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Research on the Application of Non-State Law in the Field of International Commerce

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Abstract

Since the unification movement of International Private Law, some consensus has been reached on application of Non-State law. However, due to the difficulties that exist in conceptual characterization and value judgment, the problems of insufficient connection between legislative supply and judicial practice have not been effectively solved. There is a real interaction between State Law and Non-state Law and it is important to promote the diversified development of international law by breaking the uniqueness of the application of State enacted law in the judicial and quasi-judicial fields. In response to the need for the construction of "Community of Shared Future for Mankind" and "foreign-Related Rule of Law", China could focus on the consideration of "convenience", realize the construction of a Non-state law system from the dimensions of system positioning, value hierarchy, norm evolution and reality promotion, and gradually endow international commercial usages with the status of applicable law at the domestic dimension.

Keywords

Non-State Law, Applicable Law, International Commercial Treaties, International Commercial Usages

1. Introduction

The rule of law/non-state law[1] contains treaty law, merchant law, customary law, model law, religious law and even tribal law, which plays an important role in the adjustment process of rights relations at home and abroad. If the non-state

[1]"rule of law" may mean "governance by law", and its relative concept is "rule by law". Some scholars interpret Article 3 of *The Hague Principles* as "provisions of non-state law", which does not mean that rule of law itself means non-state law; other scholars literally translate non-state law into non-state law, in which, non-state corresponds to international, supranational or regional level, while rule of law reveals the nature of rules that non-state law should possess in the application process.

law is regarded as an independent legal department, it contains both the principle of non-state law and the corresponding legal rules, and has the characteristics of applicable procedures and substantive rules. Based on the fact that state sovereignty is superior in the current world governance system, the actual force promoting global governance is still sovereign states and their organizational means. However, with the rise of a large number of non-state actors, many international organizations, non-governmental organizations and even transnational corporations have exerted a non-negligible influence on the adjustment of international relations. For example, since the unification movement of private international law in the late 19th century and early 20th century, a large number of treaties regulating international civil and commercial relations have appeared. *United Nations Convention on Contracts for the International Sale of Goods* (hereinafter referred to as CISG), *Principles of International Commercial Contracts* (hereinafter referred to as PICC), *Hague Principles on Choice of Law in International Commercial Contracts* (hereinafter referred to as Hague Principles) and other normative documents are highly standardized and systematic. It plays a practical role in commercial arbitration and even international judicial practice. Some scholars refer to Article 3 of the *Hague Principles* adopted in 2015 as "non-state law clause" and affirm the status of non-state law as the applicable law (Yan & Huang, 2018). In view of the fact that the *Hague Principles* itself is not binding, national judicial organs often treat non-state model law and customary international commercial law as contract clauses based on the autonomy of the parties, while effective international treaties have produced constraints on domestic judicial trials to varying degrees. As the name "non-state law" adopts the "complementary" structure of "state law" in the concept of "law", the richness of denotation brings the ambiguity of relevant applicable rules, and it is necessary to discuss the application of typical non-state law.

2. The Concept, Elements and System of the Non-State Law

As the relative concept of national law, non-state law seems to point to infinity in the scope of national extension. However, it is restricted by the practice of rule of law and the characteristics of law.

2.1. The Concept of the Non-State Law

Definition is an effective way to describe the value of something. As for the concept of non-state law, some scholars have tried to describe what non-state law is from the perspective of the formulation of relevant norms, or limit the subject of non-state law to the authority[2]. However, there is still insufficient guidance in the disclosure of relevant legal relations. In fact, the abandonment of the definition of non-state law provisions in the formulation of the *Hague Principles* in

[2]Compared with the national law, the non-state law is usually formulated by some authoritative bodies such as intergovernmental organizations (UNIDROIT or UNCITRAL), academic groups (blue-ribbon committee), industry organizations (International Chamber of Commerce), etc., which does not take the national force as the guarantee and is different from the traditional legal norms.

2012 indicates that the improper definition of non-state law may lead to fallacies in the application of subsequent legal rules. In order to solve the inconvenience of actual application of non-state law, relevant treaties or rules usually introduce some practical legal rules into corresponding category by means of the mode of "enumeration & qualification". Article 49 of *the China International Economic and Trade Arbitration Commission* (*CIETAC*) *Arbitration Rules* (2015) and Article 21 of *the Rules of Arbitration of the International Chamber of Commerce* (2021) on the selection of legal rules affirm the validity of the parties' agreement on the applicable law to the entity of the case, which also provides a certain interpretation space for the application of non-state law in the field of arbitration. Non-state law is not a pure concept of domestic law, but also has close relations with international law, international merchant law, international soft law and so on.

2.2. The Elements of the Non-State Law

From the point of view of elements, concept, principle, and rule together constitute the three-dimensional image of law. Non-state law is the relative concept of state law, its formation does not depend on the legislative activities of state organs, and in the process of national law application, has the function of supplement and interpretation. There is a cross relationship between non-state law and international law. At least from the point of view of the subject of law making, the category of international law except the state law can be included in the field of non-state law. International Merchant Law or Lex Mercatoria is an important part of non-state law. Through international merchant law and gradually develop the uniform international commercial law non-state law can be applied as the applicable law. The existing treaties and commercial practices represented by *CISG*, *Convention For The Unification Of Certain Rules For International Carriage By Air* (*Montreal Convention*), *International Rules for the Interpretation of Trade Terms* (*INCOTERMS*) and *Uniform Rules for Demand Guarantees* (*URDG*) have been widely applied in the world. International soft law and non-state law are common in a certain level.

The substantive rules generated by the two do not have direct legal binding force, but both have the function of adjusting specific legal relations. However, non-state law can achieve direct legal binding force through specific means. *The Montreal Convention* has obtained the effect of compulsory priority application after it came into force in our country. In fact, non-state law, international law, international merchant law and international soft law are different judgments of law from different spatial dimensions, legal rule generation dimensions and legal characteristics dimensions. However, from the perspective of adjustment objects, they also have considerable intersections. From the perspective of application possibility of applicable law, the international civil and commercial treaties, international commercial practices and model laws covered by the above concepts are most likely to become the applicable laws.

2.3. The System of the Non-State Law

The establishment of legal research system according to subject classification is an important method to carry out social research. From the perspective of the contents covered by non-state law, it can be found in the knowledge tree of both domestic law and international law. However, from the perspective of the formal application of norms, the substantive legal rules formed in the field of international law are more malleable for long-term development. "Legal globalization" is a process that includes "legal internationalization" at the global level, and an open process from "state legal monism" to "state and non-state legal pluralism" (Deng, 2008). The development of non-state law is a process of promoting legal pluralism at the level of legal globalization. Global international organizations and cross-border commercial transaction participants, as direct participants in globalization, often play the role of founders in the development of non-state law in the field of international commerce.

