) (“A foreign judgment shall not be recognized if . . . judgments of this state are not recognized in the courts of the foreign state.”); OHIO REV. CODE ANN. § 2329.92(b) (West 2020) (“A foreign country judgment rendered in a foreign country that does not have a procedure for recognizing judgments made by courts of other countries and their political subdivisions in its statutes, rules, or common law that is substantially similar to [Ohio’s statute] may be recognized and enforced . . . in the discretion of the court.”); TEX. CIV. PRAC. & REM. CODE ANN. § 36A.004(c)(9) (West 2017) (“A court of this state is not required to recognize a foreign-country judgment if . . . it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, would constitute foreign-country judgments to which this chapter would apply . . .”). A bill currently pending in the Massachusetts legislature would adopt the 2005 Uniform Act, repealing the 1962 Uniform Act and, along with it, the state’s reciprocity requirement. *See* H.B. 62, 191st Gen. Ct., 2019-2020 Sess. (Mass. 2019).

enforced a judgment from their particular state. Instead, they either look at how the foreign country has treated judgments from the United States in general,¹⁵⁹ or they ask whether the country would be likely to recognize and enforce a similar judgment from their state.¹⁶⁰ The fact that China has already recognized US judgments from states like California and Illinois¹⁶¹ should satisfy the reciprocity requirements of the few US states that have such requirements. And of course, in most states, lack of reciprocity would not be a ground for denying recognition to a Chinese judgment even if Chinese courts were not currently recognizing US judgments.

C. Common-Law States

There are fourteen US states that have not adopted one of the uniform acts.¹⁶² In these states, the recognition of foreign judgments is governed by common law.¹⁶³ Courts in five of these states have said that foreign judgments may be recognized and enforced on the basis of “comity” even in the absence of a state statute.¹⁶⁴

159. See *Netherlands v. MD Helicopters Inc.*, 462 P.3d 1038, 1047 (Ariz. Ct. App. 2020) (finding reciprocity requirement satisfied based on Dutch recognition of Louisiana, Tennessee, and Texas judgments); *Chabert v. Bacquie*, 694 So. 2d 805, 814 (Fla. Dist. Ct. App. 1997) (concluding that the lower court did not abuse its discretion in rejecting a reciprocity defense because “France now recognizes *American* judgments similar to the kind involved here” (emphasis added)).

160. See *Genujo Lok Beteiligungs GmbH v. Zorn*, 943 A.2d 573, 581 (Me. 2008) (concluding that “German courts would *likely* recognize a comparable judgment from Maine” (emphasis added)); *Reading & Bates Const. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 710 (Tex. App. 1998) (asking “whether Canada (or Ontario) would recognize and enforce a (*hypothetical*) Texas judgment similar to the Canadian judgment before us and rendered under similar circumstances” (emphasis added)).

161. See *supra* notes 53–59 and accompanying text.

162. The fourteen states are Arkansas, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, New Hampshire, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming. See *Foreign Country Money Judgment Recognition Act 2005*, *supra* note 120 (listing the states that have adopted the 2005 Uniform Act); *Foreign Country Money Judgment Recognition Act 1962*, *supra* note 119 (same for the 1962 Uniform Act).

163. See *Kwongyuen Hangkee Co. v. Starr Fireworks, Inc.*, 634 N.W.2d 95, 95 (S.D. 2001) (“South Dakota has no statutes that address the recognition and enforcement of a foreign nation judgment, thus the rules of the common-law are in force.”).

164. *Baker & McKenzie Advokatbyra v. Thinkstream Inc.*, 20 So. 3d 1109, 1118 (La. Ct. App. 2009) (“The recognition of the judgments of foreign countries is governed by principles of ‘comity.’”); *Laskosky v. Laskosky*, 504 So. 2d 726, 729 (Miss. 1987) (“Enforcement of foreign nation judgments in our courts is governed by the principle of comity.”); *Kwongyuen Hangkee Co.*, 634 N.W.2d at 95 (“We hold that the Hong Kong judgment is recognizable and enforceable under the doctrine of comity.”); *Office of Child Support v. Sholan*, 782 A.2d 1199, 1203 (Vt. 2001) (“As a general matter, under principles of comity, final judgments of courts of foreign nations . . . are conclusive between the parties to the action and are entitled to recognition in United States courts.”); *In re Steffke’s Est.*, 222 N.W.2d 628, 630 (Wis. 1974) (“Essentially then, since there is no compulsion constitutionally for the state of Wisconsin to recognize the Mexican decree,

To identify the common-law rules that a court should apply to recognize a foreign judgment on the basis of comity, a number of states have looked back to the U.S. Supreme Court's 1895 decision in *Hilton v. Guyot*.¹⁶⁵ *Hilton* held that:

[W]here there has been opportunity for a full and fair trial abroad before a court of *competent jurisdiction*, conducting the trial upon regular proceedings, after *due citation or voluntary appearance of the defendant*, and under a *system of jurisprudence likely to secure an impartial administration of justice* between the citizens of its own country and those of other countries, and there is nothing to show either *prejudice* in the court, or in the system of laws under which it was sitting, or *fraud* in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh.¹⁶⁶

As the italicized language shows, this statement is the source for many of the rules codified in the uniform acts.

