A COMPARATIVE ANALYSIS OF *RENVOI* UNDER PRIVATE INTERNATIONAL LAWS OF THE DPR KOREA, RUSSIA AND CHINA

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Abstract *– The neighbouring countries, the DPR Korea, Russia and China bordered by the River Tuman and the River Amnok, have traditionally developed continuous exchange and cooperation in the field of civil affairs, and today it has entered a new stage. This ever-expanding civil exchange and cooperation also gives rise to legal conflicts between the countries, the solution of which can be achieved by different private international laws of the countries concerned. The present paper offers a comparative analysis of renvoi specified in each private international law of the three countries in view of simultaneous applicability of these countries' national laws when certain legal problems arise in the process of civil exchanges and transactions between natural persons of the three countries. Such an analysis might help natural persons of these countries to participate more actively in civil transactions with a better understanding of the private international laws and applicable laws of the DPR Korea, Russia and China. At the same time, it can also contribute to facilitating civil legal acts such as the establishment and termination of family relations among different citizens residing in these countries.*

Keywords: *private international law; renvoi; applicable law; rules of the conflict of laws, choice of law rules; foreign element*

INTRODUCTION

In general, civil relations with foreign elements, unlike domestic civil relations, have connections with the laws of more than one country in the process of their establishment, alteration and termination. "Foreign element" means simply a contact with some system of law other than that of the "forum", that is the country whose courts are seised of the case. Such foreign elements in the facts of a case are quite commonplace: a contract was made with a foreign company or was to be performed in a foreign country, or a tort was committed there, or property was situated there, or one of the parties is domiciled in a foreign country.[1]

In civil relations with foreign elements, laws inevitably conflict one another, and it can be fully solved by applying the law of one country, among the laws of several countries concerned. Private international law (PIL), a body of rules determining applicable laws to settle conflict of laws in civil relations with foreign elements, is also called the 'conflict of laws'[2] or the conflict law.

The principles and rules of PIL determine the applicability of a certain law or certain rules of law in situations involving a choice between the laws of different countries. In this context, the term "international" does not refer to the internationality of the source of law but to the internationality of the cases covered. PIL or the conflict of laws itself does not decide cases. It is commonly recognized that the conflict rule is a rule determining the law of which state should be applied to a given private law relation complicated by a foreign element.[3] PIL contributes to the

[1] David McClean and Kisch Beevers, *The Conflict of Laws* 2 (Sweet & Maxwell, 6th Ed. 2005)
[2] *ibid.*, at 4.
[3] G. K. Dmitrieva, *Private International Law: Textbook* 109 (Moscow, 2013)

settlement of a case by designating an applicable law, that is, a civil substantive law of a certain state which is applicable to the settlement of the case. In other words, PIL, while still being a part of private law, can also be characterised as a meta-law which, speaking figuratively, is located above various substantive private laws and chooses among those connected to a case. This is why not a few seek to find a forum the law of which is favorable to them[4] in the hope of applying the law designated by the conflict of laws of that country when a civil dispute has occurred.

But the mode of existence of PIL varies from country to country. Some countries enact a separate PIL code, or include a separate chapter providing for the rules of conflict of laws in their civil codes, while others define their PIL rules in a dispersive way in different laws without an independent code on conflict of laws.

The PIL of Russia is contained in the third part of its Civil Code, which was amended in 2013.[5] The conflict law of China is stipulated in Arts. 142-150 of Chapter 8 of General Principles of the Civil Law of the People's Republic of China adopted in 1986, and China adopted a specialised code on PIL entitled 'Act on the Application of Laws on Foreign-related Civil Relationships' at the seventeenth Session of the Standing Committee of the Eleventh National People's Congress on October 28, 2010. It came into force on April 1, 2011.6 The DPR Korea adopted the Law on External Civil Relations, an independent code on PIL in 1995, and amended it for the first time in 1998. In all these three countries, in addition to separate or specialised statutes on PIL and civil codes, other branch laws also deal with rules of PIL or, in other words, rules of conflict of laws.

However, the rules of PIL relating to *renvoi* vary among these three countries. While the PILs of the DPR Korea and Russia recognise the concept of *renvoi*, Chinese PIL does not. And the regulations on *renvoi* in the PILs of the DPR Korea and Russia also vary in their particulars. This means that when the laws of the DPR Korea, Russia and China have equal applicability to a certain civil relation, *renvoi* may or may not be recognised depending on the choice of the forum resulting in the difference in the rights and obligations of the parties concerned.