The monism of state law emphasizes the authority of Chinese family law in the settlement of international conflicts. With the help of conflict norms, its final orientation is still national law, and the realization is the expansion of the applicable space of national law, rather than the compromise and consensus of legal pluralism. In the field of international law, substantive rules with universal adjustment power and easy to be accepted by all parties are the main contents of non-state law, which cover treaty law, customary law, model law and other important contents, and exclude norms that do not conform to the basic legal characteristics. The application of non-state law by domestic authorities will have a stable effect on legal pluralism. For example, since the unification of international private law movement, a large number of treaties targeting international civil and commercial exchanges have appeared. Although such treaties have weak binding force on the state, they may be directly applicable in the country (Wan & Yu, 2018).

To sum up, although the definition of non-state law is difficult, it does not affect its value orientation in the legal research system. However, due to the multi-dimensional intersections of similar concepts, it is an effective approach to promote the development of corresponding normative entities from the perspective of legal applicability, and the application of non-state law in the field of international civil and commercial affairs has more practical value in the positioning of the entire legal system.

3. Question Raised: The Dilemma of Non-State Law Application

Non-state law came into being earlier than state law. Whether it was the "family law (Jiatianxia)" in ancient China or the "city-state" in ancient Rome, the richness of its connotation shaped the practical legal norms of adjusting the relationship between rights and obligations, such as family law, civil law and civil law of all nationalities. Based on the richness of conceptual extension, non-state

law includes different forms of norms, such as religious law, tribal law, legislation of international organizations, etc., but only part of norms can be applied in the judicial or quasi-judicial system.

3.1. Practical Contradiction between the Autonomy and Judicial Restraint

In 1985, in the drafting process of *the Hague Convention on the law Application of Law on Contracts for the International Sale of Goods*, there was also a heated discussion on the application of non-state law. Although the relevant proposal was rejected at last, the thinking on the applicability of non-state law has continued to this day. Due to the differences in legal culture, legal system and national system construction mode, non-state law also has different extension categories in different regions. For example, some countries set up special customary law courts to promote the settlement of relevant disputes by taking the unwritten customary law of their own region or nation as the trial basis. In addition to the customary law system, the most common type of non-state legal system is the legal system based on religion (Miranda, 2007). For example, in the countries that realize theocracy, such as the Quran and Hadith can be regarded as non-state laws. Although they are not formulated or recognized by the state, they are still binding in the domestic legal system[3]. Another example is Article 187 of *the Second Restatement of Conflict of Laws*, which affirms the principle of autonomy of will and supports the parties to choose the laws of a certain state for application in an express way (Pei, 1999). There are still some differences between federal state law and international law, but it is obviously not in line with common sense to treat local law as non-state law in a unified legal system. For domestic law, the scope of the relationship adjusted by traditional non-state law can also be included in the adjustment sequence of national law by means of legal means. For example, *Chinese Regulations on Religious Affairs* not only guarantees citizens' freedom of religious belief, but also clarifies the relationship between international law and non-state law. Non-state law should be a substantive legal norm that can adjust the relationship of rights and obligations of specific subjects. For a long time, except for ethnic law and religious law, there has been no form of non-state law with extensive adjustment power in Chinese domestic field, let alone whether the corresponding non-state law can be applied to international judicial organs.

From the perspective of international law, treaties, international commercial practices and model laws have generally gained wide recognition in the field of international commercial arbitration. In formulating Article 3 of *the Hague Principles*, the Working Group submitted two unpublished reports, in May 2010 and June 2011, and deliberately limited the possibility of choosing a rule of law to an arbitral setting or made no declaration of non-state law (Peter, 2017). The

[3]For example, in the Constitution of Pakistan, Chapter IV, section 227, all laws in force must be consistent with the Islamic teachings of the Koran and the Hadith, and all laws contrary to these teachings cannot be enacted.

Secretariat of the United Nations Convention on Trade Law provided for the "rules of law to be chosen by the parties" under Article 28 of *the UNCITRAL Model Law on International Commercial Arbitration*, as amended in 2006, it also states that *by referring to the choice of "rules of law" instead of "law"*, *the Model Law* broadens the range of options available to the parties as regards the designation of the law applicable to the substance of the dispute, affirms the parties' choice and application of the Model Law and CISG, and clarifies that if the parties do not choose applicable laws, the arbitral tribunal shall apply the conflict legal rules it deems appropriate to determine the national law. Due to the full respect for the autonomy of the parties, in international civil and commercial disputes, treaties and model laws have fallen into the category of the choice of the parties, at least in the field of arbitration. International commercial arbitration, when applying the legal rules chosen by the parties to arbitration, may directly apply the law chosen by the parties to award the award, provided that it does not violate the mandatory provisions of the country where the arbitration takes place.

In domestic judicial practice, the application of treaty and model law should be considered more conservative in terms of procedure. From the perspective of the doctrine of competence, it is obvious that the judicial organs have no obligation to apply non-state law to carry out judicial activities, unless the effectiveness of a specific non-state law has been recognized by means of transformation, incorporation or adoption, at least when discussing the application of international treaties. For non-effective treaties, international commercial practices and model laws, although the court has discussed the relevant non-state legal norms in the judgment documents based on the respect for the autonomy of the will of the parties, the effective status of the relevant non-state laws is actually the respect for the contractual freedom of the parties, and the contents of the non-state laws are also treated as contract terms. As for a national court, the law that can be used as the applicable law should be endorsed by the state organ with legislative or contracting power. There is a natural tension between the parties' pursuit of autonomy of will and freedom of proper law and the judicial organs' position of restraint and conservatism in applying non-state law, and promoting the application of non-state law as the applicable law. There are two options: recognition of legislative effectiveness and active judicial practice.

3.2. Difficulty in Governance between Global Harmonization and National Development

In the theoretical logic of modern international law, collaborative governance is the mainstream thinking of global governance and national rule of law. However, under the influence of uneven global economic development and national egoism, unilateralism indeed deepens the contradiction between the two, and global governance and national rule of law are facing the danger of turning from collaborative development to parallel development.

