

ARTICLES

THE CHINA INTERNATIONAL COMMERCIAL COURT
IN THE CONTEXT OF THE BELT AND ROAD INITIATIVE:
OPERATIONAL MECHANISM,
PRACTICAL SURVEY AND FUTURE DEVELOPMENT

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THE CHINA INTERNATIONAL COMMERCIAL COURT IN THE CONTEXT OF THE BELT AND ROAD INITIATIVE: OPERATIONAL MECHANISM, PRACTICAL SURVEY AND FUTURE DEVELOPMENT

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The Belt and Road Initiative will mark its 10th anniversary in 2023 and has received more and more acceptance and recognition from various international organizations and countries. The high-quality development of the Belt and Road needs strong judicial protection. To this end, the CICC was set up in 2018 to resolve the commercial disputes related to the development of the Belt and Road. After nearly five years of its establishment, the CICC has established a multi-platform and innovative operational mechanism, including a sound organizational system, a set of feasible procedural rules and an adequate supportive system, such as the establishment of the 'one-stop' diversified dispute resolution platform, the International Commercial Expert Committee, as well as the foreign law ascertainment platforms. These measures have played an important role in properly resolving the international commercial disputes arising from the Belt and Road, safeguarding the legitimate rights and interests of the Chinese parties, and ensuring the steady and long-term development of the Belt and Road Initiative. However, through the survey of the judicial practices of the CICC and the analysis of the features of the commercial disputes arising from the Belt and Road countries, it can be further improved. The work of the CICC can be better promoted by modifying or adopting more relevant supportive legal systems, such as the adoption of a wider jurisdictional base, the doctrine of restrictive sovereign immunity, as well as the design of a more convenient recognition and enforcement mechanism of foreign judgments.

I. INTRODUCTION

The Belt and Road Initiative (hereinafter referred to as the BRI) was first proposed in 2013, and the year 2023 will mark its 10th anniversary. China will also host the third Belt and Road Forum for International Cooperation in 2023. Since the proposal of the BRI, it has been highly

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recognized by more and more countries and international organizations, including the United Nations. By June 6, 2023, China had signed more than 200 Belt and Road cooperation documents with 152 countries and 32 international organizations.¹ The building of the Belt and Road went well along the countries and began to enter the stage of high-quality joint construction with other countries. The report to the 20th National Congress of the Communist Party of China once again emphasized the promotion of high-quality development of the BRI. In order to facilitate the settlement of various international commercial disputes arising out of the implementation of the BRI and ensure the steady and long-term development of the BRI, the Chinese government has proposed on different occasions to build the Belt and Road into a road of integrity and a road of rule of law. On January 23, 2018, the meeting of the Central Leading Group for Deepening Overall Reform deliberated and adopted the *Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions* (hereinafter referred to as the *Opinion Concerning the BR Dispute Settlement*). Subsequently, in June 2018, the Supreme People's Court of China (hereinafter referred to as the SPC) established the First and Second China International Commercial Courts (hereinafter referred to as the CICC) in Shenzhen and Xi'an respectively. After nearly five years of development, the CICC has established a relatively comprehensive operational mechanism, which provides an important judicial guarantee for the proper settlement of BRI-related international commercial disputes. Since its establishment, the CICC has accepted some cases, and some of them have been concluded. There is still some room for improving the work of the CICC in the future, judging from its judicial practices. Most of the relevant literature in China put forward some suggestions for its improvement only based on the institutional design of the international commercial courts in other countries, and they rarely made a comprehensive analysis of the operational mechanism and the judicial practices of the CICC, let alone the features of the international commercial disputes arising from the Belt and Road. Therefore, some of the suggestions are not realistic or feasible. On the contrary, this paper will first analyze the current situation of the operational mechanism of the CICC, then examine the judicial practices of the CICC, and finally bring forward the ways to improve the work of the CICC in the future based on the combined analysis of the judicial practices of the CICC and the features of BRI-related commercial disputes.

1 CHINA'S BELT AND ROAD PORTAL, at <https://www.yidaiyilu.gov.cn/p/77298.html> (Last visited on February 16, 2023).

II. THE CURRENT OPERATIONAL MECHANISM OF THE CICC

To make the international commercial court operational as soon as possible, the SPC has consecutively issued a series of such documents as the *Procedural Rules of the CICC of the SPC (For Trial Implementation)* (hereinafter referred to as the CICC Procedural Rules), the *Decision on Establishment of the International Commercial Expert Committee of the SPC*, the *Working Rules of the International Commercial Expert Committee of the SPC*, and the *Notice of the General Office of the SPC on Inclusion of the First Group of International Arbitration and Mediation Institutions in the 'One-Stop' Diversified International Commercial Dispute Resolution Mechanism*. These documents and the relevant judicial interpretations that the SPC issued laid a solid institutional framework for the CICC to have a sound organizational system, a set of feasible procedural rules and an adequate supportive system, which is very helpful for the CICC to construct an efficient operational mechanism and accordingly provides great convenience for the consequent trial work of the CICC.

A. The Sound Organizational System of the CICC

In the organizational system of the international commercial court, the judge is undoubtedly the most important role. A professionalized and internationalized judge team is the key to the successful operation of the international commercial court.² Around the world, some recently established international commercial courts such as the Singapore International Commercial Court (SICC), the Dubai International Financial Center Courts (the DIFC Courts), the Qatar International Court and Dispute Resolution Center (the QICDRC), the ABU Dhabi Global Market Courts (the ADGM Courts) all appointed judges from other countries as 'International Judges', which manifests the international nature of the composition of the judges of these courts and which helps to resolve the international commercial disputes.³ In China, due to the restriction of article 9 of the *Judges Law of the People's Republic of China*⁴ that the judges in the Chinese courts must have the nationality of the People's Republic of China, the organizational structure of China's

2 Bu Lu, *The Operation of China's International Commercial Court under the Background of the Belt and Road*, 5 *Seeking Truth* 91, 93 (2018).

3 Zhu Weidong, *The China International Commercial Court: Some Thoughts Based on the Foreign Experience and Local Development*, 37(10) *Hebei Law Science* 75, 80 (2019).

4 *Judges Law of the People's Republic of China of 1995*.

international commercial court takes the form of the Chinese judges plus an international commercial expert committee. Among them, the Chinese judges adjudicate the disputes submitted to the CICC, while the members of the International Commercial Committee (hereinafter referred to as the Expert Members), if entrusted by the CICC, may assume the following duties, such as mediating the international commercial disputes; providing advisory opinions on specialized legal issues concerning the ascertainment and application of international treaties, international commercial rules, and foreign laws; as well as providing their advice and suggestions on the development of the CICC and on the formulation of the judicial interpretations and judicial policies of the SPC.⁵ This organization mode makes the CICC different from the international commercial courts in other countries.⁶

Pursuant to article 4 of the *Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court* (hereinafter referred to as the *Provisions on Several Issues*),⁷ the judges of the International Commercial Court shall be selected and appointed by the SPC from the senior judges who are experienced in trial work, familiar with international treaties, international usages, and international trade and investment practices, and capable of using Chinese and English proficiently as working languages. There are currently 12 judges in the CICC and they all have the required qualification according to their profiles on the website of the CICC.⁸ For example, among the 12 judges, nine of them have a Juris Doctor degree, and seven of them have studying or visiting experience in English-speaking jurisdictions. All of them have more than 10 years of experience in civil and commercial trials, and many of them have judicial experience in more than two divisions or courts of the SPC.