Conflict rules in PIL include rules of a special category, rules of *renvoi* character, and the relevant provisions are not composed of hypothesis, disposition and sanction, which are integral components of other legal rules.[7]

In this light, the paper attempts to offer a comparative analysis of regulations on *renvoi* in the PILs of the DPR Korea, Russia and China in a normative and academic perspective. In Section 1 of the present paper, the classification of *renvoi* is generally described in relation to the PILs of the DPR Korea, Russia and China, and in Section 2, the details of *renvoi* under the conflict laws of the DPR Korea, Russia and China and the relevant tendencies of the academic circles are compared.

1. Classifications of *Renvoi*

When a civil case with foreign elements occurs, courts of each country determine a law applicable to the case in accordance with its own PIL. According to V. P. Zvekov, the main difference between a conflict rule and other legal prescriptions is the overcoming of a conflict problem by means of determining the applicable law, i.e., the law subject to application by virtue of the directive of a conflict rule.[8]

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[4] Karen Alter and Sophie Meunier, *The Politics of International Regime Complexity* 7 (1) Perspectives on Politics 13-24 (2009).

[5] Vladimir Orlov, *Updated International Private Law of Russia* 3 (2) Athens Journal of Law 75 (2017).

[6] See Zhonghua Renmin Gongheheguo Shewai Minshi Falvguanxi Shiyongfa [Act on the Application of Laws on Foreign-related Civil Relationships/Private International Law Act] (2010); Zhonghua Renmin Gongheguo Zhuxi Ling [Order of the President of the People's Republic of China], No 36.

[7] Natalia Erpyleva, *The Evolution of Conflict Regulation in Private International Law of Russia and Poland* 4-5 (Leibniz Information Centre for Economics, 2015) available at http://hdl.handle.net/11159/255887.

[8] V. P. Zvekov in N. Marysheva (ed), *Private International Law: Institutional Aid* 53 (Moscow, 2012).

But private laws of different countries adopt divergent ways of designating applicable laws. Therefore, even in case of the same civil legal relations or cases, applicable laws differ according to which country is the forum and this is called the conflict of PILs.

In a theoretical perspective, the conflict of PILs is divided into two categories: active conflict and passive conflict. The active conflict of PILs is the conflict that arises when each state's conflict rules refer to its national law as a law applicable to a certain civil relation with foreign elements. In other words, when the law of country A becomes an applicable law according to the PIL of country A, but the law of country B becomes an applicable law according to the PIL of country B, it is an active conflict of PILs. For example, if a Russian citizen residing in Russia transfers his bond to another in the DPR Korea, there is an active conflict between the Russian PIL and that of the DPR Korea in connection with this civil relation. This is because in relation to the transfer of bonds, the Russian PIL defines that where there is no agreement of the parties on an applicable law, the contract should be subject to the law of the country with which the contract has the closest relation, namely the law of the country where the party responsible for the performance under the contract has its place of residence or main place of business,[9] whereas the PIL of the DPR Korea defines the law of the place of transfer or the law of residence of the debtor10. In case of such an active conflict of PILs, the results will be clearly different according to which country's court the civil dispute in question is brought to. In the above example, if the case is litigated in Russia, the Russian court will apply the Civil Code of Russian Federation according to its PIL, whereas if it is brought to a court in the DPR Korea, the DPR Korean court will apply the civil law of the DPR Korea, which will subsequently lead to different consequences.

But the same is not the case in passive conflict of PILs. A passive conflict of PILs is the conflict that arises when the rules of PILs of different countries related to civil relations with foreign elements refer to the laws of different countries as applicable laws. In other words, when, with regard to the same civil relation, the PIL of State A refers to the law of state B as an applicable law while the PIL of State B refers to the law of either state A or state C as an applicable law, it is a passive conflict of PILs.

In case of a passive conflict of PILs, the results of the same civil relation will be comparatively similar no matter which country's judicial organ judges the case, if one relies on the method of applying civil substantive laws designated by the foreign PIL. This method of determining an applicable law is *renvoi*.

Renvoi, which is a term derived from French,[11] arises whenever a rule of the conflict of laws refers to the "law" of a foreign country, but the conflict rule of the foreign country would have referred the question to the "law" of the first country or to the "law" of some third country.[12] If the court of the DPR Korea refers to Russian law according to the PIL of the DPR Korea as applicable to certain civil relations with foreign elements, but according to the PIL of Russia, the applicable law is the law of DPR Korea again, or that of China, then the Court of the DPR Korea would apply its civil substantive law or that of China. This is referred to as *renvoi*.

The doctrine of *renvoi*, practiced in many but not all legal systems, is based on the idea that a reference to a foreign law means a reference to this law as a whole so that the foreign PIL rules also have to be applied. If it is regarded as referring to only the civil law of the relevant foreign country, *renvoi* would not take place.