3.2.1. Mainstream: Non-State Actors Have Relatively Limited Influence

In a broad sense, non-state actors include intergovernmental international organizations and non-governmental international organizations, transnational corporations and other entities that can participate independently in international affairs. In the process of promoting global rule of law, non-state actors have played a positive role in promoting the construction of relevant institutions or entities. Among them, international organizations represented by the United Nations Commission on International Trade Law (UNCITRAL), the International Institute for the Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law (HCCH) and the International Chamber of Commerce (ICC) have played an important role in promoting the development of international civil and commercial economy. Or the establishment of relevant arbitration institutions, or participate in the formulation of international economic treaties and model laws. Taking a series of international commercial practices formulated by the ICC as an example, although there is still much to be discussed whether they can be applied as the applicable law, their practical role in international civil and commercial exchanges has reached a wide degree of recognition. Article 5 of the *Provisions of the Supreme People's Court of the PRC on Several Issues Concerning the Trial of Cases Concerning Disputes over Independent Letter of Guarantee* (2020 *Amendment*) affirms that the contents of the model rules agreed by the parties or uniformly invoked by the court of first instance before the end of debate constitute an integral part of the terms of the independent letter of guarantee. Once enacted and effective, the non-state law will come into play independently of the will of the maker. The behavior of the non-state actor shall comply with the provisions of the location of the organization and bear the corresponding legal obligations. When the responsible country fails to exercise prudence and suspend the behavior of the non-state actor, the behavioral responsibility of the non-state actor can eventually be placed on the relevant country.

3.2.2. Challenge: Primacy of Domestic Law and Reservation of Application

There are various types of non-state actors and different forms of participation in international governance. However, returning to international rule of law, non-state law at the level of applicable law should have the characteristics of international public goods. This means that, as a rule of law, the corresponding non-state law does not fall into the dilemma of limited or inapplicable application due to the consciousness of the formulation organization. There are various types of non-state law. For example, if the treaty is confirmed by the sovereign will of the state, it should have superior effect to the application of domestic law unless it is retained in accordance with procedures.

In the case of large differences between general domestic law and non-state law related substantive rules, in order to prevent potential non-state legal norms from harming judicial sovereignty, not all non-state laws in the field of international civil and commercial affairs are applicable. Such as national courts cannot directly apply WTO agreement as the applicable law for case trial, and the appli-

cation of treaties already in force should generally exist in cases already in force. In China, after the invalidity of Article 142 of *the General Principles of Civil Law*, in the absence of an effective response to the application of treaties by the upper law, the provisions of the separate law have become the main approaches to the application of treaties, and specific approaches such as compulsory application, priority application, self-help application and exclusion application have been formed. Reservation of specific provisions of relevant treaties is not only the legitimate rights and interests of sovereign states, but also an effective way to deal with inconsistent domestic legal provisions and incomplete transformation of international treaties. However, objectively, long-term reservation of treaties may lose the final effect of treaty application.

3.2.3. Development: Broadening the Scope of Application of Non-State Law

In recent years, the *CISG*, *Montreal Convention*, *Agreement on International Railway Freight Transport*, *UCP*, *URDG* have all been applied at different levels in China. From the perspective of specific application, CISG takes precedence over conflict law and corresponding domestic substantive law to uniformly adjust international commercial disputes when the parties are not excluded by agreement and fall within the scope of the CISG adjustment (Yang, 2020a). *The Montreal Convention* belongs to the case of compulsory application. Since China is a State party to the corresponding convention, the application of the convention does not need to be realized by conflict norms. International commercial practice, as a rule to adjust specific commercial relations formed in the long-term legal practice of international commercial law, has always taken the autonomy of the will of the parties as the premise of application and treated them as contract terms under the freedom of contract. With the continuous enrichment of relevant international practice activities in China, international trade usages are becoming feasible as applicable law.

In addition, the *Mexico City Convention* has formed a supportive view of the application of non-state law, at least as interpreted by Parra-Aranguren, a participant in the formulation of the treaty (Li, 2017a). The inclusion of non-state law into the category of applicable law will not cause the erosion of the effectiveness of domestic law. As for mandatory treaties and treaties with priority application effect, possible conflicts of domestic legal norms caused by treaties have been "recognized" by state authorities in the process of treaty ratification, or have been excluded through necessary application arrangements. Therefore, from the perspective of domestic law, Promoting partial non-state law as applicable law will realize the positive recognition of the rules of international law in the real sense.

4. Value Judgment: From Reference to Complement to Selective Application

The value of the application of non-state law shows different characteristics due to its type characteristics. Especially from the design of the domestic judicial

system, the national law and the entity legal norms recognized by the competent authorities can be used as the direct judgment basis of the court system, and other substantive rules have been applied with reference to the actual practice. It is an effective way to further realize the value of non-state law to promote the optional application of other legal substantive rules conforming to the characteristics of non-state law as applicable law.

4.1. The Influence of the National Development Concept

Non-state law is not a closed system, compared with non-state law, national law has inherent defects in adjusting international legal relations: First, the adjustment accuracy of specific international commercial relations is insufficient, or the filling of legal loopholes relies on the application of principles or judicial discretion; Secondly, the selection of applicable law is "narrow", and the judicial organ can only choose the law enacted by the state. Third, the law is not inclusive enough. Based on conflict guidelines, one party will actually lose the advantage of law application due to lack of understanding. Although there is a defect of active application in the process of application of national law, the applicable law can be limited to a relatively stable category based on the limitation of applicable connection points. The application of non-state law may form different normative application strategies due to differences in international relations concepts. Petermann believes that there are three kinds of international relations concepts: Hobbes' power politics and mercantilism, Locke's right-based domestic policy and "foreign policy priority", and Kant's international and domestic constitutionalism (Petersmann, 1997). On this basis, different trade policy tendencies are formed based on different legal traditions. The United States and the European Union are on the defensive for "institutional management" and "normative commitment." India is on the defensive for "trade democracy." China is on the defensive for "shared responsibility." (Zuo, 2022) In the context of Chinese active participation in international governance, the application of non-state law has indeed ushered in a predictable space for development.