Courts in Louisiana and South Dakota have looked directly to *Hilton* as a source for common-law rules governing foreign judgments.¹⁶⁷ In Mississippi, a court has looked to Section 98 of the Restatement (Second) of Conflicts for the common-law rules on foreign judgments, a provision that, in turn, relies on *Hilton*.¹⁶⁸ And in Vermont, a court has looked to Sections 481 and 482 of the Restatement (Third) of Foreign Relations Law, which relied both on *Hilton* and the 1962 Uniform Act.¹⁶⁹

The cases show that common-law states have consistently based their rules for foreign judgments on the same ultimate source as the uniform acts, and other states are likely to follow suit when the issue

it will be recognized only on the principles of comity.”). In the United States, comity is the basis not just for the recognition of foreign judgments but also for a number of other doctrines that mediate relationships with foreign legal systems. See generally William S. Dodge, *International Comity in American Law*, 115 COLUM. L. REV. 2071 (2015) (surveying doctrines of international comity).

165. 159 U.S. 113 (1895).

166. *Id.* at 202–03 (emphases added). *Hilton* also adopted a reciprocity requirement for foreign judgments under federal common law, see *id.* at 228 (denying recognition to French judgment “for want of reciprocity”), but none of the states relying on *Hilton* for common-law rules have adopted its reciprocity requirement.

167. *Baker & McKenzie*, 20 So. 3d at 1118 (paraphrasing a quotation from *Hilton*); *Kwongyuen Hangkee Co.*, 634 N.W.2d at 97 (relying on *Hilton*). Utah had also done so prior to its recent adoption of the 2005 Uniform Act. See *Mori v. Mori*, 931 P.2d 854, 856 (Utah 1991) (citing *Hilton*, 159 U.S. at 163–64).

168. See *Laskosky*, 504 So. 2d at 729 (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (AM. LAW INST. 1971)); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 cmt. c (quoting *Hilton*, 159 U.S. at 202).

169. See *Sholan*, 782 A.2d at 1202–04 (relying on RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 481–482 (AM. LAW INST. 1987); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 482 cmt. b (quoting *Hilton*, 159 U.S. at 202); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 cmt. a (relying on the 1962 Uniform Act)).

arises. Thus, the rules governing foreign judgments in common-law states are likely to be substantially similar to the rules in states that have adopted one of the uniform acts. No common-law state has yet recognized and enforced a Chinese judgment, but, just like the uniform act states, they are likely to apply the same rules to Chinese judgments that they apply to judgments from other countries.

* * *

In sum, courts in the United States recognize and enforce Chinese judgments subject to the same limits that are applied to judgments from other countries.¹⁷⁰ US courts have consistently rejected arguments that the Chinese judicial system does not provide impartial tribunals and procedures compatible with due process and have also resisted arguments that they should scrutinize the procedures of Chinese courts in specific cases. Efforts to enforce Chinese judgments have failed when a party failed to produce a copy of the judgment¹⁷¹ or mistakenly brought suit in federal rather than state court.¹⁷² Chinese judgments have also been denied recognition on the ground that the Chinese court lacked jurisdiction¹⁷³ or that the judgment conflicted with other final judgments.¹⁷⁴ And some Chinese judgments have been denied preclusive effect on the ground that Chinese courts would also not give them preclusive effect.¹⁷⁵ In general, however, it is fair to say that courts in the United States regularly recognize and enforce Chinese judgments.

IV. CHINESE AND US PRACTICE COMPARED

As Parts II and III have shown, there are some large, structural differences between the frameworks for recognizing and enforcing foreign judgments in China and the United States. But there are also

170. See, e.g., *Qinrong Qiu v. Hongying Zhang*, 2017 WL 10574227, at *1–2 (C.D. Cal. 2017); *Anyang Xinyi Elec. Glass Co. v. B & F Int'l (USA), Inc.*, 2015 WL 12859716, at *1–3 (C.D. Cal. 2015); *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, 2015 WL 1977527, at *6 (N.D. Ill. 2015); *KIC Suzhou Auto. Prods. Ltd. v. Xia Xuguo*, 2009 WL 10687812, at *1 (S.D. Ind. 2009); *Hubei Gezhouban Sanlian Indus. Co. v. Robinson Helicopter Co.*, 2009 WL 2190187, at *1 (C.D. Cal. 2009).

171. See *Ningbo FTZ Sanbang Indus. Co. v. Frost Nat'l Bank*, 338 F. App'x 415, 416 (5th Cir. 2009).

172. See *Chen v. Sun*, 1:13-cv-00280 (ALC) (KNF), 2016 WL 270869, at *1 (S.D.N.Y. 2016).

173. See *Folex Golf Indus., Inc. v. O-Ta Precision Indus. Co.*, 603 F. App'x 576, 577 (9th Cir. 2015).

174. See *UM Corp. v. Tsuburaya Prod. Co.*, No. 2:15-cv-03764-AB (AJWx), 2016 WL 10644497, at *8 (C.D. Cal. 2016).

175. See, e.g., *Folex Golf Indus., Inc. v. O-Ta Precision Indus. Co.*, 603 F. App'x 576, 579 (9th Cir. 2015); *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, No. 12 CV 1851, 2015 WL 1977527, at *10 (N.D. Ill. 2015).

many similarities in the details of these frameworks, particularly in many of the grounds for nonrecognition, and the similarities between the two frameworks are likely to grow as China modernizes its approach to recognizing foreign judgments. This Part examines these differences and similarities before turning to their implications for reciprocity in China–US judgments recognition.