M.M. Boguslavsky justifiably notes that "the conflict rule is a rule determining the law of which state must be applied to a respective legal relation. The conflict rule has a *renvoi* character; it only

[9] Paras. 1-2 of Article 1211 and Article 1216 of the Civil Code of Russian Federation.
[10] Article 33 of the Law of the Democratic People's Republic of Korea on External Civil Relations.
[11] Н. Н. Викторова, *VI Введение в международное частное право России* 183 [N. N. Victorova, Application of Private International Law of Russia] available at https://publishup.uni-potsdam.de/files/5670/bellin.
[12] David McClean and Kisch Beevers, *The Conflict of Laws* 499-500 (Sweet & Maxwell, 6th Ed. 2005).

refers to material rules providing for resolving the respective question."[13] This shows that *renvoi* that arises when the PIL of a state refers to a foreign law as an applicable law ultimately aims at designating the civil substantive law of a certain state.

In theory and practice, there are four categories of *renvoi* under PIL: remission, transmission, indirect remission, and double *renvoi*.

Remission, which is a type *renvoi* in its narrow sense, occurs when a forum state selects a foreign law as an applicable law according to its own PIL recognizing that the foreign law includes the PIL of that foreign state, and the PIL of the foreign state refers back to the civil law of the forum state as an applicable law. This is called *renvoi* au premier degré,[14] but in some countries, including the DPR Korea and China, it is also called "direct remission". For example, if a case regarding the civil capacity of a Korean citizen residing in Russia is brought to a Russian court, the applicable law can be the personal law of the litigant, namely the DPR Korean Civil Law according to Arts. 1196-1197 of the Civil Code of Russian Federation, which are the rules of Russian PIL. But according to Article 4 (18) of the Law on External Civil Relations of the DPRK, the PIL of the DPRK, the dispositive capacity of a Korean citizen residing in other countries are to be governed by the law of the state where he or she resides, namely Russian law. In this case, the Russian court would apply DPRK Civil Law to decide the case. This is referred to as remission or direct *renvoi*. Many countries recognise this type of *renvoi*.[15]

Transmission is another type of *renvoi* whereby a forum state selects other state's law as law applicable to a case with foreign elements in accordance with its PIL, and the other state's PIL refers to the law of a third state as an applicable law, in which case the forum state applies the civil law of the third state to decide the dispute concerned. In France, this type of *renvoi* is referred to as *renvoi* au second degré.[16] For example, suppose that a case is brought to a Russian court regarding the guardianship of a Russian citizen over a Korean citizen with no dispositive capacity residing in China. According to Article 1199 (1) of Russian PIL, guardianship over adults having no dispositive capacity is appointed and terminated according to the personal law of the person over which it is appointed or terminated, and according to Article 47 of the DPRK PIL, the law of domicile, i.e., the Chinese law, should apply in relation to the guardianship over a Korean citizen residing abroad. In such a case, if the Russian court decides the case by applying Chinese Civil Code, then it is transmission. Some countries adopt transmission as well as remission.[17]

Other types of *renvoi* include indirect remission whereby a forum state selects the law of a foreign state as an applicable law, which selects the law of a third state as applicable to the case in question, but the PIL of the third state refers back to the civil substantive law of the forum state as applicable, thus leading the forum state to finally apply its own civil substantive law to the case. For example, suppose that guardianship was established in DPR Korea over a Chinese citizen residing in Russia and a case was brought to the DPRK court with regard to the relationship between the guardian and a person under his or her guardianship. According to Article 42 of the Law on External Civil Relations of DPR Korea, the law of the home country of a guardian should be applied in guardianship, i.e., the law of China, and according to Article 30 of the Act on the Application of Laws on Foreign-related Civil Relationships, which is the Chinese PIL, the law of the place of ordinary residence should be applied in guardianship, i.e., Russian law. And in accordance with Article 1199 (3) of the PIL of Russia, the relationship between a guardian and the person under his or her guardianship is to be determined by the law of the country in which the guardian has been appointed. In such as case, if the court of the DPR Korea applies its family law to settle the case in accordance with the requirements of the Russian PIL, this constitutes indirect remission. Now few

[13] M. M. Boguslavsky, *Private International Law* 89 (Moscow, 2012).
[14] Shuang Yuan Li and Fu Yong Ou *Private International Law* 110 (Beijing University Press, 4th Ed. 2017).
[15] *ibid.*, at 111.
[16] *ibid.*
[17] *ibid.*

countries recognise indirect remission in the world.[18]