The tolerance for the application of non-state law will be directly reflected in the application method of relevant entity norms in domestic courts, which can be divided into direct application or application as applicable law. At present, almost all countries or regions in the world do not exclude the parties to incorporate substantive rules contained in non-state law into contract terms. For example, the United States maintains that the parties can choose non-state law as a contract term and incorporate it into the contract (Symeonides, 2006), but this method has not gotten rid of the fate of adjusting the corresponding rights and obligations by national law in essence. As far as our country is concerned, the judicial organ is consciously promoting the orderly promotion of international commercial treaties which our country has joined in the judicial system. For example, *the Minutes of National Court Symposium on Foreign-related Commercial Maritime Trials* issued by the Supreme People's Court of the PRC not only clarified the automatic application of CISG, but also required the people's Court

to ask the parties for their specific opinions on the application of the Convention before the end of the court debate. It can be seen that even if the parties do not agree on the application of CISG, it still has the effect of priority application in China. The cases concerning the application of CISG have been published successively by the Supreme People's Court in the typical cases concerning the BRI[4]. As far as non-state law is concerned, there are different modes of direct application, indirect application, priority application, automatic application, selective application and reference application. Taking CISG as an example, it may meet the conditions of direct application, priority application, automatic application and selective application at the same time. In practice, the general courts do not make a clear distinction between direct application (as a direct application of domestic law) and automatic application (treaties of compound application + treaties of prior application), which may be determined by the consistency oriented by the use of results. Based on the characteristics of different non-state laws, their application methods will also be different. For example, German scholar Petersmann argued that universal international economic treaties should be directly applied in domestic courts, and should first be directly applied in the European Court of Justice, but how to define universal international economic treaties actually exists the implementation level of difficulties. In the process of China actively promoting trade liberalization and making new international rules, it is of positive significance to explore the application value of non-state law. On the one hand, the value mining of relevant rules can effectively reduce the cost of making new rules. On the other hand, we can further strengthen the connection between domestic judiciary and international substantive legal rules, and promote the construction of foreign-related rule of law in line with international rules.

4.2. The Influence of Existing State Law on Non-State Law

China's support for the application of non-state law is relatively limited, it does not affirm the path of non-country law through direct legislation, but takes a single law and judicial rule to realize the value of non-country law, under the existing legislation and interpretation of law system, the development potential of non-country law in our country needs to be evaluated effectively.

4.2.1. The Value Analysis of Non-State Law under Domestic Legal System

An international contract is a contract with two or more States in which there is a material connection. This material connection determines that the adjustment of international contractual relations cannot simply apply the domestic law of a particular State, but must determine the applicable law, including the relevant private domestic law and uniform private law, on the basis of the principle of

[4]See the first batch of Belt and Road typical cases, "Sinochem International (Singapore) Co., Ltd. v. ThyssenKrupp Metallurgical Products Co., LTD." (published on February 25, 2019, by the Supreme People's Court of the PRC); The third batch of typical cases related to the Belt and Road Initiative "Poland INDECO AG v. Guangdong Aomei Aluminum Co., LTD." (issued on March 1, 2022, by the Supreme People's Court of the PRC).

"proportionality" (Lv, 2006). At present, there is no applicable provision of treaty, model law, international commercial usages in Chinese Constitutional Law or Civil Code. Especially after the failure of *the General principles of the Civil Law of the PRC*, the application of international treaty and international practice has lost the most direct legal basis, but can only be realized on the basis of a single law. Some scholars call for provisions on the application of treaties and international practices at the level of the *Constitution Law or the Civil Code* (Che, 2020), while some scholars maintain that the status of international treaties in domestic law is a matter of the constitution rather than domestic law (Wan & Yu, 2018). By summarizing the provisions of existing domestic laws, it can be found that the application of treaties and international practices mostly exists in separate laws and is clearly applicable to foreign-related legal relations (specific examples refer to **Table 1**).

From the existing legal level, the international treaty entered into force is being actively applied at the national law level. Since the conclusion of the treaty itself is the exercise of sovereignty, there is no obstacle to the treaty as the object of application, while the international practice is relatively in a secondary position. Only in the absence of provisions in the national law and the signed treaty, the international practice party has the possibility to be selected for application. The model Law and other rules including uniform commercial rules have not been found relevant applicable provisions at the legal level, and can only be found in the State Council normative documents, two high-level working documents,

Table 1. The provisions of relevant laws concerning the application of treaties and international usages in China.

Name	Related Clauses	Applicable Mode
Constitutional Law	Only the preamble deals with foreign policy	Not involved
Legislation Law	Not involved	Not involved
Procedural Law	Not involved	Not involved
General Principles of the Civil Law (Invalid)	Article 142	Preferential application of treaties (excluding reservations) & Supplementary or Optional application of international practices (limited to foreign-related legal relations)
Civil Code	Article 10 & Article 12	National law & law shall apply in the field except as otherwise provided
Maritime Law	Article 268 & Article 269	Preferential application of treaties (excluding reservations) & Supplementary or Optional application of international practices (limited to foreign-related legal relations)
Foreign Investment Law	Article 4	Preferential application of treaties
Foreign Investment Law	Article 184 & Article 190	Preferential application of treaties (excluding reservations) & Supplementary or Optional application of international practices (limited to foreign-related legal relations)
……		

and departmental normative documents[5]. There are many difficulties in promoting the application of non-state law to be confirmed at the level of national legislation and breaking through the constraints of existing treaties and international conventions. For the treaties that have been ratified and come into force in China, it is the responsibility of the contracting parties to guarantee the effective implementation of the treaties, while non-state laws such as international treaties that have not come into effect, international practices, model laws and unified commercial affairs rules have low value in promoting the application within the national legal system. The substantial rules that have played a practical role in international commercial practice can be applied by means of the agreement based on the autonomy of the parties' will (agreement as the applicable law + agreement as the contract clause). Besides, in the judicial practice of foreign civil and commercial matters, for non-state legal rules which do not have binding force in domestic, the judicial organ will respond to the parties' need of applying law or fill the relevant domestic legislative loopholes by referring to the form of application. "Reference" provides more possibilities and normative stability for the autonomy of the parties' will and the adaptation of state organs to law.

4.2.2. Value Analysis of Non-State Law as Applicable Law

As the principle of non-interference is actually a principle with constitutional nature, it is of positive significance to promote the stability of civil and commercial transactions by respecting the autonomy of the will of the parties to the greatest extent and broadening the scope of selection of applicable laws. According to Article 3 of *the Law of the Application of Laws for Foreign-related Civil Relations of the PRC*, the selection of applicable law should generally satisfy "express choice + foreign legal relationship + national law + matters not involving coercion or exclusion". And one of the greatest values of the existing provisions of the applicable law limited to national law is to limit the applicable law to the foreseeable category through the necessary connection points. Relative to the objective connection points such as nationality, domicile, location of things, which non-state law system belongs to the subjective connection points agreed by the parties actually has the possibility of destroying the predictability and stability of the applicable law. In the *Law of the Application of Laws for Foreign-related Civil Relations*, we also adopt the closest connection as a general exception clause, so as to allow the court of this country to apply the other legal system which is most closely related to the case when the legal system designated by the normal conflict rules is not closely related to the case. Thus, while main-

[5]For example, "*Several Opinions of The General Office of the State Council on Accelerating the Development of E-commerce*" (2005) No. 2): "Actively participate in international organizations related to e-commerce, participate in the research and formulation of important rules, treaties and model laws of international e-commerce..."; *Opinions of the Supreme People's Court on Supporting and Safeguarding the Construction of Hengqin Guangdong-Macao In-depth Cooperation Zone* (FFA (2022) No.4): "Supporting the Hengqin Court's application for authorization to explore the application mechanism of extraterritorial laws on a pilot basis... Or apply international treaties, international practices and international commercial rules to resolve disputes."

taining the predictability and stability of law application, it avoids or overcomes the fixity, rigidity, rigidity and blindness of traditional conflict rules (Chen, 2015).