A. *Structural Differences*

Two structural differences between Chinese and US frameworks for enforcing foreign judgments stand out. The first concerns the level on which the rules on foreign judgments are established and the court systems through which they are administered. The second concerns the two countries' approaches to reciprocity.

In China, the rules for recognizing foreign judgments are established at the national level in the CPL and other laws passed by the Standing Committee of the National People's Congress, which are subject to interpretation by the SPC.¹⁷⁶ These rules are administered by a unified national court system, specifically by the intermediate people's courts to which the CPL assigns jurisdiction,¹⁷⁷ with the guidance of the SPC.¹⁷⁸ In the United States, the rules for recognizing foreign judgments are established at the state level, in most states through the adoption of two uniform acts.¹⁷⁹ These rules are administered jointly by the state courts of each of the fifty states and by the federal courts located in those states, although federal courts applying the state rules are required to decide questions of recognition in the same way that state courts would.¹⁸⁰ Unlike the SPC in China, the U.S. Supreme Court has no role in supervising the recognition of foreign judgments. Because these cases present questions of state law, the Supreme Court has no appellate jurisdiction.¹⁸¹ Thus, in cases coming through the state court systems, the state supreme courts are the courts of last resort, whereas in cases coming through the federal court system, the federal courts of appeals are the courts of last resort. Overall, the system for recognizing foreign judgments in the United

176. See *supra* notes 32–33 and accompanying text.

177. CPL, *supra* note 7, art. 281.

178. Under Chinese law there is no appeal from an intermediate people's court ruling on the recognition of a foreign judgment. See *id.* art. 154 (permitting appeal of a ruling (“*caiding*” [裁定]) only with respect to refusal to entertain a case, objection to jurisdiction, and dismissal of a complaint). However, an intermediate people's court may request the opinion of a higher people's court, and the higher people's court may seek the opinion of the SPC. This is what happened in the *Gomi Akira* case discussed above. See *supra* notes 46–47 and accompanying text.

179. See *supra* notes 102–05 and accompanying text.

180. See *supra* notes 116–18 and accompanying text.

181. See 28 U.S.C. § 1257(a) (2018) (limiting Supreme Court review of state courts to federal questions).

States is significantly more complicated. Proposals to simplify the system by making the enforcement of foreign judgments subject to federal law, including a federal statute proposed by the American Law Institute,¹⁸² have failed to gain support in Congress. But for all of this system's complexity, the rules governing the recognition of foreign judgments in the United States are generally uniform, and the systems for administering those rules operate predictably.

The other large structural difference between the Chinese and US frameworks for recognizing foreign judgments is their approach to reciprocity. In China, unless a bilateral or multilateral treaty is in place, foreign judgments must satisfy a requirement of reciprocity.¹⁸³ Traditionally, this requirement has been interpreted to require *de facto* reciprocity—that is, prior recognition of Chinese judgments by the legal system in question—although China's SPC has softened this requirement in some contexts. In the United States, reciprocity is generally not required for the recognition of foreign judgments. Only six states have adopted such a requirement, and none appears to require *de facto* reciprocity.¹⁸⁴

B. *Similar Rules*

Despite these structural differences, the substantive rules governing the recognition of foreign judgments in China and the United States show many similarities. To begin, both China and the United States have a finality requirement for foreign judgments. In China, the CPL requires that the foreign judgment be “legally effective.”¹⁸⁵ In the United States, the uniform acts require that the foreign judgment be “final, conclusive, and enforceable.”¹⁸⁶ The United States looks to the law of the rendering state to determine whether a foreign judgment is final, conclusive, and enforceable. A foreign judgment subject to appeal might be recognized and enforced in the United States, although Chinese judgments subject to appeal would not be because China does not consider such judgments to be final.¹⁸⁷ As discussed above, it is not clear whether China interprets “legally effective” according to the Chinese standard that the judgment is not appealable or according to the law of the rendering court.¹⁸⁸

182. See RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE (AM. LAW INST. 2006).

183. See *supra* notes 43–59 and accompanying text.

184. See *supra* notes 158–60 and accompanying text.

185. CPL, *supra* note 7, art. 282.

186. 2005 UNIFORM ACT, *supra* note 103, § 3(a)(2); 1962 UNIFORM ACT, *supra* note 102, § 2.