As mentioned above, the CICC does not appoint the international judges as those in other international commercial courts. In order to enhance the international nature of international commercial dispute settlement in China and provide convenient dispute settlement services for the parties, the CICC has creatively set up the International Commercial Expert Committee. The members of the International Commercial Expert Committee are appointed by the SPC and they must have the following qualifications: (1) they shall

5 Article 3 of the *Working Rules of the International Commercial Expert Committee of the SPC*.

6 Cai Wei, *International Commercial Courts: System Comparison, Rules Conflict and Construction Path*, 5 *Global Law Review* 175, 186 (2018).

7 Judicial Interpretation [2018] No.11.

8 CICC JUDGES, at <https://cicc.court.gov.cn/html/1/219/193/196/index.html> (Last visited on February 9, 2023).

have expertise in international trade law, international investment law, and other fields of international commercial law, with internationally recognized authority; (2) they shall have the character of integrity and fairness; and (3) they are able to perform duties conscientiously in accordance with the *Working Rules of the International Expert Committee of the SPC*.⁹ Among the first 31 members appointed by the SPC in August 2018, 13 of them are from China, and 18 of them are from the Netherlands, the United States, Britain, France, Switzerland, South Africa, Greece, Canada, South Korea, Australia, Russia, Germany, Lebanon, etc. The wide localities and rich legal background covering the common law, the civil law as well as the mixed law jurisdictions of the Expert Members will help them enhance the dispute resolution process of the BRI-related commercial disputes, which also reflects the golden principles of the BRI, namely, consultation, contribution and shared benefits.¹⁰ In order to make the International Expert Committee more international, more representative and more authoritative, on December 8, 2020, and March 2, 2023, the SPC appointed the second batch of 24 experts and the third batch of 14 experts, respectively, among whom the 19 overseas experts are respectively from Singapore, South Africa, Mexico, Uganda, Nigeria, Algeria, Egypt, Belgium, Kazakhstan, Pakistan, etc, further expanding the localities of the Expert members.¹¹ Especially more and more Expert Members from Africa were appointed, which may have taken account of the fact that there are more and more civil and commercial disputes arising from China-Africa transactions in recent years due to the booming China-Africa economic relations.

B. The Feasible CICC Procedural Rules

1. A Set of Clear Jurisdictional Rules. — A set of clear jurisdictional rules will help the courts to quickly determine what kind of cases are admissible, so as to improve the efficiency of the courts in dealing with the cases. According to article 2 of the Provisions on Several Issues, the CICC may accept the following five types of cases: (1) the first instance international commercial cases with the amount of the subject matter not less than 300 million yuan which the parties have submitted to the SPC by their choice under article 34 of the *Civil Procedure Law*; (2) the first

⁹ Article 2 of the *Working Rules of the International Commercial Expert Committee of the SPC*.

¹⁰ Zhang Yongjian, *Mechanism Innovation of the International Commercial Court*, People's Court Newspaper, July 14, 2018.

¹¹ The SPC reappointed 23 Expert Members of the first 31 members on August 24, 2022, thus the total number of the International Commercial Expert Committee is currently 61. THE EXPERT DIRECTORY at <https://cicc.court.gov.cn/html/1/219/235/237/index.html> (Last visited on January 5, 2023).

instance international commercial cases which are subject to the jurisdiction of the High People's Courts who nonetheless consider such cases should be tried by the SPC and have got the approval from the SPC; (3) the first instance international commercial cases with a nationwide influence; (4) applications made in accordance with article 14 of the Provisions on Several Issues for the conservative measures in arbitration, for the setting aside of the arbitral awards, as well as for the recognition and enforcement of arbitral awards; and (5) the other international commercial cases that the SPC considers appropriate to be tried by the CICC. As may be inferred from such a provision that the CICC mainly accepts three types of cases: the cases submitted by the parties in which the amount in dispute is over 300 million yuan; the international commercial cases with significant influence; and the cases involving the conservative measures, the setting aside and recognition and enforcement of arbitral awards from the arbitral institutions that are included in the 'one-stop' international commercial dispute settlement platform.

The Provisions on Several Issues adopted nearly a similar standard as that in article 1 of the *SPC's First Judicial Interpretation Concerning Several Issues on the Application of the Law of the PRC on the Laws Applicable to Foreign-Related Civil Relations* (hereinafter referred to as the First Judicial Interpretation)¹² in determining whether a commercial case is 'international' or not.¹³ However, the Provisions on Several Issues does not adopt a catch-all clause as the First Judicial Interpretation does in defining the 'foreign civil relations', namely, the other circumstances that can be regarded as the foreign civil relationship.¹⁴ Just as a scholar put forward, this closed legislative model reflects the cautious attitude of the lawmakers, but may create obstacles to further expand the jurisdiction of the CICC in the future.¹⁵ In addition, the Provisions on Several Issues does not define the meaning of 'commercial case'. However, at the press conference held by the State Council Information Office on June 28, 2018, about the Opinions Concerning the BR Dispute Settlement, *Liu Guixiang*, a member of the Judicial Committee of the SPC, pointed out that two facts must be taken into account in defining the 'international commercial case': On the one hand,

12 Judicial Interpretation [2012] No.24.

13 According to article 3 of the Provisions on Several Issues, a commercial case may be regarded as 'international', if: (1) one or both parties are foreigners, stateless persons, foreign enterprises or organizations; or (2) the habitual residences of one or both parties are outside the territory of the People's Republic of China; or (3) the subject matter is outside the territory of the People's Republic of China; or (4) the legal facts creating, altering or terminating the commercial relationship have occurred outside the territory of the People's Republic of China.

14 Article 1(5) of the First Judicial Interpretation.

15 Shi Jingxia & Dong Nuan, *Some Core Issues of China International Commercial Court*, 39(3) Journal of Xi'an Jiaotong University (Social Science Edition) 116, 117 (2019).

the foreign element mentioned above must be present in such a case; and on the other hand, such a case is a civil and commercial one between parties with equal status. *Liu* also expressly pointed out that two types of disputes must be excluded from the category of the international commercial cases, namely, the trade or investment disputes between different states and the investor-state disputes, both of which are to be settled under the existing international legal framework.¹⁶

2. *A Flexible 'One-Stop' Dispute Resolution Mechanism.* — In order to establish a dispute settlement platform that organically integrates mediation, arbitration and litigation to form a 'one-stop' international commercial dispute resolution platform,¹⁷ the SPC decided to include the Mediation Center of China Council for the Promotion of International Trade and Shanghai Commercial Mediation Center as the first batch of the mediation institutions in the 'one-stop' international commercial dispute resolution mechanism, and the SPC has also included China International Economic and Trade Arbitration Commission, China Maritime Arbitration Commission, Beijing International Arbitration Center, Shanghai International Economic and Trade Arbitration Commission, Shenzhen International Arbitration Court, Guangzhou Arbitration Commission, Shanghai Arbitration Commission, Xiamen Arbitration Commission, Hainan International Arbitration Court, Hong Kong International Arbitration Center as the arbitral institutions in the 'one-stop' international commercial dispute settlement mechanism in December 2018 and July 2022, respectively.