Double *renvoi* is also one of the categories of *renvoi* whereby a forum state apply the substantive law of another state although the PIL of the forum state refers to the law of the latter as an applicable law, while the PIL of that state refers to the law of the forum state as an applicable law. Double *renvoi* is a distinctive method by which a judge of a forum state selects an applicable law by putting himself in the place of a judge of that foreign court when the law of the foreign court is selected as an applicable law according to the PIL of the forum state. This type of *renvoi* is widely followed in the courts of the UK. In the UK, double-*renvoi* is also called 'total *renvoi*' or 'foreign court theory' and other types of *renvoi* are called 'single *renvoi*' or 'partial *renvoi*'.[19]

Among the four categories of *renvoi*, the DPR Korea and Russia only recognize remission, while Chinese PIL does not recognize *renvoi* as a principle, which is reflected in 1986 General Principles of the Civil Law of the People's Republic of China or 2010 Act on the Application of Laws on Foreign-related Civil Relationships.

States have different approaches to *renvoi*. The countries that adopts *renvoi* regime include France, the UK,[20] US, Germany, Japan, Australia, Poland and Hungary. The majority of such states recognizes conditional and limited type of *renvoi*, i.e., direct remission, and recognizes transmission only in exceptional cases. For example, Article 35 of the PIL of Tunisia of 1998, Article 4 of the PIL of Venezuela, Article 1096 of Belarus Civil Code of 1999, Article 2259 of Romanian Civil Law of 2009 and Louisiana State Civil Code as amended in 1991 recognize *renvoi* in a conditional and restricted way. According to Article 13 of Italian IP Statute amended on 31 March 1995, when a foreign law is designated as an applicable law, it should be considered whether the foreign PIL recognizes *renvoi*, and if that is the case, Italian law is to apply.[21] On the other hand, there are some countries and regions that entirely deny *renvoi* such as Greece, Brazil, Egypt, Iraq, Peru and Quebec of Canada etc.[22]

Such divergences in PIL rules on *renvoi* of different states are related to the fact that the content of the conflict law, which is a national law of each country, can be determined independently by the countries concerned.

2. *Renvoi* in the PILs of the DPR Korea, Russia and China

The PIL rules of the DPR Korea, Russia and China on *renvoi* are different from one another. This is due to the differences in the state and social systems, basic principles and requirements of the legal systems, historical traditions, national customs and usages, and international environment.

In general, comparative studies help systematically understand the legal systems of different countries by comparing and analyzing corresponding legal provisions.

This part of the paper analyses the regime of *renvoi* specified in the PIL of each country separately by individual comparison among different methods of comparative study with the aim of enabling the parties involved in civil legal relations related to the DPRK, Russia and China to have a proper understanding of *renvoi* regimes of these countries and to actively utilise them in practice.

2. 1 Regulation on *Renvoi* in the PIL of the DPR Korea and its interpretation

As mentioned earlier, the branch law specializing in conflict law rules in the DPR Korea is the Law of the Democratic People's Republic of Korea on External Civil Relations (the Law on External

[18] *ibid.*
[19] *Ibid.*; David McClean and Kisch Beevers, *The Conflict of Laws* 500-501 (Sweet & Maxwell, 6th Ed. 2005).
[20] David McClean and Kisch Beevers, *The Conflict of Laws* 14 (Sweet & Maxwell, 6th Ed. 2005).
[21] Shuang Yuan Li and Fu Yong Ou *Private International Law* 118 (Beijing University Press, 4th Ed. 2017).
[22] *ibid.*

Civil Relations).23 Before the adoption of the 1995 Law on External Civil Relations in the DPR Korea, the rules of the conflict of law used to be defined in various branch laws, including trade law and maritime law. Therefore, before the adoption of the Law on External Civil Relations, *renvoi* as a general rule of PIL was not legally established in this country but discussed merely by academics.