It is further considered that the inclusion of some non-state laws into the category of applicable law may have an impact on the existing legal norms of foreign-related civil conflicts, and the agreement of the parties may replace the subjective connection point of the closest connection. The effective application of the rule of the closest association could help avoid the parties intentionally using the freedom of choice of the applicable law, to escape the jurisdiction of the national law that should have been received, and also set up a scientific capacity for the judge's corresponding discretion. The restriction and expansion of the judge's discretion should be cautious. Under normal circumstances, the judge must apply the applicable law through the guidance of the conflict norm. Only when the application of the applicable law will seriously affect the justice of the case, the judge can invoke the exception clause to exercise the discretion (Mei, 2016).

The examination of state laws and non-state rules shows that the majority of international commercial arbitration law is composed of minor rules (Joshua, 2015). Compared with the restraint of national judicial organs in the application of non-state law, international arbitration institutions should be more open to the selection of relevant laws, with more autonomy of the parties' will and more freedom of procedure. Some arbitration laws also authorize courts to apply non-state law without the parties' choice (Michal, 2015). The purpose of national judicial procedure design is fundamentally different from that of arbitration rules, which also causes the difference in the application of non-state law as the applicable law. In order to avoid the weakening of legal predictability caused by the excessive expansion of the scope of selected law, the court will try its best to limit the scope of application of non-state law as the applicable law. Finally, what type or specific non-state law can be used as the applicable law will return to the judgment of the strength of its legal characteristics.

4.3. The Law Characteristics of Non-State Law Application

In a broad sense, without considering the binding force, all the norms of non-state entities with the characteristics of the minimum requirements of law have the "reference" significance for the suitability of the law of the court, and all have the possibility of being incorporated into the contract terms according to the will of the parties and the freedom of contract under the condition that they do not violate the mandatory provisions or harm other legal interests. State standard is the basic feature of modern international law. All the actors outside the organization mechanism of international operation are cooperative and auxiliary (He, 2021). Compared with the national law, the more similar a particular type of non-state law is to the national law, the stronger its legitimacy will be as the applicable law in the process of law selection. In the definition of non-state law,

The Hague Principles holds that non-state law should have the characteristics of "system", "balance", "neutral" and "universal" in addition to regional characteristics. Article 38 of *the Statute of the International Court of Justice* defines the international law to which the ruling applies as international treaties, international custom and general legal principles recognized by the States concerned. To further determine whether the corresponding type of non-state law can be used as the applicable law, we can compare it with the national law by the method of distance discrimination[6].

As different countries or regions have different understandings of the characteristics of national law, the basic concepts of many customary international law systems in international law, such as state sovereignty, human rights, the right to self-determination, the right to self-defense, and state immunity, have diversified meanings due to differences in international history, religion, culture, social system, values, ideology, etc. Different countries can interpret it differently according to their own interests or the interests of the community to which they belong (Jiang, 2010). However, it has been widely recognized that *national will*, *national compulsion*, *standardization*, *explicit openness and universal constraint* should be featured in national law. By comparing state law with different types of non-state law, we can intuitively find out the compatibility of specific types of non-state law applied to domestic courts (The detailed analysis chart is shown in Table 2).

According to the distribution of compatibility or conformity of characteristics of different types of non-state laws in the table above, there are also differences in the strength of characteristics of national laws possessed by different types of

Table 2. Feature compatibility analysis table of non-state law.

Types & Characteristics	National Formulation	Compulsory Guarantee	System Specification	Explicit Disclosure	Equity and Justice	Universal Constraint
National Law	●	●	●	●	●	●
Treaty in Force	⊙	●	●	●	●	●
Uniform Rules of International Commerce	⊙	⊙	●	●	●	●
Treaties not in Force	⊙	○	●	●	●	●
Customary International Law	○	⊙	●	●	●	●
Model law	⊙	○	●	●	●	●
Religious Law	○	⊙	⊙	⊙	⊙	○
Tribal Law	○	⊙	○	○	⊙	○

Note: ● for complete compliance, ⊙ for other circumstances, ○ for non-compliance; The relevant characteristics are judged from the general perspective of the country. Due to different national conditions, there may be differences in each item.

[6]The basic idea of distance discrimination is to first calculate the center of gravity of each type according to the data of known classification, and then calculate the distance between the samples to be judged and each type. The closest distance to the samples to be judged will determine which type x belongs to.

non-state laws. Applicable law is the substantive law of a specific legal region determined by the guidance of conflict norms, which should satisfy the basic characteristics of law such as "system", "balance", "neutral" and "universal". It can be seen from the above table that compared with other types of non-state law, uniform rules of international commercial affairs, treaties not in force, international customary law and model law have relatively little impact on national law while maintaining the basic characteristics of law.

5. Operational Thinking: The Realization of Non-State Law as Applicable Law

Compared with the application of applicable law by national judicial organs, relevant arbitration rules and practices in the field of international commercial arbitration are obviously more inclusive in the application of non-state law. Considering the risk and legislative cost, it is necessary to broaden the scope of application of non-state law, to enable it to play a further role in the field of national justice.

5.1. Promoting Legislation on the Non-State Law Application

To promote the application of non-state law as applicable law at the legislative level, it is necessary to consider the systematic requirements of law and make provisions on the applicability of law at multiple levels for specific types of law application.