In terms of the Provisions on Several Issues and the CICC Procedural Rules, the 'one-stop' dispute settlement procedure is as follows: The CICC may, within seven days of accepting a case and with the consent of the parties, entrust the members of the International Commercial Expert Committee or the international commercial mediation institution to mediate the dispute.¹⁸ If the parties reach a mediation agreement with the help of the Expert Members or the mediation institution, the CICC may issue a conciliation statement in accordance with the law; and if the parties request a judgment, the CICC may make such a judgment based on the mediation agreement which may be served subsequently to the parties.¹⁹ If the parties do not agree to mediation, or the mediation fails to reach an agreement or the mediation is terminated otherwise,

16 THE STATE COUNCIL INFORMATION OFFICE HELD A PRESS CONFERENCE ON THE OPINIONS ON THE ESTABLISHMENT OF THE BELT AND ROAD DISPUTE SETTLEMENT MECHANISM AND INSTITUTIONS, at <http://cicc.court.gov.cn/html/1/218/149/192/768.html> (Last visited on November 21, 2022).

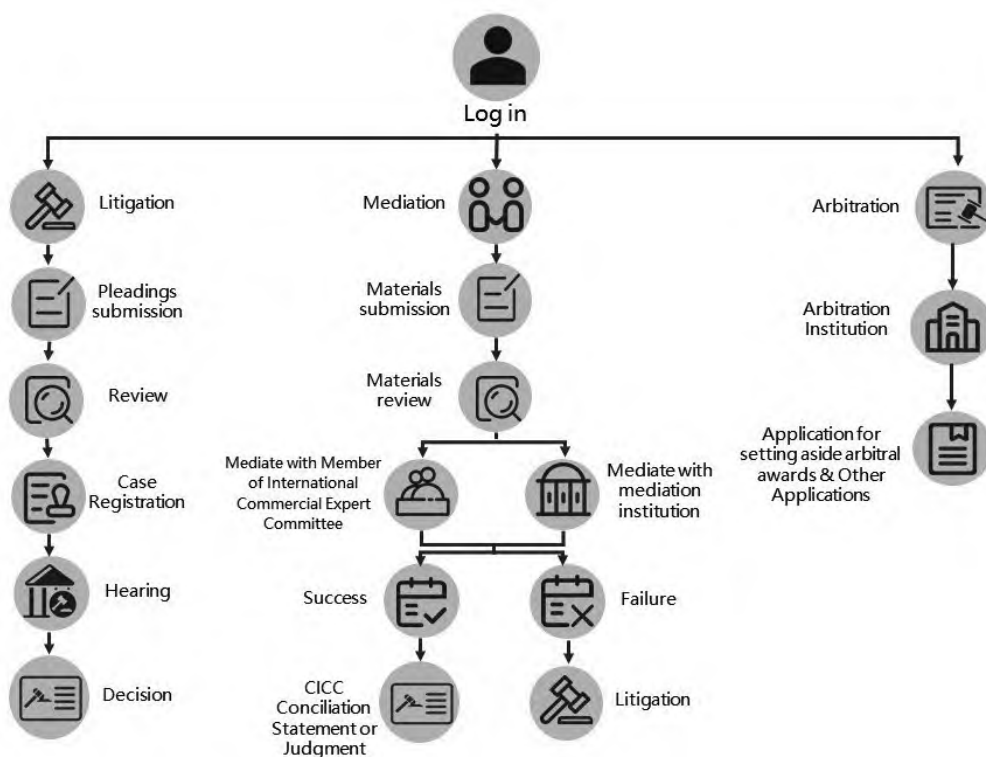
17 Article 11 of the Provisions on Several Issues.

18 *Id.*, article 12; Article 17 of the CICC Procedural Rules.

19 Article 13 of the Provisions on Several Issues; Article 24 of the CICC Procedural Rules.

the CICC Case Management Office shall officially accept the case and determine the time schedule for the litigation procedure after it receives the Mediation Form or other relevant case materials submitted by the Office of the International Expert Committee or the international mediation institution.²⁰ If the parties agree to submit their disputes to the arbitral institutions included in the ‘one-stop’ dispute settlement platform, either of them may apply to the CICC for an order of preservation of property, evidence or conduct, before or after the arbitration proceedings commence.²¹ After an arbitral award is made by an international commercial arbitral institution, the party may apply to the CICC for setting aside or recognizing and enforcing such an award.²²

The procedure of the above ‘one-stop’ international commercial dispute settlement platform can be illustrated as the following:²³



20 Article 25 of the CICC Procedural Rules.

21 Article 14(1) of the Provisions on Several Issues; Article 34 of the CICC Procedural Rules.

22 Article 14(1) of the Provision on Several Issues; Article 35 of the CICC Procedural Rules.

23 The chart is from the website of the CICC, at <https://cicc.court.gov.cn/html/1/218/321/index.html> (Last visited on January 5, 2023).

After the case enters the litigation proceedings of the CICC, a collegial panel of three or more judges will hear the case.²⁴ Prior to the hearing, the CICC may hold a pretrial meeting to clarify the plaintiff's claim(s) and the defendant's defense opinion(s), as well as to handle other matters related to the hearing.²⁵ The deliberation of the case after the collegial's hearing will follow the rule of the majority and the minority opinion may be specified in the judgment or the ruling.²⁶ This is the first time that the minority opinion can be stated in the judgment or the ruling, which is of great significance as it is conducive to emphasizing the reasoning of the judgment or ruling, enhancing its credibility and restricting the judge's discretion.²⁷

As the permanent judicial organ of the SPC, the CICC's trial of the first instance will be final, and its judgment or ruling made is *res judicata*. The conciliation statement made by the CICC shall have the same legal effect as the judgment after its receipt is signed by both parties.²⁸ The design of such a trial-level setting of the CICC to some extent improves the efficiency of the court and realizes the finality of the judgment, conducive to saving the judicial costs and conducive to the recognition and enforcement of the CICC's judgment in other jurisdictions, but the disadvantage of such a design is also obvious: the parties do not have the right to appeal the judgment. As a product of the combination between litigation and arbitration, the international commercial courts in other countries have inherited some of the advantages of the arbitration and realized the arbitralization of the litigation proceedings, while at the same time, they have got rid of the disadvantages of the arbitration, especially those difficulties caused by the finality of the arbitral awards to the parties in seeking remedy, and have thus retained the second trial of litigation, some of them even giving the parties the freedom to decide whether to appeal or not.²⁹ In such a way, not only the advantages of the litigation against arbitration are retained, but also the parties' autonomy is respected.³⁰ Fortunately, article 16 of the Provisions on Several Issues provides the parties with the opportunity of seeking the retrial of the CICC's judgment

24 Article 5(1) of the Provisions on Several Issues.

25 Article 27 of the CICC Procedural Rules.

26 Article 5(2) of the Provisions on Several Issues.

27 Zhang Yongjian, *supra* note 10.

28 Article 15 of the Provisions on Several Issues.

29 For example, the parties to the Singapore International Commercial Court may in writing agree to waive their right of appeal against any judgment or order of the Singapore International Commercial Court, whether final or interlocutory in nature. For the effect of such an agreement, see Supreme Court of Judicature Act 1969 section 29 and Fourth Schedule, paragraph 3, and section 29A and Fifth Schedule paragraph 5.

30 Zhu Weidong, *supra* note 3, 83.

or ruling to avoid the possible negative impact of the finality of such judgments or rulings.³¹

C. The Adequate Supportive System of the CICC

To facilitate the parties to participate in the CICC litigation proceedings and to assure the efficient and speedy operation of the dispute settlement process, the Provisions on Several Issues made many innovative provisions on the ascertainment of foreign law, the taking of evidence, cross-examination, etc, which realized in the diversification of the ways of proving foreign law, the simplification of the techniques of taking evidence and cross-examining, and the digitalization of the court procedures.