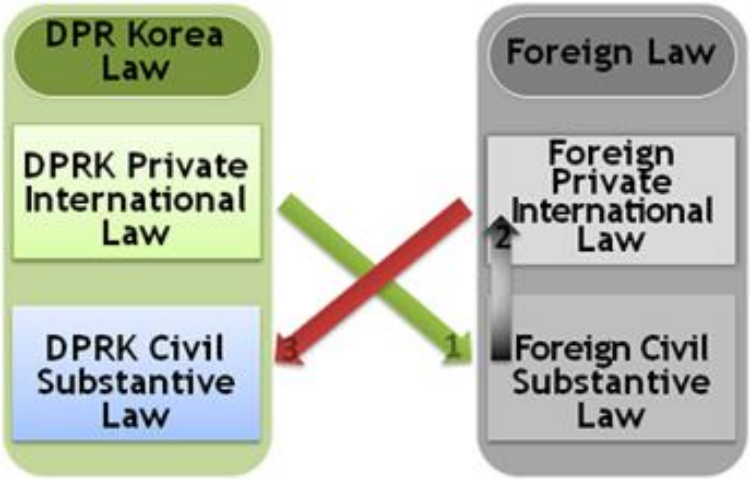
The DPRK Law on External Civil Relations provides with respect to *renvoi* that "where the law of a foreign country defined as the governing law under this Law refers back to the law of the DPRK, the latter shall hold."24 In this provision, "the law of a foreign country" refers to the PIL of the country whose law is selected as an applicable law by the DPRK Law on External Civil Relations. This indicates that the law of a foreign country designated as an applicable law by the PIL in the DPR Korea should be viewed as including rules of conflict laws of that foreign state.[25]

As we've seen, there is only one article with regard to *renvoi* in the Law on External Civil Relations, which is a single separate PIL code in the DPR Korea.

Then, what is the rationale behind the recognition of *renvoi* under the DPRK PIL and how should we interpret the clause on *renvoi* in the Law on External Civil Relations? The rationale behind recognizing *renvoi* is, in a word, to select applicable laws in consideration of the laws of other countries as well in the resolution of civil disputes having foreign elements, so that the parties involved in civil legal relations in the DPR Korea are subject to the application of relatively reasonable and advantageous applicable laws. This is of certain significance in equally ensuring the interests of the parties from all countries, including foreigners, irrespective of their nationality, residence, etc.

The provision of the DPRK Law on Foreign Civil Relations regarding *renvoi* is generally interpreted as follows:

First, not all types of *renvoi* are recognised but only a narrow sense of *renvoi*, that is, remission (*renvoi* au premier degré) is recognised by this law. The article regulating *renvoi* in the Law can be segmented into three component parts, that is, "the law of a foreign country is defined as the governing law under this Law", "the law of the foreign country refers back to the law of the DPRK" and "the latter shall hold." This can be expressed in the following diagram.



The DPRK PIL (designates foreign law) → foreign PIL (designates DPRK law) → application of the DPRK Civil Substantive Law

This diagram intuitively shows that *renvoi* stipulated in the DPRK Law on External Civil Relations is restricted to remission, which is *renvoi* in a narrow sense.

Secondly, the DPRK PIL recognises *renvoi* only when an applicable law is the law of nationality of

[23] Adopted by Decision No. 62 of the Standing Committee of the Supreme People's Assembly on 6 September 1995, and amended by Decree No. 251 of the Presidium of the Supreme People's Assembly on 10 December 1998.
[24] Article 14 of the Law of the Democratic People's Republic of Korea on External Civil Relations.
[25] Hui Chol Pak, *Private International Law* 65 (Pyongyang, **Kim Il Sung** University Press, 2020).

a party concerned. The law of nationality of a party refers to the law that is determined by considering nationality as a connecting point, and therefore, it is relatively stable. However, several points of connection that are considered in the determination of applicable laws, such as the place of wrong, the place of property, or the place of contracting are easily changeable by the intention of the parties or other objective factors. Therefore, the DPRK PIL allows remission only when the applicable law is the national law of the parties concerned. In the DPRK PIL, civil relations, which are governed by the national law of the parties, are limited mainly to the capacity of a citizen to act or to his family or inheritance. This is because such civil relations are the most typical ones that enable people to live in conformity with the historical traditions, customs and usages of the countries concerned. According to the DPRK Law on External Civil Relations, the national law of a party concerned is designated as an applicable law with regard to such issues as legal capacity of citizens (Arts. 18 and 19), authentication of the missing or the deceased (Article 21), marriage and divorce (Arts. 35-37), adoption and parenthood (Arts. 40-41), guardianship and support (Arts. 42-44), inheritance and testament (Arts. 45-46).

Thirdly, *renvoi* rules in the DPRK PIL are not applicable with respect to the national law of a party that does not allow *renvoi*.[26] In fact, the application of *renvoi* presupposes the recognition of the concept of *renvoi* by the PILs of two or more countries concerned. Suppose that the PIL of a forum state designates the law of a foreign state as an applicable law in a given case, but the law of that foreign state does not recognise the concept of *renvoi* itself. In such a case, if a forum state applies its domestic law in accordance with the choice of law rules of the PIL of that foreign state designating the forum state's law as applicable, even though that foreign state does not recognise *renvoi*, it would be in violation of the PIL and sovereignty of that foreign state. This explains why *renvoi* provision in the Law on External Civil Relations is interpreted as inapplicable to the relations with a country that denies *renvoi* itself. Since China does not recognise *renvoi* by law, it cannot be applied between the DPR Korea and China.