187. CPL, *supra* note 7, art. 155.

188. See *supra* notes 36–42 and accompanying text.

Both China and the United States also have public policy exceptions.¹⁸⁹ Chinese courts will not recognize a foreign judgment that “contradicts the basic principles of the law of the People’s Republic of China” or “violates State sovereignty, security and the public interest.”¹⁹⁰ US courts will not recognize a foreign judgment if the judgment or the cause of action on which it is based is “repugnant” to the public policy of the state or of the United States.¹⁹¹ But both China and the United States interpret their public policy defenses narrowly, and public policy has thus far not played a major role in China–US judgments practice.¹⁹²

China has also begun to adopt other grounds for nonrecognition, not found in the text of the CPL, that have counterparts in US practice. As discussed above, Chinese courts are already applying a requirement that the judgment debtor has been duly served with process, and the SPC has issued an interpretation expressly requiring service for default judgments.¹⁹³ In the United States, the uniform acts speak in terms of notice rather than service.¹⁹⁴ Of course, notice usually comes through service of process, but US courts have found that technical defects in service will not defeat recognition of a foreign judgment so long as the judgment debtor had actual notice of the proceedings and was able to defend itself.¹⁹⁵

China’s recent arrangements with Singapore and Hong Kong on the recognition of judgments list other defenses to recognition.¹⁹⁶ The memorandum with the Singapore Supreme Court requires that the Singapore court rendering the judgment had personal jurisdiction according to Chinese law,¹⁹⁷ which is quite similar to the US approach of requiring that foreign courts have had personal jurisdiction according to US due process standards.¹⁹⁸ The arrangement with Hong Kong lists specific bases of personal jurisdiction that are considered acceptable in terms that track the bases listed in the US uniform acts to a striking degree, including general jurisdiction based on

189. See also Simowitz, *supra* note 34, at 1047 (noting that “virtually all laws of judgment recognition and enforcement permit non-recognition on the ground that the incoming judgment violates the public policy of the nation where recognition is sought”).

190. CPL, *supra* note 7, art. 282.

191. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(3); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(3).

192. See *supra* notes 61–65, 144–46 and accompanying text.

193. See *supra* notes 66–71 and accompanying text.

194. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(1); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(1).

195. See *supra* notes 139–41 and accompanying text.

196. See *supra* notes 86–95 and accompanying text.

197. 2018 Memorandum with Singapore, *supra* note 41, art. 9.

198. See *supra* notes 132–37 and accompanying text.

residence,¹⁹⁹ specific jurisdiction for actions arising out of the activities of an office branch or place of business,²⁰⁰ jurisdiction based on a choice of court clause,²⁰¹ and appearance without objecting to jurisdiction.²⁰² China's arrangement with Hong Kong does not recognize tag jurisdiction as the US uniform acts do.²⁰³ And the uniform acts do not expressly recognize jurisdiction based on the place of performance of a contract or the place of a tortious act as China's arrangement with Hong Kong does,²⁰⁴ although the uniform act's list of bases is not exclusive²⁰⁵ and both of these bases are consistent with US standards of personal jurisdiction.

The arrangements with Singapore and Hong Kong also recognize fraud and conflict with another final judgment as grounds for nonrecognition,²⁰⁶ grounds that are also found in the US uniform acts.²⁰⁷ The Singapore memorandum additionally lists as a ground for nonrecognition "that the judicial body is constituted by persons with personal interests in the outcome of the case,"²⁰⁸ which is similar to the 2005 Uniform Act's "the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment."²⁰⁹

It is important to note that the impetus for these changes in the SPC's approach to the recognition of foreign judgments is not to bring China's practice into line with US practice but rather to bring it into line with international practice, particularly as represented in the 2019 Hague Judgments Convention. Nevertheless, the result of

199. Compare 2019 Arrangement with Hong Kong, *supra* note 40, art. 11(1), with 2005 UNIFORM ACT, *supra* note 103, § 5(a)(4) and 1962 UNIFORM ACT, *supra* note 102, § 5(a)(4).

200. Compare 2019 Arrangement with Hong Kong, *supra* note 40, art. 11(2), with 2005 UNIFORM ACT, *supra* note 103, § 5(a)(5), and 1962 UNIFORM ACT, *supra* note 102, § 5(a)(5).

201. Compare 2019 Arrangement with Hong Kong, *supra* note 40, art. 11(5), with 2005 UNIFORM ACT, *supra* note 103, § 5(a)(3), and 1962 UNIFORM ACT, *supra* note 102, § 5(a)(3).

202. Compare 2019 Arrangement with Hong Kong, *supra* note 40, art. 11(6), with 2005 UNIFORM ACT, *supra* note 103, § 5(a)(2), and 1962 UNIFORM ACT, *supra* note 102, § 5(a)(2).

203. See 2005 UNIFORM ACT, *supra* note 103, § 5(a)(1); 1962 UNIFORM ACT, *supra* note 102, § 5(a)(1).

204. See 2019 Arrangement with Hong Kong, *supra* note 40, art. 11(3)–(4).

205. 2005 UNIFORM ACT, *supra* note 103, § 5(b); 1962 UNIFORM ACT, *supra* note 102, § 5(b).

206. 2018 Memorandum with Singapore, *supra* note 41, art. 10(b), (f) (including fraud and conflict with another final judgment); 2019 Arrangement with Hong Kong, *supra* note 40, art. 12(3), (5) (same).

207. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(2), (c)(4) (including fraud and conflict with another final judgment); 1962 UNIFORM ACT, *supra* note 102, § 4(b)(2), (b)(4), at 3 (same).

208. 2018 Memorandum with Singapore, *supra* note 41, art. 10(d).

209. 2005 UNIFORM ACT, *supra* note 103, § 4(c)(7).

China's efforts to improve the general environment for recognition of foreign judgments in China has been to make them more similar in substance to those in the United States.