For the ascertainment of foreign laws, the Chinese courts when dealing with foreign-related civil and commercial disputes often come across great difficulties in ascertaining the applicable foreign law, due to the restrictions from the capacity of the languages, the availability of the resources, the complexities of the legal systems, etc. Therefore, the Chinese courts will apply the Chinese law (*lex fori*) on the ground that foreign law cannot be proved. This will of course get the judges out of the trouble of finding the foreign law, but it may likely bring injustice to the party concerned and will also enhance the ‘go-homing’ trend in the application of law. For solving the inefficiency of the ways of proving foreign law provided in the previous legislation,³² the Provisions on Several Issues adds another two ways of proving foreign law, namely, the foreign law may be provided by the institution rendering the law finding service and by the members of the International Expert Committee.³³ At the same time, considering the rapid development of the internet and other new technology, the Provisions on Several Issues also included an open-ended clause on the ascertainment of foreign law, namely, the foreign law may

31 Article 16 of the Provisions on Several Issues stipulates that ‘parties may, in accordance with the provisions of the *Civil Procedure Law*, apply to the main body of the SPC for a retrial of a legally effective judgment, ruling or conciliation statement made by the International Commercial Court’.

32 For example, article 193 of the *Opinions of the Supreme People’s Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People’s Republic of China (For Trial Implementation)* provides five ways for ascertaining a foreign law: (1) provided by the parties; (2) provided by a central authority of the signatory with which China has entered into a judicial assistance agreement; (3) provided by the Chinese embassy/consulate in the country in question; (4) provided by the embassy/consulate in China of the country in question; and (5) provided by the Chinese or foreign legal experts. If the foreign law cannot be ascertained through the above five ways, the Chinese law will apply. Article 10(1) of the *Law on the Law Applicable to the Foreign-Related Civil Relations* provides that the foreign law applicable to a foreign-related civil relationship shall be ascertained by the relevant people’s court, the arbitral institution or the administrative agency; where the parties have chosen the applicable foreign law, they shall adduce such a law. If the foreign law cannot be ascertained or the foreign law has no provision on the foreign-related civil relationship, the Chinese law shall apply.

33 Article 8 of the Provisions on Several Issues.

also be ascertained through other reasonable ways in addition to the above-mentioned ones.³⁴ Such provisions are obviously more helpful in conveniently, accurately and timely finding foreign law. On November 29, 2019, the website of the CICC also officially launched the Foreign Law Ascertainment Platform to integrate the resources of international commercial experts and the institutions rendering foreign law finding services in China, so as to effectively solve the ‘bottleneck’ problem of ascertaining foreign laws.³⁵

The Provisions on Several Issues made three innovations with regard to the taking of evidence and cross-examination.³⁶ First, the evidentiary materials that came into being outside the territory of the PRC will not be mandatorily required to be notarized or verified in the CICC proceedings as in the proceedings in other Chinese courts and the parties may decide on their own whether to have their overseas evidentiary materials notarized or verified or not. This will not affect the admissibility of such evidence and the CICC will decide the admissibility based on the cross-examination of such evidence. Second, if the evidentiary materials submitted by one party are in English, the Chinese translation of such materials may not be required if the other party gives his consent. And lastly, the CICC may make use of audio-visual transmission technology and other information networking methods in the investigation, the taking of evidence and the organization of the cross-examination. These innovative provisions, quite opposite to those regulating the ordinary courts in China, can greatly improve the efficiency of litigation, reduce the cost of the parties, facilitate the taking and cross-examination of the evidence, and finally achieve the goal of effectively solving the international commercial disputes.

As for the digitalization of the court procedures, article 18 of the Provisions on Several Issues provides that the CICC will facilitate the parties with its Electronic Litigation Service Platform, the Litigation Process Information Disclosure Platform, and other litigation service platforms, and it will support online case registration, fee payment, review of files, exchange of evidence, service of process, court hearings, etc. In order to put such a provision into practice, the SPC has since 2021 issued a series of judicial interpretations and documents consecutively, such as

³⁴ *Id.*

³⁵ THE SUPREME PEOPLE’S COURT’S UNIFIED FOREIGN LAW ASCERTAINMENT PLATFORM WAS OFFICIALLY LAUNCHED TODAY, at <https://www.chinacourt.org/article/detail/2019/11/id/4697254.html> (Last visited on December 26, 2022).

³⁶ Articles 9 and 10 of the Provisions on Several Issues.

the *Provisions on Providing Online Case Filing Services for Cross-Border Litigants*, the *Online Litigation Rules of the People's Courts*, the *Online Mediation Rules of the People's Courts*, and the *Online Operation Rules of the People's Courts*. This information construction, the application of service platforms and the corresponding institutional arrangements can greatly facilitate the parties to participate in the litigation procedures, help to improve the information level of the trial ability of China's international commercial courts, and ensure the efficient settlement of international commercial disputes.

III. A SURVEY OF THE JUDICIAL PRACTICE OF THE CICC

A. General Examination of the Cases Accepted by the CICC

In less than a year, the CICC has come into operation from the blueprint. Whether the institutional design of the CICC can operate well and achieve the expected results will depend on its operation in practice. In terms of the cases accepted, both the first branch and the second branch of the CICC have accepted their first case within less than one year after their establishment. On May 29, 2019, the second branch of the CICC (Xi'an Branch) held a public hearing of the dispute over the confirmation of the shareholder qualification between the Ruoychai International Group Co., Ltd (the plaintiff) and Red Bull Vitamin Drink (the defendant) and Intertec Biopharm Holding Ltd (the third party), which is the first case heard by the CICC.³⁷ Then on May 31, 2019, the first branch of the CICC (Shenzhen Branch) held a public hearing of the product liability dispute between Guangdong Bencao Medicine Group (the plaintiff) and the Italian company Bruschenttini SRL (the defendant). According to a speech by *Tao Kaiyuan*, Vice President of the SPC, at the Third Seminar of the International Commercial Expert Committee of the SPC, by the end of August 2022, the CICC had accepted 27 cases, among which 11 cases have been concluded.³⁸ However, the author can only collect 20 cases accepted by the CICC including 9 concluded cases from the website of the CICC, the website of China Judgments and the website of PKULaw. The 20 cases accepted by the CICC may be simply summarized as follows:

37 LONG FEI, THE CHINA INTERNATIONAL COMMERCIAL COURT HEARS ITS FIRST CASE, at <https://cicc.court.gov.cn/html/1/219/208/210/1237.html> (Last visited on December 23, 2022).

38 TAO KAIYUAN, TO PROMOTE THE NEW DEVELOPMENT OF THE CICC FROM A HIGHER STARTING POINT, at <https://cicc.court.gov.cn/html/1/218/62/164/2237.html> (Last visited on January 8, 2023).