2.2 Regulation on *Renvoi* in the Russian PIL and its interpretation

The norms of the Russian PIL are contained in Part III of the Civil Code of Russian Federation. They include general provisions27 and choice of law rules concerning legal status of physical and juristic persons,28 as well as property law and personal non-property law relations.29

Article 1190 of Part III of the Civil Code reads as follows:

1. Any reference to a foreign law in compliance with the rules of the present section shall be deemed a reference to substantive law rather than the law of conflict of the relevant country, except for the cases specified in Item 2 of the present article.

2. A reverse reference of a foreign law may be accepted in the cases of reference to the Russian law defining the legal status of a natural person (Arts. 1195-1200).

As can be seen above, Article 1190 providing for *renvoi* is composed of two paragraphs regulating different circumstances. Article 1190 (1) of the Civil Code of Russian Federation, can be understood in two parts. The first part is that, in Russian PIL, a reference to a foreign law is regarded as a reference to the material law of the respective state but not to its conflict of laws norms or choice of law rules.30 Therefore, *renvoi* is not recognised as a general rule in Russia. Russian PIL scholars also interpret Article 1190 of the Civil Code of Russian Federation as denying *renvoi* in general.[31] However, the second part establishes an exception from the general rule by

[26] *ibid.*, at 66.
[27] Russian Civil Code, Part III, Ch. 66, Arts. 1186–1194.
[28] *ibid.* at Part III, Chapter 67, Arts. 1195–1204.
[29] *ibid.* a*t* Part III, Chapter 68, Arts. 1205–1224.
[30] Russian Civil Code, Article 1190 (1).
[31] Н. Н. Викторова, *VI Введение в международное частное право России* 184 [N. N. Victorova, Application of Private International Law of Russia] available at https://publishup.uni-potsdam.de/files/5670/bellin.

stating that in certain circumstances, a reference to a foreign law in compliance with the rules of Russian conflict of laws is deemed a reference to not only the substantive law of that foreign state but also its law of conflict.[32]

As mentioned above, the premise of *renvoi* is the assumption that a foreign law designated as an applicable law by PIL of a certain state includes not only the material law of the former but also its law of conflict or PIL. It follows, therefore, that Article 1190 (1) of the Civil Code of Russian Federation does not recognise *renvoi* in general, but allows *renvoi* in exceptional cases.[33]

According to Article 1190 (2), *renvoi* is recognised only when a foreign law refers to the Russian law in connection with the legal status of a natural person. In other words, *renvoi* is recognised only where the Russian law of conflict designates a foreign law and the law of conflict of that foreign state refers back to the Russian law in connection with the legal status of natural persons. This paragraph leads to the following two observations.

First, the exceptional case where *renvoi* is recognised in Russia is when determining the legal status of natural persons. The Russian PIL defines the personal law of the relevant parties as an applicable law for determining the legal status of a natural person. Chapter 67 (Arts. 1195-1204) of the Civil Code of Russian Federation deals with the law governing determination of the legal status of natural and legal persons, among which Arts. 1195-1200 covers the law governing determination of natural persons. Article 1195 provides the ways of determining the personal law of a natural person in case of his or her conflict of nationalities or residence. Article 1196 defines the law governing determination of the civil legal capacity of a natural person as his or her personal law, Article 1197 defines the law governing determination of the civil dispositive capacity of a natural person as his or her personal law, Article 1198 designates the law governing determination of the rights of a natural person to a name as his or her personal law, and Article 1190 regulates that the law tutorship and guardianship are governed by the personal law of the person over which it is appointed or terminated. Unlike aforementioned articles, Article 1200 defines the declaration in Russia of a natural person as missing or dead should be governed by Russian law. With respect to this article, *renvoi* is not recognised since it defines Russian law as an applicable law to the relevant cases. Russian PIL scholars also observe that *renvoi* is recognized in a restricted scope in Russia, i. e., only *renvoi* to Russian law governing the legal status of a natural person is allowed. It can be concluded from the foregoing that *renvoi* is possible with respect to the legal status of a natural person in Russia when the personal law of the natural person designated by Russian PIL is a foreign law, and the law of conflict of that foreign state refers back to the Russian law as an applicable law. This illustrates *renvoi* in a narrow sense mentioned in Section 2 Classification of *Renvoi*.