C. *Implications for Reciprocity*

Before turning to consider the prospects for future developments in China–US judgments recognition, it is worth pausing to consider the implications for reciprocity of the current Chinese and US frameworks. For the United States, the differences and similarities in the two frameworks discussed above are largely irrelevant. With the exception of six states, the United States does not provide that lack of reciprocity is a ground for nonrecognition of foreign judgments. How China chooses to treat US judgments is simply irrelevant to whether Chinese judgments should be recognized in most US states, and even the six states requiring reciprocity are likely to find that current Chinese practice meets those requirements.²¹⁰

But for China, some of the differences and similarities are important. To begin with the similarities, the fact that Chinese and US practices appear to be converging to some degree should give Chinese courts further confidence in recognizing US judgments. Chinese courts have already determined that US judgments meet China's *de facto* reciprocity requirement based on past US recognition and enforcement of Chinese judgments. Although US courts do sometimes deny recognition to Chinese judgments on grounds other than reciprocity, Part III pointed out that US courts have applied the same grounds to Chinese judgments that they apply to the judgments of other countries. As China's approach to foreign judgments comes to resemble that of the United States, the occasional nonrecognition of Chinese judgments on such grounds should seem less and less objectionable. It should be no cause for concern that a US court does not recognize a Chinese judgment on the ground that the rendering court lacked jurisdiction²¹¹ or because the Chinese judgment conflicts with another final judgment²¹² when Chinese courts also deny recognition on these grounds. Other scholars have asked whether US decisions denying recognition of Chinese judgments are a problem under China's reciprocity requirement.²¹³ This Article suggests that the answer

210. See *supra* notes 158–61 and accompanying text.

211. See, e.g., *Folex Golf Indus., Inc. v. O-Ta Precision Indus. Co.*, 603 F. App'x 576, 578 (9th Cir. 2015) (concluding that the Chinese court lacked jurisdiction because the defendant had not been properly served with process).

212. See, e.g., *UM Corp. v. Tsuburaya Productions Co.*, No. 2:15-cv-03764-AB (AJWx), 2016 WL 10644497, at *6 (C.D. Cal. 2016) (denying recognition where Chinese judgment conflicted with Thai judgments).

213. See, e.g., King Fung Tsang, *Enforcement of Foreign Commercial Judgments in China*, 14 J. PRIV. INT'L L. 262, 284–85 (2018).

should be no if the United States is applying the same grounds for nonrecognition that it applies to judgments from other countries, and particularly if those grounds for nonrecognition are also applied by Chinese courts.

For China, the fact that the US framework for the recognition of foreign judgments is structured differently also raises important questions. As noted above, in applying the CPL's reciprocity requirement, Chinese courts must decide whether to treat US federal and state courts as parts of the same system or as parts of different systems. They must also decide whether to treat each US state individually for purposes of reciprocity, to treat the thirty-six US states that have adopted the uniform acts as a single system, or to treat the entire United States as a single system.

In *Liu v. Tao*, the Wuhan court treated US federal and state courts as part of the same system. Specifically, it used a California federal court decision recognizing and enforcing a Chinese judgment to establish reciprocity for the purposes of recognizing a California state court judgment.²¹⁴ This Article submits that this is the correct approach. As explained above, the enforcement of foreign judgments in the United States is governed by state law, and federal courts applying that law are supposed to rule exactly as state courts would.²¹⁵ Therefore, a federal court decision recognizing a Chinese judgment is equivalent to a state court decision doing the same, and a state court judgment recognizing a Chinese judgment is equally evidence of what a federal court would do.

How to group the US states for purposes of applying China's reciprocity requirement is a more difficult question and one that *Liu v. Tao* did not resolve.²¹⁶ Technically, each US state has its own law for the recognition and enforcement of foreign judgments. So while the decision of a federal court in California recognizing a Chinese judgment should certainly establish reciprocity for California judgments, whether from state or federal courts, there is an argument that a California decision should not establish reciprocity for Illinois judgments.

Such an argument should be rejected. California and Illinois have both adopted the 2005 Uniform Act.²¹⁷ Although the state adoptions are technically different laws, they are practically the same, and US

214. *Liu v. Tao*, *supra* note 5; Brand, *supra* note 3, at 35 (noting that “the U.S. decision relied upon to prove reciprocity was from a federal court in California, not from a California state court”).

215. See *supra* notes 116–18 and accompanying text.

216. See Brand, *supra* note 3, at 35 (noting that whether recognition by a California court would establish reciprocity “for judgments from U.S. courts (state or federal) outside of California remains to be seen”).

217. See CAL. CIV. PROC. CODE §§ 1713–1725 (West 2008); ILL. COMP. STAT. 5/12-661–5/12-672 (2012).

courts will interpret and apply them in the same ways. At a minimum, therefore, the twenty-five US states that have adopted the 2005 Uniform Act should be treated as a single jurisdiction for purposes of China's reciprocity requirement. The same principle should be extended to states that have adopted the 1962 Uniform Act. The 2005 Act is really just an updated and clarified version of the 1962 Act with very few substantive changes. Because US courts generally interpret and apply the two acts in the same ways, Chinese courts should treat the thirty-six states that have adopted either one of the uniform acts as a single jurisdiction for purposes of China's reciprocity requirement.