Table 1:

No.	Case Name	Court Seized with the Case	Jurisdictional Base	Closing Date
1	Bonus distribution dispute between Inter-Biopharm Holding Ltd and Red Bull Vitamin Drink ³⁹	The second branch of the CICC (Xi'an Branch)	The SPC ruled in accordance with article 20 ⁴⁰ and article 38(1) ⁴¹ of the <i>Civil Procedure Law</i> and article 2(5) ⁴² of the Provisions on Several Issues that the case should be tried by the CICC.	Unknown
2	Dispute over the damage to the interests of the company between Inter-Biopharm Holding Ltd. and Chanchai Ruayrungruang ⁴³	Id	Id	Unknown
3	Dispute over the damage to the interests of the company between Market Global Holdings Ltd. and Saravoot Yoovidhya ⁴⁴	Id	Id	Unknown
4	Dispute over the confirmation of the shareholder qualification between Ruoychai International Group Co. Ltd and Red Bull Vitamin Drink and the third party Red Bull Vitamin Drink (Thailand) Co., Ltd ⁴⁵	Id	Id	Unknown
5	Dispute over the confirmation of the shareholder qualification between Ruoychai International Group Co., Ltd and Red Bull Vitamin Drink and the third party Inter-Biopharm Holding Ltd. ⁴⁶	Id	Id	Unknown

39 Civil Ruling No. 188 (2018) of the Supreme People's Court.

40 Article 20 of the *Civil Procedure Law* provides: 'The High People's Court shall exercise jurisdiction over the cases that have great influence within its area of jurisdiction.'

41 Article 38(1) of the *Civil Procedure Law* provides: 'Where the court that has jurisdiction over a case cannot exercise its jurisdiction due to some particular reasons, the higher people's court shall designate a court to try the case.'

42 Article 2(5) of the Provisions on Several Issues provides: 'Other international commercial cases that the Supreme People's Court considers appropriate to be tried by the International Commercial Court.'

43 Civil Ruling No. 190 (2018) of the Supreme People's Court.

44 Civil Ruling No. 189 (2018) of the Supreme People's Court.

45 Civil Ruling No. 191 (2018) of the Supreme People's Court.

46 Civil Ruling No. 27 (2019) of the Supreme People's Court.

No.	Case Name	Court Seized with the Case	Jurisdictional Base	Closing Date
6	Dispute over the damage to the interests of the company between Plaintiff Beta Pharmaceuticals Co., Ltd. and Defendant Beta Pharma, Inc., Don Xiaodong Zhang, and Beta Pharma (SHANGHAI), Inc. ⁴⁷	Id	Id	Unknown
7-8	Two standby letter of credit disputes between Australia and New Zealand Banking Group Limited, Manila Branch, Australia and New Zealand Bank (China) Limited, Shanghai Branch, China National Electric Engineering Co., Ltd., and Bank of Jiangsu Co., Ltd. ⁴⁸	Id	Unknown	Unknown
9	Dispute over the transferring guarantee between <i>Zhang Yufang</i> and <i>Xie Yumin</i> , etc. ⁴⁹	The first branch (Shenzhen Branch)	The SPC ruled in accordance with article 38(1) of the <i>Civil Procedure Law</i> and article 2(5) of the Provisions on Several Issues that the First International Commercial Court (Shenzhen Branch) should exercise its jurisdiction.	July 27, 2022
10	Dispute over the equity transfer between Lite-on Mobile Pte. Ltd and Star Touchcontrol Technology (Shenzhen) Co., Ltd., etc. ⁵⁰	Id	The SPC ruled in accordance with articles 21 ⁵¹ and 39(1) ⁵² of the <i>Civil Procedure Law</i> and article 2(5) of the Provisions on Several Issues that the First International Commercial Court (Shenzhen Branch) should exercise its jurisdiction.	Unknown

47 THE SECOND INTERNATIONAL COMMERCIAL COURT OF THE SUPREME PEOPLE'S COURT HELD A PUBLIC HEARING ON THE LIABILITY DISPUTE FOR INFRINGING UPON COMPANY INTERESTS, at <https://cicc.court.gov.cn/html/1/219/208/210/2103.html> (Last visited on January 19, 2023).

48 Case number is unavailable, see THE SECOND INTERNATIONAL COMMERCIAL COURT OF THE SUPREME PEOPLE'S COURT HELD A PUBLIC HEARING ON TWO DISPUTES OVER STANDBY LETTER OF CREDIT, at <https://cicc.court.gov.cn/html/1/219/208/210/1922.html> (Last visited on January 12, 2023).

49 Civil Ruling No. 54 (2020) of the Supreme People's Court.

50 Civil Ruling No. 44 (2022) of the Supreme People's Court.

51 Article 21 of the *Civil Procedure Law* provides that 'the SPC shall exercise jurisdiction over the following first instance civil cases: (1) Those have nationwide significant influence; (2) Those that it considers appropriate to try by itself'.

52 Article 39(1) of the *Civil Procedure Law* provides that: 'The higher people's court has the right to adjudicate the first instance civil case over which the lower people's court has jurisdiction. Where it is necessary to refer the first instance civil case over which it has jurisdiction to its lower people's court, the referring people's court shall report to its higher people's court and get its approval.'

No.	Case Name	Court Seized with the Case	Jurisdictional Base	Closing Date
11	Contractual dispute between HNA Finance I Co., Ltd. and Frontier Investment Partner Holding Ltd. and Chin Tony ⁵³	Unknown	Unknown (after examining the case, the SPC ruled that it is inappropriate for the CICC to hear the case because one of the defendants Chin is missing and the case should be heard by Haikou Intermediate People's Court.)	
12	The application of Beijing CTS Weijing International Hotel Management Co., Ltd. and Shenzhen Weijing Jinghua Hotel Co., Ltd. to confirm the validity of the arbitration agreement ⁵⁴	The first branch (Shenzhen Branch)	The SPC ruled in accordance with article 38(1) of the <i>Civil Procedure Law</i> and article 2(5) of the Provisions on Several Issues that the case should be heard by the First International Commercial Court.	September 18, 2019
13	The application of New Power Enterprise Inc. and Shenzhen Zhongyuancheng Commercial Investment Holding Ltd. to confirm the validity of the arbitration agreement ⁵⁵	Id	Id	September 18, 2019
14	The application of Luck Treat Ltd. and Shenzhen Zhongyuancheng Commercial Investment Holding Ltd. to confirm the validity of the arbitration agreement ⁵⁶	Id	Id	September 18, 2019
15	Dispute over the processing contract between Asia Optical Co., Inc., Dongguan Xintai Optics Ltd. and Fujifilm Co., Ltd. ⁵⁷	Id	The Guangdong High People's Court referred the case to the CICC of the SPC and the SPC later ruled that the First International Commercial Court should hear the case.	October 25, 2019
16	The application of Zhang Lan, Grand Lan Holding Group (BVI) Ltd., Qiao Jiang Lan Development Ltd. to set aside an arbitration award ⁵⁸	Unknown	The parties applied to the SPC to set aside an arbitral award made by the CIETAC which is included in the 'one-stop' dispute settlement platform.	December 19, 2020