Second, *renvoi* recognised by Russian PIL is confined to direct remission[34]. According to para. 2 of Article 1190, reverse reference to foreign law is applicable where the reference is to Russian law.[35] This paragraph has no such phrase as “a third state” other than a foreign law or Russian law. In other words, it does not anticipate circumstances where a foreign law referred to by the Russian conflict of laws norms is the law of a third state or where the PIL of a third state refers to Russian law. This entails that *renvoi* in Russian PIL is direct remission, i.e., *renvoi* in its narrow sense.

In fact, ushering in the 1990s, vigorous efforts were exerted to make new civil law system in line with dramatically changed circumstance in Russia. As a result, the new Russian Civil Code was adopted in several installments: the first part in 1994, the second in 1995, the third in 2001, and

[32] *ibid*.

[33] Vladimir Orlov, *Updated International Private Law of Russia* 3 (2) Athens Journal of Law 82 (2017).

[34] Vladimir Orlov, *Updated International Private Law of Russia* 3 (2) Athens Journal of Law 82 (2017).

[35] *ibid*.

the fourth in 2006. Although Russian civil law had its unique features resulting from differences in economy, politics and lifestyle, it did not deviate from the civilian tradition.[36] The views expressed in Russian literature with respect to Civil Law as a whole, including the third part consisting of PIL rules, and its prospect are quite optimistic. It was commented that the new Civil Code of 1994-2006 makes a particular and substantial effort to make Russian civil law compatible with the civil laws of its European counterparts, and that Russian society now has a very good and promising regulator in the field of civil law. Russian lawyers and legal scholars have intelligently commented upon, interpreted and annotated the Civil Code and they assessed it as containing a good regulative potential.[37] In particular, Vladimir Orlov justifiably contended that the reform of the Civil Code concerning PIL legislation succeeded in integrating judicial practice and international standards, including the necessary flexibility, into Russian law, and that the consistency and coherence of the third part of the Civil Code containing PIL rules have been secured by the adequacy of the novelties, which made the third part the most sophisticated part of Russian civil law legislation.[38]

However, although Russian civil law, including PIL rules in its third part, are sophisticated and relatively perfect, the enforcement of the law into everyday social life will entail not a few problems to be solved. Such problems could be settled during the process of civil law implementation by law-enforcement bodies such as the judiciary and the bar, now that the legislature has fulfilled its task perfectly.[39]

2.3 Approach to *Renvoi* in Chinese PIL

Chinese PIL is silent on *renvoi*.[40] The General Principles of the Civil Law of the People's Republic of China adopted in 1986 did not provide for *renvoi* itself at all. Later, the Supreme People's Court Opinions on Certain Questions on the Implementation of the General Principles of Civil Law adopted in 1988 (1988 General Principles Opinions) implied, in Article 178, that China does not admit *renvoi*. Article 178 of the 1988 General Principles Opinions has two paragraphs. The first paragraph defines a foreign-related civil relation[41] and the second paragraph provides that the People's Court is to determine an applicable material law in accordance with the rules of Chapter 8 of the General Principles of Civil Law when hearing a foreign-related civil case.[42] It is Article 178 (2) of the 1988 General Principles Opinions that can be interpreted as non-recognition of *renvoi*. This is because *renvoi* is possible when a forum state regards a reference to a foreign law in its PIL as a reference to both substantive law and the law of conflict of that foreign state.

China expressly stated in Article 943 of the People's Republic of China's Act on the Application of Laws on Foreign-related Civil Relationships, which is its separate code on PIL adopted in 2010 that it does not allow *renvoi*. Non-allowance of *renvoi* in Chinese PIL does not mean complete rejection of this concept in the private international legal scholarship of this country. At present, China's PIL academics are divided over the issue of *renvoi* into scholars who support *renvoi* and those who are against it. Those who are in favor of *renvoi* argue that it is in conformity with the principle of respect for sovereignty and also favorable to ensuring uniformity of the decision in whichever forum

[36] Asya Ostroukh, *Russian Society and its Civil Codes: A Long Way to Civilian Law 6* (1) Journal of Civil Law Studies 399-400 (2013).
[37] *ibid.*, at 400.
[38] Vladimir Orlov, *Updated International Private Law of Russia* 3 (2) Athens Journal of Law 96 (2017).
[39] Asya Ostroukh, *Russian Society and its Civil Codes: A Long Way to Civilian Law 6* (1) Journal of Civil Law Studies 400 (2013).
[40] Qing Jiang Kong and Hu Minfei, *The Chinese Practice of Private International Law* 3 Melbourne Journal of International Law (2002).
[41] Qing Sen Chu and Huan Fang She, *Private International Law Workbook* 12 (Beijing, Chinese People's Publishing House, 2006).
[42] *ibid.*, at 59 and 62.
[43] Article 9 of the People's Republic of China's Act on the Application of Laws on Foreign-related Civil Relationships reads that "Foreign laws applicable to foreign-related civil relations do not include the Law of the Application of Law of this foreign country."