One might argue that the common-law states belong in a different category because they have not adopted either of the uniform acts. But as Part III.C described, the common-law states that have addressed the question have consistently held that foreign judgments should be recognized and enforced under the same principles found in the uniform acts.²¹⁸ Specifically, in articulating common-law rules based on comity, courts in these states have looked to the principles articulated in *Hilton v. Guyot*, which are the same principles codified in the uniform acts. This trend will find further support in the Restatement (Fourth) of Foreign Relations Law, published in 2018, which articulates rules for the recognition and enforcement of foreign judgments, largely based on the uniform acts, that common-law states can follow.²¹⁹ Because courts in all US states follow essentially the same rules for the recognition of foreign judgments, this Article concludes that Chinese courts should treat the entire United States as a single jurisdiction for purposes of China's reciprocity requirement.

In *Nalco Co. v. Chen*, the Shanghai court adopted this approach. Although there was a federal court decision recognizing a Chinese judgment in Illinois,²²⁰ the Shanghai court did not rely on that decision. Instead, it looked to the practice of US courts generally to establish reciprocity for the purposes of recognizing an Illinois judgment.²²¹ Counsel for the applicant Nalco made two separate arguments for reciprocity in that case: (1) that legal reciprocity existed because Illinois has adopted the 2005 Uniform Act, like many other states; and (2) that *de facto* reciprocity existed because American courts had recognized and enforced Chinese judgments in many cases.²²² The Shanghai court accepted the second, broader argument, finding reciprocity based on the fact "that American courts have

218. See *supra* notes 162–69 and accompanying text.

219. RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 481–90 (AM. LAW INST. 2018); cf. *Office of Child Support v. Sholan*, 782 A.2d 1199, 1203–04 (Vt. 2001) (relying on the Restatement (Third) of Foreign Relations Law).

220. See *Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co.*, No. 12 CV 1851, 2015 WL 1977527, at *8 (N.D. Ill. 2015).

221. *Nalco Co. v. Chen*, *supra* note 6.

222. *Id.*

recognized and enforced the civil and commercial judgments made by Chinese courts for many times,” without distinguishing among different states.²²³ This Article’s analysis supports *Nalco’s* approach as the correct one.

In sum, there are important differences in the frameworks for recognizing foreign judgments in China and the United States, differences that have implications for how China’s reciprocity requirement is applied. But there are also similarities in the rules that China and the United States apply, and those similarities appear to be increasing. Part V will examine future prospects for reciprocity in China–US judgments recognition.

V. FUTURE PROSPECTS

This Part considers the future prospects for progress in judgments recognition between China and the United States. Because China recognizes foreign judgments either according to the principle of reciprocity or pursuant to international treaties,²²⁴ it is worth considering whether China and the United States might conclude a bilateral treaty or join a multilateral judgments convention. The other possibility is to strengthen the mutual recognition of judgments under domestic law. In China, this might take the form of applying China’s softer approach to reciprocity to the United States.

A. *A Bilateral Treaty*

As discussed above in Part II, China has concluded 35 bilateral treaties on judicial assistance that provide for the recognition and enforcement of foreign judgments.²²⁵ Bilateral treaties furnish a reliable way for having foreign judgments recognized in China. Over the years, the number of the countries establishing bilateral treaty relations with China has risen steadily. However, no such treaties exist between China and its biggest trading partners, including the United States.²²⁶ Under the Belt and Road Initiative, more countries are expected to conclude bilateral treaties with China, but these treaties will not include any major economies like the United States.

On the US side, the prospects for a bilateral treaty seem even more unlikely. The United States currently has no treaties with any other country providing for the enforcement of civil judgments.²²⁷ In

223. *Id.*

224. *See supra* note 15 and accompanying text.

225. *See supra* notes 16–25 and accompanying text.

226. *See supra* note 27 and accompanying text.

227. A few U.S. courts have interpreted the provisions on equal access to courts found in U.S. Friendship, Commerce, and Navigation Treaties as requiring the recognition and enforcement of foreign judgments. *See, e.g.,* *Otos Tech Co. v. OGK Am.*,

the 1970s, the United States attempted to negotiate a judgments treaty with the United Kingdom.²²⁸ The parties agreed on a draft in 1976 and further revised that draft in 1979, but the agreement was never signed.²²⁹ Since the United States was unable to conclude a judgments treaty with the common-law country whose legal system is perhaps most similar to its own, it is unlikely that the United States would be able to agree on a judgments treaty with a civil-law country like China. In any event, since the 1990s, the United States has focused its negotiating efforts with respect to foreign judgments on multilateral conventions under the auspices of the Hague Conference on Private International Law.

B. *Multilateral Conventions*

In 1992, the United States proposed the negotiation of a multilateral judgments convention at the Hague Conference on Private International Law.²³⁰ In 1999, the negotiations produced a draft convention covering both personal jurisdiction and the enforcement of judgments, but the draft convention proved unacceptable to the United States, largely because of the limits that the draft convention would have placed on the jurisdiction of US courts.²³¹

Negotiations at the Hague Conference continued on a less comprehensive convention, and, in 2005, they produced a Hague Convention on Choice of Court Agreements.²³² The Choice of Court Convention is narrower than other judgments treaties, providing only for the enforcement of exclusive choice of court agreements and for the recognition and enforcement of judgments rendered under such

Inc. 653 F.3d 310, 312-13 (3d Cir. 2011); *Daewoo Motor Am., Inc. v. Gen. Motors Corp.*, 459 F.3d 1249, 1259 (11th Cir. 2006). But these decisions are mistaken. None of these treaties mention judgments. Rather, the treaties provide for national treatment with respect to access to courts in the United States, which is a different question from the enforcement of foreign judgments in the United States. See John F. Coyle, *Friendship Treaties ≠ Judgments Treaties*, 112 MICH. L. REV. FIRST IMPRESSIONS 49 (2013).