53 Civil Ruling No. 44 (2019) of the Supreme People's Court.

54 Civil Ruling No. 3 (2019) of the Supreme People's Court.

55 Civil Ruling No. 2 (2019) of the Supreme People's Court.

56 Civil Ruling No. 1 (2019) of the Supreme People's Court.

57 Civil Ruling No. 3 (2019) of the Supreme People's Court.

58 Civil Ruling No. 4 (2019) of the Supreme People's Court.

No.	Case Name	Court Seized with the Case	Jurisdictional Base	Closing Date
17	The application of Zhang Lan, Grand Lan Holding Group (BVI) Ltd. to set aside an arbitration award ⁵⁹	Unknown	Id	December 31, 2020
18	The lien dispute between Guangzhou Aircraft Maintenance Engineering Co., Ltd. and Orient Thai Airlines Co., Ltd. ⁶⁰	The First branch (Shenzhen Branch)	The SPC ruled in accordance with article 38(1) of the <i>Civil Procedure Law</i> and article 2(5) of the Provisions on Several Issues that the case should be heard by the First International Commercial Court.	August 12, 2021
19	The dispute over the product liability between Guangdong Bencao Pharmaceutical Group Co., Ltd. and Bruscenttini SRL ⁶¹	Id	Id	October 25, 2019
20	The guarantee dispute between Singapore Kenon Holdings Ltd.(the plaintiff), Shenzhen Baoneng Investment Group Co., Ltd. and Yao Zhenhua (the defendants), and American Quantum Corporation (the third party) ⁶²	Id	Unknown	Unknown

According to the nine concluded cases that were published on the website of the CICC, the CICC concluded five cases in 2019, two in 2020, and one in 2021 and 2022, respectively. Of the nine concluded cases, six were adjudicated by the CICC following the SPC’s ruling that the CICC should hear such cases;⁶³ one was adjudicated by the CICC through the

59 Civil Ruling No. 5 (2019) of the Supreme People’s Court.

60 (2020) ZUIGAOFASHANGCHU No.4.

61 (2019) ZUIGAOFASHANGCHU No.1.

62 THE FIRST INTERNATIONAL COMMERCIAL COURT OF THE SUPREME PEOPLE’S COURT HEARD AN INTERNATIONAL COMMERCIAL CASE IN OPEN SESSION IN THE NEW COURTROOM, at <https://cicc.court.gov.cn/html/1/219/208/210/2388.html> (Last visited on May 19, 2023).

63 The application of Beijing CTS Weijing International Hotel Management Co., Ltd. and Shenzhen Weijing Jinghua Hotel Co., Ltd. to confirm the validity of the arbitration agreement; The application of New Power Enterprise Inc. and Shenzhen Zhongyuancheng Commercial Investment Holding Ltd. to confirm the validity of the arbitration agreement; The application of Luck Treat Ltd. and Shenzhen Zhongyuancheng Commercial Investment Holding Ltd. to confirm the validity of the arbitration agreement; The lien dispute between Guangzhou Aircraft Maintenance Engineering Co., Ltd. and Orient Thai Airlines Co., Ltd.; The liability dispute between Guangdong Bencao Pharmaceutical Group Co., Ltd. and Bruscenttini SRL; The dispute over the transferring guarantee between *Zhang Yufang* and *Xie Yumin*, etc.

referral by the High People's Court to the SPC and with the approval from the SPC that the CICC should hear it;⁶⁴ two were applications by the parties to the SPC to set aside the arbitral awards made by the arbitral institution included in the 'one-stop' dispute settlement platform.⁶⁵ In terms of the causes of the cases, the confirmation of the validity of the arbitration agreement, the product liability, the contract, the setting aside of the arbitration award, and the competence between the court and the arbitration institution were respectively involved. In terms of the background of the parties, they are from various countries such as Japan, Italy, Thailand, the Federation of St. Kitts and Nevis, the British Virgin Islands, the British Cayman Islands, and China. Some of these cases come from the Belt and Road countries and regions and have great social influence or typical significance for other BRI-related disputes. In order to ensure the quality of these trials and the swift resolution of the disputes, the above-mentioned eight cases were all heard by a collegial panel composed of five judges. After the first five cases were concluded in 2019, it was reported that the trial of these five cases well reflected the advantages of the efficiency of the CICC, taking only several months to complete all the processes from the acceptance of the cases to the conclusion of them, as the relevant rules of the CICC provide much convenience of the adjudication of these cases. For example, for the evidential materials in English that one party directly presented to the CICC, they can be cross-examined in the court without being translated into Chinese after the judges get the permission from the other party; Additionally, the CICC can ask for the advisory opinions from the Expert Members on the legal issues or the proof of foreign laws, which also contributes to the advance of the court process.⁶⁶

B. A Preliminary Comment on the Judicial Practice of the CICC

As a judicial organ specially designed to deal with foreign-related civil and commercial cases, the BRI-related civil and commercial cases in particular, the judgments and rulings of the CICC can offer reference and guidance to the adjudication of other similar cases. Professor *Susan Finder*, a distinguished scholar in residence in the School of International Law, Peking University and also an expert of the International Expert Committee of the CICC, once pointed out that 'the judgments and rulings of the CICC

64 Dispute over the processing contract between Asia Optical Co., Inc., Dongguan Xintai Optics Ltd. and Fujifilm Co., Ltd.

65 Civil Ruling No. 190 (2018) of the Supreme People's Court.

66 QIAO WENXIN, THE FIRST INTERNATIONAL COMMERCIAL COURT OF THE SUPREME PEOPLE'S COURT EFFICIENTLY CONCLUDED THE FIRST FIVE CASES, at <https://cicc.court.gov.cn/html/1/218/149/156/1545.html> (Last visited on December 18, 2022).

are likely to be significant for lower court judges and members of the legal community as ‘soft precedents’, authoritative decisions that are highly persuasive although not binding on the lower courts’, and they ‘will send important signals to the market, and are likely to be significant worldwide, as there is a documented increase in international arbitration cases where either the contract in dispute is governed by Chinese law or Chinese law is relevant in various ways’.⁶⁷ As can be seen from the judgments and rules of the eight concluded cases published on the website of the CICC, the CICC has clarified some vague legal issues that existed in the previous judicial practice, which provided good guidance for the lower courts to adjudicate similar cases. For example, in these cases, the CICC confirmed and analyzed the principle of separability of the arbitration clause, the conflict rules of the arbitration agreement, the requirements of setting aside the arbitration award, the determination of the recall duties of the defective product and the compensation from it, etc.

But the reasoning of the application of law that the CICC made in some cases is worth further examining. For example, in the dispute over the product liability between Guangdong Bencao Pharmaceutical Group Co., Ltd. and Bruschenttini SRL, the First International Commercial Court of the SPC (Shenzen Branch) held in its judgment: ‘Both Bencao Pharmaceutical Group Co., Ltd and Bruschenttini SRL agreed during the hearing that the Chinese law shall apply in the case. Article 3 of the *Law of the PRC on the Laws Applicable to the Foreign-Related Civil Relations* stipulates that ‘the parties concerned may explicitly choose the law applicable to the foreign-related civil relations in accordance with the law’. Article 8 (1) of the First Judicial Interpretation stipulates: ‘If the party chooses or changes the applicable law by agreement before the end of the first instance court argument, the people’s court shall grant permission’. Therefore, this court applies the Chinese law to deal with this case.’