5.1.1. The Legislative Level and Content of Non-State Law Application

In terms of the application of international civil and commercial treaties in our country, there are two modes of application of direct application and of international private law (Zhang, 2022a). The most direct beneficiaries of promoting the application of non-state law as the applicable law are international civil and commercial groups. Therefore, based on the characteristics of this group's service, the application space of non-state law should be broadened to meet the actual interests of non-state law as far as possible. At the same time, different types of non-state law should be discussed. In order to promote the application of non-state law as the applicable law, the internal conflict norms and substantive rules should be adjusted to some extent. On the one hand, at least certain types of non-state law should be confirmed to have a legal status, or in the conclusion and ratification of an international civil and commercial treaty, its legal status in the domestic legal system should be made clear, as a way of application of the applicable law, whether it has self-execution, whether it can be directly applied, etc. On the other hand, it should be made clear that treaties and international commercial usages can be applied as the applicable law by agreement in the relevant legislation of norms of domestic conflicts, and at the same time set up provisions that are invalid because of improper provisions of the applicable law. For example, in Article 3 of *the Law on the Application of Foreign-related Civil Legal Relations*, "the parties may expressly choose the applicable law of for-

eign-related civil legal relations in accordance with the law", "or substantive legal rules" are added after the law. At this point, relevant provisions involving social public interests (Article 5) and the closest connection (Article 6) can still be realized in the actual selection process to block relevant risks.

5.1.2. Legislative Restrictions on the Application of Non-State Law

It is neither wise nor professional to use the term "non-state law" at the legislative level. Based on the above analysis of the characteristics of different types of non-state law, not all non-state laws with substantive rules have the potential to be applied as applicable laws. Treaties in force, uniform international commercial rules, treaties in force, customary international law and model laws have the potential to be applicable as applicable laws. Obviously, if the names of the above non-state laws are incorporated into the existing legislative system, the judgment of whether they are applicable laws will directly aggravate judicial judgment because the formulation subject of relevant substantive law norms is not single. Therefore, it is also necessary to restrict the application of non-state law. First, if it conflicts with the application of domestic compulsory laws and rules and the public interest, it shall not be applied; Second, restricting the parties to choose a non-state law (commercial treaty) as the applicable law should be in writing (Zhang, 2022b); Third, through legislative interpretation or empowering the Supreme People's Court to clarify that specific non-state laws can be used as applicable laws, and publish them in the form of a positive list. Fourth, the application of the corresponding applicable law is still limited to foreign-related legal relations[7].

5.2. Promoting the Selection on the Application of Non-State Law

In the judicial practice of international civil and commercial matters, the applicable law pointed to by the selection of regulations can be treaties, international usages, international uniform commercial rules, international commercial model law, etc., while in domestic judicial practice involving the application of international commercial treaties, the court can directly invoke the provisions of the treaty, involving the application of international commercial practices, the court can adopt a relatively positive attitude towards the application of applicable law. Excluding non-state law with weak unity as applicable law.

5.2.1. Choose International Treaties as the Applicable Law

In the 1960s, the new trend of thought in *the European Institute of Comparative* Law had a positive influence on promoting the uniform application of international treaties, and also gave great support to the non-private international law model for arbitrary rules (Li, 2017b), however, this kind of law application rela-

[7]A counterexample is that *Japanese Act on General Rules for Application of Laws* does not limit its scope of application to foreign-related relations. Under the condition that it does not violate the mandatory provisions of its own country, relevant domestic contracts can also choose to apply foreign laws, but non-state laws are still different from national laws in terms of normalization and so on. Therefore, promoting the application of non-State law in the field of international law to purely domestic legal relations is currently not realistic.

tionship which separates the treaty from the local state law of the court shows great limitations in the value construction of the system, and also restricts the party's freedom to choose the law to use to a certain extent. The application path of the uniform law should not be separated from that of the relevant non-state law as the applicable law. "Mandatory substantive norms of treaties in force + direct application" is the general method by which treaties maintain their validity under normal logic. For the arbitrary entity norm, if the choice of the applicable law is used, it should be clear to what extent the parties should choose the applicable law explicitly.

At present, China's treaty database has included more than 2000 economic and investment and trade bilateral treaties, accounting for about 30% of the total number of bilateral treaties, while according to the Treaty Database of the PRC, there are only about 60 multilateral treaties in the corresponding fields, and the number of conventions is relatively small. As for the application of treaties, at the domestic level, more than 50 laws, such as *the Law of the Application of Laws for Foreign-related Civil Relations of the PRC*, have stipulated the application provisions of international treaties. However, if the above judgment is made on the application mode of international treaties, the current application of domestic treaties and conventions basically follows the pattern of "preferential application of treaties (excluding reservations) + supplementary or selective application of international conventions (limited to foreign-related legal relations)". Unless otherwise stipulated, for treaties with non-compulsory application, unless the treaty itself or relevant legislation specifies in specific clauses, even if the parties have completed the selection of laws in general circumstances, the corresponding norms are also difficult to be incorporated into the scope of application of applicable law in judicial practice. Based on the Vienna Convention on the Law of Treaties' adherence to the basic principle of international law that "treaties must be kept" and the obligation of international treaties, our courts will directly invoke the provisions of treaties in the practice of foreign commercial trials and have made judgments. However, it needs to be further clarified that invoking treaties and applying treaties as applicable law are two completely independent issues.

Most treaties make provisions on their own application and enforcement at the beginning of their design. A country can in principle obtain the effect of direct domestic application of an international treaty if it implements specific procedures to give it the effect of domestic application. However, *the CISG* has been directly applicable in China because of *the 1987 Supreme Court Notice*[8], the application of other conventions on private substantive law should still be based on its inconsistency with the provisions of domestic law.

5.2.2. Choose International Usages as the Applicable Law

International conventions play an important role in the existing international

[8]See *Notice of the Supreme People's Court on Transmitting the Notice of the Ministry of Foreign Economic Relations and Trade on Several Issues to Be Paid Attention to in the Implementation of the United Nations Convention on Contracts for the International Sale of Goods*, Fa [Jing] no.34, 1987.

commercial exchange practice. *ICC Code of practice*, *INCOTERMS*, *URDTT*, *URDG*, *ISDGP* and so on are widely welcomed by international businessmen in international civil and commercial practices. Non-state actors play a role in shaping customary international law, either through State authorization or indirect participation (Nicolas, 2017). In essence, the normative nature of customary international law has a higher level of compatibility for international commercial practices. Custom is actually the secondary rule of law formation (Anthony, 2012). The behavior recognized as a habit (law) should meet two requirements: First, there must be a long-term, fixed pattern of behavior, and even, some habits as general rules must have an ancient and difficult to trace history; Second, custom is regarded as law and followed (Chen & Lu, 2019). It can be said that international commercial usages are the concrete manifestation of international customary law in the field of civil and commercial transactions. The international convention is similar to the new customary law of merchants mentioned by *Clive M. Schmitthoff*, which has the characteristic of being the applicable law (Xu, 2006). Based on the particularity of the adjusted relationship, the corresponding convention is different from the international customary law in the field of public law, and its starting point of effect is the premise of the autonomy of the will of the parties.