228. See Ronald A. Brand, *Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 NOTRE DAME L. REV. 253, 297-98 (1991).

229. For detailed discussion, see David Luther Woodward, *Reciprocal Recognition and Enforcement of Civil Judgments in the United States, the United Kingdom, and the European Economic Community*, 8 N.C. J. INT'L L. & COM. REG. 299 (1983).

230. See Letter from Edwin D. Williamson, Legal Advisor, U.S. Dep't of State, to Georges Droz, Sec'y Gen., Hague Conference on Private Int'l Law (May 5, 1992), <https://2009-2017.state.gov/documents/organization/65973.pdf> (last visited Sept. 6, 2020) [<https://perma.cc/W2R4-5VVZ>] (archived Sept. 6, 2020).

231. See Letter from Jeffrey Kovar, Assistant Legal Adviser, U.S. Dep't of State, to J.H.A. van Loon, Sec'y Gen., Hague Conference on Private Int'l Law (Feb. 22, 2000), <http://www.cptech.org/ecom/hague/kovar2loon22022000.pdf> (last visited Sept. 6, 2020) [<https://perma.cc/RWH7-3ZMV>] (archived Sept. 6, 2020).

232. Hague Convention on Choice of Court Agreements, June 30, 2005, 44 I.L.M. 1294.

agreements. In a sense, it provides a litigation analogue to the New York Convention, which provides for the enforcement of agreements to arbitrate and of arbitral awards.²³³ The United States signed the Choice of Court Convention in 2009, and China signed the Convention in 2017.²³⁴ But neither country has yet ratified the Convention.

In the case of the United States, the delay in ratification is the result of disagreement about how the Convention should be implemented in US domestic law. Because the enforcement of foreign judgments has historically been governed by state law in the United States, representatives of the Uniform Law Commission (ULC) argued that it should be implemented through a uniform act prepared by the ULC.²³⁵ The US State Department argued that the implementation of an international convention could not be left entirely to state law and proposed a cooperative federalism approach that would combine a federal statute with a uniform act adopted by the states.²³⁶ Because it would be very difficult to obtain the approval of two-thirds of the U.S. Senate, which the US Constitution requires for treaties, without the support of state interests, the executive branch has not transmitted the Convention to the Senate for its approval.²³⁷

China signed the 2005 Hague Choice of Court Convention in 2017, and its ratification is proceeding. In 2006, China signed a Choice of Court Arrangement with Hong Kong, which was inspired by and

233. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

234. See *Status Table for the Convention of 30 June 2005 on Choice of Court Agreements*, HAGUE CONFERENCE ON PRIVATE INT'L LAW, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last visited Sept. 6, 2020) [<https://perma.cc/PS7Q-4VDZ>] (archived Sept. 6, 2020) (showing that the Convention is currently in force between the members of the EU, Mexico, and Singapore).

235. The ULC approved such a uniform act in 2012. See generally UNIF. CHOICE OF COURT AGREEMENTS IMPLEMENTATION ACT (UNIF. LAW COMM'N 2012), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=5e7a9920-15af-c2c1-7f9d-53ef0185a4a5&forceDialog=0> (last visited Sept. 6, 2020) [<https://perma.cc/L6FL-AP4D>] (archived Sept. 6, 2020).

236. See Memorandum from Harold Hongju Koh, Legal Advisor, U.S. Dep't of State, Regarding United States Implementation of the Hague Convention on Choice of Courts Agreements (COCA) (Jan. 19, 2013), <https://2009-2017.state.gov/documents/organization/206865.pdf> (last visited Sept. 6, 2020) [<https://perma.cc/88LL-D9JA>] (archived Sept. 6, 2020). Professor Dodge participated in these discussions when he served as Counselor on International Law to the Legal Adviser at the State Department from 2011 to 2012.

237. More generally, it has become increasingly difficult to convince the U.S. Senate to approve treaties. See John B. Bellinger, *Senate Approves Two More Treaties, Bringing Obama Administration's Treaty Record to Fifteen*, LAWFARE BLOG (July 16, 2016), <https://www.lawfareblog.com/senate-approves-two-more-treaties-bringing-obama-administrations-treaty-record-fifteen#> [<https://perma.cc/6KY2-B58Y>] (archived Sept. 6, 2020) (noting that Senate had ratified 15 treaties during the Obama Administration compared to 163 treaties during the Bush Administration).

modeled on the 2005 Convention and thus paves the way for China to put the Convention into practice.

Negotiations on a broader convention began again at the Hague Conference in 2011, and, in 2019, the Hague Conference approved the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. Unlike the failed 1999 draft convention, the new Hague Judgments Convention does not place limits on the personal jurisdiction of the countries that join it, addressing jurisdiction only in the context of the recognition of judgments. The Convention's rules are largely consistent with those found in the US uniform acts as well as with the rules that China has been incorporating into its new bilateral judgments treaties and its arrangements with Singapore and Hong Kong.