The court’s reasoning about the application of the law will simply give the overseas producers such an implication that they can choose the other laws applicable to the liability arising from the recall of their products in China. In fact, in China, the law on the recall of defective products is mandatory in nature. This is because when defective products enter the market, they may bring personal or property damage to potential consumers and thus threaten public safety. Article 10 of the First Judicial Interpretation clearly enumerates the scope of mandatory provisions, among which the

67 SUSAN FINDER, THE CICC AND THE DEVELOPMENT OF CASE LAW WITH CHINESE CHARACTERISTICS, at <https://supremepeoplescourtmonitor.com/2019/12/31/the-china-international-commercial-court-the-development-of-case-law-with-chinese-characteristics/> (Last visited on January 12, 2023).

provisions concerning food or public safety are obviously mandatory ones.⁶⁸

Article 4 of the *Law of PRC on the Laws Applicable to the Foreign-Related Civil Relations* stipulates that a mandatory provision shall directly apply to a foreign-related civil relation where the Chinese law has a mandatory provision for it. The administrative regulations on drug administration and drug recall mentioned by the CICC in this case are obviously mandatory and therefore should be applied directly, without considering whether the parties have made a choice of the applicable law or not. Accordingly, the CICC may invoke the above provisions on the mandatory rules in China for its reasoning about the application of law in this case and clearly pronounce that the Chinese laws concerning the recall of defective products shall directly apply to the claim for the compensation arising from such a recall considering their mandatory nature, regardless whether the sellers in China based their claims to the overseas producers on tort or contract. In this way, it can also provide a clear signal to the overseas producers that when importing their products into China they must comply with the Chinese laws and regulations on the recall duty, and there is no other choice or room for negotiation as they involve the public interests of China.

Judging from the above collected 19 cases accepted by the CICC, there is still room for improvement of the CICC in its jurisdictional rules, the source and type of the cases, and the ‘one-stop’ dispute settlement platform, especially in the effective combination of the arbitration and the mediation for dispute settlement. In terms of its jurisdictional rules, most of the cases accepted by the CICC were ruled by the SPC to be tried by the CICC, while the cases submitted to the CICC by the parties’ agreement are rarely seen. There may be subjective and objective explanations for this. Objectively, due to such a restriction as the requirement of the ‘actual connection’ from the *Civil Procedure Law* on the jurisdiction by agreement,⁶⁹ many parties will be unlikely to submit their disputes arising from the Belt and Road countries which have no actual connection with China to the CICC; Subjectively,

68 According to this article, in one the following circumstances, the provisions of laws and administrative regulations concerning the public interests of the People’s Republic of China, which the parties cannot exclude their application by agreement and which are directly applicable to the foreign-related civil relations without making reference to the conflict rules, are recognized by the people’s court as the mandatory provisions enunciated in article 4 of the *Law of PRC on the Laws Applicable to the Foreign-Related Civil Relations*: (1) where the protection of the rights and interests of workers is involved; (2) where food or public health safety is involved; (3) where the environmental safety is involved; (4) where the financial security such as foreign exchange control is involved; (5) where anti-monopoly or anti-dumping is involved; (6) other situations where the mandatory rules should be deemed to be involved.

69 Article 35 of the current *Civil Procedure Law* (amended on December 24, 2021, effective as of January 1, 2022) stipulates: ‘The parties to a contractual dispute or any other property dispute may agree in writing to be subject to the jurisdiction of the people’s court at the place having connection with the dispute, such as where the defendant is domiciled, where the contract is performed, where the contract is signed, where the plaintiff is domiciled or where the subject matter is located, etc., provided that such an agreement does not violate the provisions of the law regarding court-level jurisdictions and exclusive jurisdictions.’

perhaps the parties still do not have a high degree of recognition and acceptance of the CICC, even they may have some doubts about the system of the first instance as the final of the CICC. Whatever explanation it may be, it will definitely have some impact on the CICC's adjudication of the BRI-related disputes and on China's efforts to make the CICC a preferred commercial dispute settlement destination worldwide.

From the perspective of the source and the type of the cases, so far the cases accepted by CICC do not originate from a wide locality and the types of the cases are relatively focused. For example, the cases accepted by the CICC mainly originated from a few countries, such as Japan, Thailand, Italy, the Federation of St. Kitts and Nevis, Singapore, British Cayman Islands, British Virgin Islands, and China. The cases mainly focus on issues related to arbitration agreements, the qualification of shareholders, the distribution of shareholders' rights and interests, equity transfer, damage to the interests of the company, etc. And there are several cases belonging to a group of affiliated cases.

As regards the 'one-stop' dispute settlement platform, among the 19 cases that have been collected, no party has chosen the arbitration or mediation provided in the 'one-stop' dispute settlement platform. This may deviate from the original intention of the CICC to establish a 'one-stop' dispute resolution platform which needs further improvement in the future. For example, *Zhang Yongjian*, a former judge of the First International Commercial Court of the SPC, pointed out in October 2019 that in light of the judicial practice of the 'one-stop' dispute settlement of the CICC, there is still much room to improve, especially the mediation is rarely resorted by the parties.⁷⁰ *Zhou Qiang*, the former chief justice of the SPC, also pointed out in his report on the foreign trial work of the people's court on October 28, 2022 that the 'one-stop' diversified settlement mechanism of the CICC needs to be further improved.⁷¹

IV. THE WAYS TO IMPROVE THE CICC

The author once classified the international commercial courts in the world into two categories, namely, radical ones and conservative ones, after an examination of them. The radical international commercial courts refer

70 'CHINA-GERMAN ARBITRATION LAW ROUNDTABLE CONFERENCE: INTERNATIONAL BUSINESS ENVIRONMENT AND INTERNATIONAL DISPUTE SETTLEMENT' WAS HELD SUCCESSFULLY, at http://iolaw.cssn.cn/xshy/201910/t20191028_5022274.shtml (Last visited on December 18, 2022).

71 ZHOU QIANG, REPORT OF THE SUPREME PEOPLE'S COURT ON THE TRIAL OF THE PEOPLE'S COURT, at <https://cicc.court.gov.cn/html/1//218/149/156/2315.html> (Last visited on January 8, 2023).

to those that are established through such radical reforms as revising the constitutions or drafting the special laws or those that adopt their own court system independent from the national court system. The Dubai International Financial Center courts, the Singapore International Commercial Court, the Astana International Financial Center Court, and the Qatar International Court and Dispute Resolution Center may belong to such a category. While the conservative international commercial courts refer to those that are established through minor reform of the existing judicial systems without revising the constitutional laws or adopting separate court systems. The Business and Property Courts of England and Wales, and the recently established commercial courts in the Netherlands, Germany, Belgium, and France may belong to such a category.⁷²

No matter what category an international commercial court may belong to, they all aim to inherit the advantages of both litigation and arbitration and overcome the disadvantages of them, and finally encourage a good combination between litigation and arbitration, with the expected result of a competitive litigation service model. As can be inferred from the institutional design of these international commercial courts, they all manifest the following distinct features: The expansion of jurisdiction; the specialization of judges; the flexibility of litigation; the facilitation of judgment's circulation; the diversification of the dispute resolution mechanism; and the digitalization of the court process.

Judging from the background of its establishment, its institutional structure and its operation mechanism, the CICC can obviously be classified into the conservative category. After the establishment of the CICC, many scholars in China have put forward many suggestions on how to improve it based on the institutional designs of other international commercial courts in the world, mainly including the introduction of international judges, the grant of the presentation by foreign lawyers, the use of English in the proceedings, the establishment of the appeal procedures, the expansion of the jurisdictional basis, the facilitation of the recognition and enforcement of foreign judgments, and so on.⁷³ Taking full account of the innovations in other international commercial courts, these suggestions aim to promote the CICC into a globally competitive destination for the international commercial

72 According to different setting systems of the international commercial courts, a scholar has summarized the existing setting modes of international commercial courts into two types: the embedded ones and the independent ones. See Bu Lu, *supra* note 2, 92.