Most domestic laws stipulate that international practice can be applied when international law and international treaty have not made provisions on relevant issues, which establishes the legal status of "supplementary application" of customary international law. A large number of cases in judicial practice involve international practices, most of which are based on the premise that the parties first agree on the application. *The judicial interpretations of the Provisions on Several Issues Concerning the Trial of Cases Concerning Disputes over Independent Letter of Guarantee* and *the Provisions on Several Issues Concerning the Trial of Cases concerning Disputes over Letter of Credit issued by the Supreme People's Court* do not adopt the same expression for the application of relevant international practices. The former refers to relevant international practices as an "integral part of the terms"; The latter affirms the effect of the agreed application, and the application mode of international convention is more inclined to the actual application of the applicable law. However, if this application mode is interpreted as the application mode of the applicable law, confined to the provisions of the relevant provisions in Chapter 1 of *the Law on the Application of Laws for Foreign-related Civil Relations*, the conflict between judicial interpretation and legal provisions may be formed. At the level of legal norms, the overall concept of non-state law has not been recognized, international practice is relatively independent of non-state law, and promoting the status of international practice to obtain law is the biggest obstacle to its application as the applicable law.

5.2.3. Choose Non-State Law Rather than Treaty and Practice as the Applicable Law

Non-state laws outside treaties and practices include some uniform rules of in-

ternational commercial affairs, model laws, religious laws, tribal laws, etc. However, not all types of non-state laws have the possibility to become applicable laws, but at the same time, the possibility of application of some non-state laws as applicable laws cannot be completely excluded.

Based on the professionalism of the formulation, the unified international commercial rules and model Law have been generally recognized in the field of international commercial arbitration, and have been transformed into universally respected treaties at the objective level. Model law has certain correlation with international practice and uniform rules. For example, *PICC* can be generally regarded as a collection of model law, international practice and uniform rules. In addition, the provisions of the *Principles of European Contract Law* on its own scope of application also make clear the application conditions of "when it is agreed that its contract is governed by 'general principles of law', 'merchant law' or similar". One of the important values of model law is to provide an important reference model for the formulation of international law[9]. In other words, its substantive value is achieving the application effect as the applicable law through a way of "assimilation". With the help of the selection law, achieving the model law is not mature in the judicial practice of our country. At present, China has not formulated relevant legal documents on the direct application of the applicable law.

Based on the above judgment on the characteristics of relevant legal norms, the application of religious law and tribal law in our practice is also narrowing, and the possibility of being recognized as the applicable law in the current judicial system is very low. In the process of law selection, even if the parties choose relevant legal norms, there should be a greater possibility that they will be invalid due to their conflict with domestic mandatory legal norms or social and public order. However, the reality of existing international economic and trade exchanges does not allow the relevant norms to be completely excluded from the scope of applicable law. The influence of religious law tradition is an important feature of the countries along the Belt and Road. Except for some countries, most of them are affected by several major shariah laws (Wang, 2018), and some countries have directly stipulated the effect of religious law at the level of constitution. The party choosing this country's religious law is actually to choose a foreign law, as long as it does not violate the provisions of Chinese laws, it should respect the party's choice of this type of non-state law. Although tribal law also belongs to the content of non-state law, it has been gradually eliminated by the modernity of law due to its strong regional and consanguineous attributes. It is difficult to have the legal characteristics of "system", "balance", "neutral" and "universal", and even harder to apply as the applicable law.

5.3. Promoting the Judicial Realization on the Application of Non-State Law

At the international level, at least a considerable number of countries have rec-

[9]For example, *Government Procurement Law* (*Draft*) *of the PRC* is mainly based on the 1994 *United Nations Model Law on Procurement of Goods Construction Services*.

ognized that the rule of law can be recognized and applied by national courts as the law chosen by the parties to an international contract, which is an important step beyond the application only in the field of arbitration (Genevieve, 2014). The application of non-state law, including treaty and practice, is closely related to the law-making practice of a country. However, due to the restraint of law-making, China has not yet formulated non-state law as the normative document for the application of applicable law. Treaty, usages and model law also exist in judicial practice as independent concepts.

5.3.1. Promoting the Development of the Application of Treaties and Usages in China

From the perspective of the application of international civil and commercial treaties and practices in 2022[10], relevant legal documents usually make it clear that the case is foreign-related before explaining the application of treaties, and the parties agree to apply Chinese law as the applicable law, thus indicating the priority of the application of treaties[11]. Although the interpretation of this mode of application explains the Chinese law as the applicable law and the preferential application of treaties, it does not show that the application of treaties is carried out as the applicable law based on the effectiveness of the preferential application of treaties. In the case of *Steeltrade S.R.L v. Xian Litonglian Steel Pipe Co., Ltd.*, Xian Intermediate People's Court directly affirmed that *CISG* should be applied as the applicable law[12]. In view of the features of both arbitrariness and priority application of *CISG*, even if the parties did not choose CISG as the applicable law, the case can still be applied as the applicable law, and typically such as the application of *the Montreal Convention*. Because China is a member of this convention, the case involved should be applied first if it meets the applicable conditions of the convention[13].

From the practice of relevant international treaties, not all treaties have the possibility of direct application, and it is more typical that relevant treaties in the field of intellectual property need to be transformed into domestic laws by means of transformation[14]. However, the final application of relevant intellectual

[10]According to incomplete search and statistics, in 2022, there were 12 judgments and 2 rulings applicable to the CISG; 11 judgments applying the 1999 Montreal Convention; 1 ruling on the application of the Agreement on International Railway Combined Transport of Goods; 7 judgments applying Incoterms; 1 judgment applicable to the Uniform Rules for Collection; 1 judgment applicable to the Uniform Customs and Practices for Documentary Credits; 2 judgments and 2 rulings in the Uniform Rules for Demand Guarantee.

[11]See Qingdao Longquan Graphite Co., Ltd., Longpelide Co., Ltd. V. International Goods Sales Contract Dispute Case, (2021) Lu Minzhong No. 337 Civil Second Instance Civil Judgment; The case of disputes over international goods sales contracts between Leipuno Trading Co., Ltd. V. Jinan Darun Machinery Co., Ltd., (2020) LMZ No. 947 Civil Judgment of Second Instance; Beijing Kangjiekong International Freight Forwarding Co., Ltd. V. Samsung Property Insurance (China) Co., Ltd. Tianjin Branch, (2021) Jin 03 Min Zhong No. 1419 Civil Second Instance Civil Judgment.