state it is adjudicated and to expanding the range of the application of its internal laws. On the other hand, those who oppose *renvoi* contend that it is detrimental to the jurisdiction of a forum state, makes it impossible to determine an applicable law due to endless loop, and increases the burden of exploring and clarifying foreign laws (Chu and She 2006, 68).[44]

In the practice of the PIL of China, however, there exist some variations. Although the Supreme People's Court of China clearly stated its denial of *renvoi* with regard to certain matters, it took ambiguous position in some issues (Chu and She 2006, 68).

CONCLUSION

In conclusion, the DPR Korea and Russia recognise *renvoi* or reversed reference, while China does not. The PIL norms on *renvoi* of Russia and the DPR Korea are similar, yet different in some aspects. They both recognise *renvoi* in its narrow sense, i.e., remission, and allow reversed reference only with regard to the selection of a law governing natural persons. However, the specific civil relations in which *renvoi* is allowed in the PILs of the DPRK and Russia are different. In the DPR Korean PIL, *renvoi* is permitted only when an applicable law governing the relations of the legal capacity, family or inheritance of a natural person is his or her national law, but the Russian PIL recognises *renvoi* only when an applicable law governing the legal status of a natural person is the personal law of that person. In general, of course, national law belongs to the category of personal law. But personal law is distinguished from national law in its scope in that the former includes not only the latter but also the law of domicile, the law of habitual residence, etc. In particular, in Russian law of conflict, *renvoi* is not allowed in other family relations than tutorship or guardianship. In this respect, *renvoi* regimes of these two countries differ.

What poses as a difficulty in conducting a comparative study of *renvoi* in the PILs of the DPR Korea, Russia and China is that no real-life precedent regarding *renvoi* can hardly ever be found, thus making it hard to demonstrate the topic through case study. No cases seem to have been brought to courts with regard to *renvoi* in the relations between the DPR Korea and Russia. Before the 1990s most of the civil disputes between these two countries were settled by conciliation and the PIL rules of the counties were not advanced during that period. Therefore, no controversies arose with regard to *renvoi* under PIL. After the dissolution of the Soviet Union, civil relations between Russia and the DPR Korea became rather feeble and few civil disputes were brought to the DPRK or Russian courts.

Article 10 of the Treaty on Comprehensive Strategic Partnership between the Democratic People's Republic of Korea and the Russian Federation, adopted on 19 June 2024 states that both parties shall promote the expansion and development of cooperation in the areas of trade economy, investment, and science and technology. It is expected accordingly, that the civil relations, including economic and trade relations between the two countries will rapidly expand, and the problem of *renvoi* under the law of conflict would inevitably arise.

With respect to the relations between the DPRK and China, no precedents can be found either. This is due to the fact that, as already mentioned, China do not recognize *renvoi*, and therefore *renvoi* is impossible not only in the Sino-DPRK relations but also in all other Sino-foreign relations. The rationale for this non-recognition is explained by some Chinese scholars as a fear of "foreign influence" on choice of law.[45]

Although China does not recognise *renvoi* by law, there are many views in the academic community or practice in China that support *renvoi* and some of Chinese literature on PIL offers in-depth analyses of *renvoi*, which makes one wonder whether the PIL of China might move towards allowing *renvoi* in particular civil legal relations in the future.

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[44] Qing Sen Chu and Huan Fang She, *Private International Law Workbook (*Beijing, Chinese People's Publishing House, 2006).

[45] Zhang Mo, *Choice of Law in Contracts: A Chinese Approach* 26 (2) Northwestern Journal of International Law 289-334; 300 (2006).

Law is not immutable at all but is subject to change and development in compliance with the changed circumstances. At present, the DPRK Government is planning to promote major revisions of its external economic arbitration law to suit to the drastic change in its external economic environment amidst increasing expansion of economic transactions with friendly nations, including Russia, and reflecting experience and lessons learnt during the process of enforcing its national laws governing external economic relations. The amendment of the external economic arbitration law could lead to major amendment and supplementation of the laws regarding external economic relations such as DPRK Law on External Civil Relations, the PIL of the DPR Korea.

In order to further expand and develop civil relations between the citizens of the DPRK, Russia and China in keeping with the present situation where economic cooperation among these three neighboring countries is growing more diverse, it is necessary to bring PIL regimes such as *renvoi* closer to reality.

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