Both China and the United States participated actively in the negotiation of the Hague Judgments Convention. With the increasing need to export Chinese judgments abroad, especially in view of the establishment of China's international commercial courts and the deepening Belt and Road Initiative, China will be inclined to join the Convention. The 2019 Convention is a global one with a wide scope of application and would help facilitate the Belt and Road Initiative well. Presently, China is carefully studying the possible effects that may flow from joining, but China is unlikely to ratify the 2019 Convention in the short run.

The chances for approval by the United States are uncertain. It continues to be difficult to get the U.S. Senate to approve any treaties. Moreover, the Hague Judgments Convention may face the same disagreements over implementation that the Hague Convention on Choice of Court Agreements did. The Uniform Law Commission and others supporting state interests may argue that the recognition of foreign judgments must continue to be governed by state law, whereas the US State Department and others supporting a strong federal role may argue that the implementation of an international treaty must be guaranteed by a federal statute.

In sum, the prospects for improving judgments recognition between China and the United States by having both countries join the 2005 Hague Choice of Court Convention, the 2019 Hague Judgments Convention, or both are unlikely. The main obstacle is not the attitude in China but rather political disagreements about issues of federalism in the United States. For the time being, then, it appears that domestic law offers the best chances to strengthen reciprocity in the recognition of judgments between China and the United States.

C. *Domestic Law*

On the US side, the rules governing the recognition and enforcement of foreign judgments are likely to remain largely the

same, although it is also likely that additional states will adopt the 2005 Uniform Act, replacing either the 1962 Uniform Act or the common law. Under these rules, courts in the United States will continue to recognize and enforce Chinese judgments on the same terms as judgments from other countries. US courts have consistently held that Chinese courts provide procedures compatible with due process,²³⁸ and that trend should continue. As the number of decisions recognizing Chinese judgments grows, such decisions will seem more and more routine.

On the Chinese side, the basic recognition laws are also expected to remain the same because of the inertia of China's legislature. Although obsolete and incomplete, these laws are not the main barriers for the recognition of foreign judgments in China. The main problem arises from the fact that the SPC has been interpreting the reciprocity requirement narrowly and conservatively. Because the SPC was the one to adopt that interpretation, it may also change the interpretation. As China has intensified its integration with the rest of the world, the SPC has started to soften its traditional interpretation of the reciprocity requirement, although so far only in specific contexts and to a limited extent.²³⁹ The SPC had been working on an interpretation on judgments recognition, but the initiative was blocked by China's legislature.²⁴⁰ Probably, the SPC will narrow its judgments project and focus on the reciprocity requirement specifically. It may issue an interpretation solely addressing this requirement. If it does so, it is likely to adopt a much-softened reciprocity requirement similar to the one it had included in its earlier draft interpretation on judgments recognition, a requirement that looks to *de jure* reciprocity rather than the current *de facto* reciprocity.²⁴¹ If this softened reciprocity requirement were to be adopted, US judgments would continue to satisfy this requirement for recognition purposes.

VI. CONCLUSION

Time will tell how much trade wars and pandemics will “decouple” the Chinese and US economies. But it is clear that parties in China and the United States will continue to do business, goods and services

238. See *supra* notes 107, 131, 155–57 and accompanying text.

239. See *supra* notes 77–85 and accompanying text. Professor Jie (Jeanne) Huang argues that developments such as *Liu v. Tao*, the Nanning Declaration, and the Singapore Arrangement, suggest that China is determined to reject a reciprocity requirement. See generally Jie (Jeanne) Huang, *Reciprocal Recognition and Enforcement of Foreign Judgments in China: Promising Developments, Prospective Challenges and Proposed Solutions*, 88 NORDIC J. INT'L L. 250 (2019) (suggesting that China is determined to reject a reciprocity requirement).

240. See *supra* notes 77, 85 and accompanying text.

241. See *supra* notes 77–85 and accompanying text.

will continue to flow, and disputes will continue to arise. It is in the interests of both countries to provide for the reciprocal enforcement of judgments. This requires cooperation and mutual understanding.

This Article has shown that the prospects for cooperation between China and the United States through international agreements are limited, primarily because of obstacles on the US side relating to the implementation of such agreements in US domestic law. Nevertheless, possibilities remain for cooperation through the application of Chinese and US domestic laws on the recognition of foreign judgments.

Cooperation on the level of domestic law requires mutual understanding. Chinese courts must understand the confusing US system for recognizing and enforcing foreign judgments, while US courts must understand that the Chinese legal system provides impartial tribunals and procedures compatible with due process that satisfy US requirements for judgments recognition. This Article has argued that Chinese courts have correctly treated the United States as a single jurisdiction for purposes of applying China's reciprocity requirement and have correctly treated US federal and state court decisions as equivalent. This Article has also shown that US courts have treated Chinese judgments the same as judgments from other foreign countries, applying the same rules on recognition and rejecting arguments that the Chinese legal system does not afford due process. Even in the absence of an international agreement between China and the United States, the prospects for reciprocity in China–US judgments recognition look bright.