[12](2020) Shan 01 Minchu No. 662, Civil judgment of first instance.

[13]See Shenzhen Hangyu Taihua Freight Forwarding Co., Ltd. V. Shenzhen Jinhaicheng International Freight Forwarding Co., Ltd., (2019) Guangdong 03 Minzhong 23038 Civil Judgment of second Instance.

[14]See Article 4 of the Law of *the Supreme People's Court on the Application of Foreign Civil Legal Relations* (*I*).

property protection treaties may return to the judgment of relevant intellectual property protection standards. When domestic intellectual property protection standards are higher than treaty standards, the provisions of the treaties should be applied preferentially (Yang, 2020b). To sum up, there have been actual judicial achievements of Chinese judicial bodies on the application of treaties as applicable law, but judging from the nature of treaties, not all treaties can be protected in accordance with the content of treaties, and the final application should return to the comparison between the provisions of domestic law and the content of treaties.

After sorting out and studying 66 typical arbitration awards from 2010 to 2018 included in the Yearbook of International Commercial Arbitration, it is found that in international commercial arbitration, the parties to the case have no obvious preference for international commercial usages and other autonomous rules when choosing the agreement of the applicable law. The parties' preference for international commercial usages may not be as great as some scholars claim. In fact, the parties directly choose the Convention (CISG) situation is relatively rare. When the parties do not explicitly exclude the application of the Convention, the arbitral tribunal directly chooses to apply international commercial usages on the basis of its authority, only 8 out of 66 cases, accounting for only 12% of the total, showing very obvious exceptions (Song, 2020). The selection of the general applicable law is based on the choice of the parties. If the parties do not agree, according to Article 17 of *the Arbitration Rules of the Court of Arbitration of the ICC*, "the Arbitration Tribunal shall decide to apply the rule of law as it deems appropriate". This "mode of direct election of applicable law" objectively creates conditions for the use of international practice as applicable law. Different from the direct election of applicable law in the field of international commercial arbitration, the domestic legislation adopts the approach of the closest connection principle to fill the loopholes in the application of law. In the practice of judicial adjudication, the Supreme People's Court makes an attempt to apply international commercial conventions as applicable law. For example, in the case of *the Bank of China Limited Henan Branch v. the Arab and United Bank of France* (*Hong Kong*) *Ltd.*[15], the parties have not agreed on the applicable law of the contract, but in the case of the anti-guarantee letter of guarantee, *URDG*758 is specified as applicable. Therefore, the court first affirmed that the contents of *URDG*758 constituted an integral part of the letter of Guarantee according to Article 5 of *the Provisions on Several Issues of Independent Letter of Guarantee*, and then affirmed that the parties chose the applicable law of contract by incorporating the contents of *URDG*758 into the agreement according to Article 34 paragraph 2 of URDG758.

5.3.2. Promoting the Construction of Application of Some Non-State Laws

The development of new judicial frameworks is slowly but steadily reducing the

[15](2018) Supreme People's Court of the PRC Civil Judgment No. 880 of the Second Instance.

role of the state, but this transformation cannot be separated from the most fundamental element of classic sovereignty and statehood: a major revision of the judicial system (Pedro & Rafael, 2009). To promote the application of non-state law as the applicable law is a dynamic legal operation process, which needs to adapt a series of institutions derived from the rules of civil conflict (Zhang, 2019). Before the formal adaptation of the law, it is necessary to solve the problem of identification and identification of the law, after the adaptation of the law, it is necessary to solve the problem of relief of improper application of the law.

Because of the uncertainty of the extension of non-state law, the identification of specific non-state law is the prerequisite for the advancement of the application work. Identification is not only the process of testing whether the applicable law is qualified, but also the process of finding the law. In the case that the relevant subject has made an express choice of the applicable law in the contract terms, the focus of case identification is to "examine the legitimacy" of the applicable law rules determined by the parties. If the norms chosen belong to the form of applicable law recognized by the conflict norms, the corresponding substantive rules should be affirmed as valid as applicable law. If the parties do not agree on the applicable substantive law rules in the contract, the parties should be allowed to "choose law" before the end of the debate in the court hearing according to the requirements of "Judicial Interpretation of Applicable Law"; If the parties have not chosen the applicable law from the beginning, it is up to the court to "find" the most closely related law based on the objective link points. Similar to identification, as for the identification of non-state legal rules, according to article 10 of *the Law of the Application of Laws for Foreign-related Civil Relations*, if the party chooses to apply foreign law, the law of that country shall be provided. Therefore, the obligation of legal investigation should fall on the party who is making the expression. However, the party may not be liable to the international treaty already in effect in our country as the applicable law.

In the process of application of non-state law as the applicable law, there is also the possibility of wrong use of the applicable law, or the court makes the mistake of "looking for law" when the parties do not make the choice of the relevant applicable law, or makes the judgment that is not in line with the legal intent of the applicable law. Under the above circumstances, in order to respect the judicial sovereignty of the court where the judgment is made, the relevant relief should also be carried out in accordance with the local law of the court.

6. Conclusion

Non-state law, as an important form of law, has undoubtedly broken away from the scattered and inferior nature of general rules, but due to the differences in the subject of formulation and the applicable environment, it can not be adopted as a whole by all state laws. International treaties, customs, uniform rules of international commercial affairs, customary international law and model law, as

important components of non-state law, have been applied to varying degrees in the field of international commercial arbitration. Correspondingly, the scope of applicable law is defined as rule of law by general and international commercial tribunals. This also provides a relatively sufficient interpretation space for the relevant applicable law. As a relative concept of national law, non-state law is not a completely isolated binary relationship. National law can "absorb" treaties into its own normative system through transformation and incorporation, etc. Uniform international commercial rules and international model laws can also be transformed into binding treaties, or relevant contents can be directly absorbed by national law. While maintaining the interactive relationship with national law, non-state law also shows rich independent value. Based on the natural neutral advantages, non-state law is easier to be accepted by the parties in the practice of commercial arbitration and judicial trial. Moreover, the evolution of non-state law content keeps pace with the development of the unified private law movement and the unified commercial law. Chinese legal system has its own advantages. With the acceleration of China's internal reform and opening to the outside world, the coordinated promotion of domestic rule of law and foreign rule of law has become the epitome of Chinese legal system construction and a plan to build a socialist rule of law system with Chinese characteristics. How to promote the interaction between domestic rule of law and foreign rule of law, achieve the maximum guarantee effect of domestic rule of law, and promote the maximum effect of foreign rule of law serving domestic rule of law, we need to think more about the pluralism of more diversified international legal forms.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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