73 For example, see Yin Min, *The Challenges Facing the CICC under the Practice of the Belt and Road*, 4 *International Business Research* 51-62 (2022); Lin Fuchen, *Research on the Operation Mechanism of the CICC*, 49 *Journal of Sichuan Normal University (Social Science Edition)* 41, 47-54 (2022); He Qisheng, *On the Construction of the CICC*, 3 *International Law Review of Wuhan University* 1-28 (2018).

dispute resolution. But considering the conservative style of the CICC, it is unlikely for the CICC to adopt some foreign innovative institutions in a short term, especially the international judge, the representation by foreign lawyers, the use of English in the proceedings, etc.

As discussed above, the CICC now has been equipped with a sound organizational system, a set of feasible procedural rules and an adequate supportive system, and from its judicial practice, it can basically satisfy the original requirements of its establishment even though there is still some room for its improvement. Hence, in the long run, the CICC may be improved based on the questions arising out of its operation and taking account of the features of the BRI-related commercial disputes. To be more specific, the improvement of the CICC in the future will not be radically carried out, but will gradually be done by amending or drafting such relevant supportive legal systems as the *Civil Procedure Law*, the *Arbitration Law* and the *Mediation Law*, so as to keep it working well. Indeed, in the past two years, the drafting or revision of the laws in China has reflected such a trend.

For example, as regard litigation, due to the jurisdiction restrictions from the *Civil Procedure Law*, the parties on many occasions cannot submit their disputes to the CICC, which has an impact on the numbers, sources and types of the disputes that the CICC may accept currently. What's more, the deficiencies in, or the lack of, some relevant institutions in the *Civil Procedure Law* also affect the parties' recognition and acceptance of the CICC. Take the jurisdiction for instance, the requirement of the 'actual connection' in article 34 of the currently effective *Civil Procedure Law*, as well as the only recognition of the reactive or adversarial parallel litigation in which the same defendant in the first suit filed the same claim against the same plaintiff in the first suit instead of the repetitive parallel litigation in which the same plaintiff filed two or more suits against the same defendant on the same claim in the judicial practices or judicial interpretation in China,⁷⁴ have made it impossible for a large number of the BRI-related commercial disputes to be submitted to the CICC. This is because many BRI-related commercial disputes are those arising from the

74 For example, article 533 of the *Supreme People's Court's Interpretation of the Application of the Civil Procedure Law of the People's Republic of China of 2015* stipulates: 'For the cases over which both the court of the People's Republic of China and the foreign court may exercise jurisdiction, if one party institutes a suit in the foreign court, while the other party also institutes a suit in the court of the People's Republic of China, the latter may accept such a suit. If the foreign court or the party in the foreign suit applies to recognize and enforce the judgment or the ruling that the foreign court has made, the court of the People's Republic of China may deny such an application in case where it has made its own judgment or ruling on the same suit, except as otherwise provided in the international treaty jointly concluded or acceded to by both the People's Republic of China and the foreign country.'

BR countries only concerning the Chinese parties which normally have no actual connection with China, while the disputed Chinese parties would rather bring their suits to the Chinese courts than bring them in the foreign courts which are strange to them. Another possibility may be like this: In a dispute between the Chinese parties arising from a BR country, one of the parties filed his claim in the local court, but due to the delay in the local proceedings he filed his claim again in a Chinese court. Nonetheless, the Chinese court will refuse to accept such a claim as the repetitive parallel litigation is not recognized in China. Both scenarios not only limit the scope of the disputes that the CICC may accept, but also affect the settlement of the BRI-related commercial disputes, which will increase the cost and inconvenience of the Chinese parties to resolve their disputes in a foreign court. Therefore, almost all the suggestions made by Chinese scholars to improve the CICC emphasized the importance of the expansion of the jurisdiction.

The draft amendment of the *Civil Procedure Law* submitted to the 38th session of the Standing Committee of the 13th National People's Congress for deliberation on December 27, 2022, has responded to the above scenarios and suggestions. For example, the draft amendment expands the basis of foreign-related jurisdiction, and clearly stipulates that the parties may submit their disputes which have no actual connection with China to the jurisdiction of a Chinese court; and the Chinese court may still accept a suit in case of repetitive parallel litigation.

The draft amendment also adds other means and techniques of the service abroad and the taking of evidence abroad which will promote the cost-efficiency of the settlement of foreign-related civil and commercial disputes. The draft amendment also further clarifies and improves the conditions for the recognition and enforcement of foreign judgments, but it does not explicitly adopt the principle of presumed reciprocity or reverse reciprocity as against the factual (*de facto*) reciprocity stipulated in the Chinese law.⁷⁵ In order to promote the recognition and enforcement of the civil and commercial judgments among the BR countries, it is submitted here that more specific provisions on the conditions for the presumed reciprocity or the reverse reciprocity be adopted in the amendment of the *Civil Procedure Law* or in a new single legislation specifically on the recognition and enforcement of foreign judgments.

75 ZHOU EXPLAINS DRAFT REVISION TO CIVIL PROCEDURE LAW AT NPC STANDING COMMITTEE SESSION, at https://english.court.gov.cn/2022-12/29/c_864833.htm (Last visited on August 11, 2023). The draft amendment of the *Civil Procedure Law* has been enacted into law with minor revision by the 5th session of the Standing Committee of the 14th National People's Congress on September 1, 2023 and will come into effect as of January 1, 2024.

As for arbitration and mediation, despite the fact that the ‘one-stop’ dispute settlement mechanism effectively combined with arbitration, mediation and litigation and its procedures have been provided in the Provisions on Several Issues and the CICC Procedural Rules, and the fact that the International Commercial Expert Committee has been established and some international commercial arbitral institutions and international commercial mediation institutions have been included into the ‘one-stop’ dispute resolution platform by the CICC, the choice of the arbitration or mediation by the parties to resolve their disputes in current judicial practices seems not so ideal as it is expected. For example, the strict and rigid requirements for a valid arbitration agreement in article 16 of the *Arbitration Law* (effective as of September 1, 1995) in China often resulted in many foreign-related arbitration agreements being held invalid by the Chinese courts in practice, which made the parties reluctant to submit their disputes to the arbitral institutions in China or to resolve their disputes through arbitration in China.

Moreover, the *Arbitration Law* neither recognizes *ad hoc* arbitration, nor does it explicitly adopt the concept of the seat of arbitration, which may cause confusion to the parties that choose arbitration to resolve their disputes. For example, under the current legal framework, the parties cannot choose the members of the International Commercial Expert Committee as *ad hoc* arbitrators to settle their disputes; If in the future, the CICC includes the foreign arbitral institutions into the ‘one-stop’ dispute settlement platform, uncertainties will occur concerning the nature of the arbitration awards made by the foreign arbitral institutions in China: Are they the foreign-related arbitral awards or foreign arbitral awards in the Chinese law?

There is another question concerning the investor-state arbitration in China under the current legal framework. Among the BRI-related disputes, many are the investment disputes between the Chinese investors and governments of the BR countries. Some arbitral institutions in China accordingly revised their arbitration rules so that they may accept the investor-state investment disputes. But the arbitral awards resulting from such arbitration will not be recognized and enforced. This may subsequently result in the parties’ reluctance to submit their disputes with the governments of the BR countries to the arbitral institutions included in the ‘one-stop’ dispute settlement platform.

Fortunately, the draft amendment of the *Arbitration Law* released by the Ministry of Justice of the PRC for public consultation on July 30, 2021, adopted loose requirements for determining the validity of arbitration agreements, added a provision on *ad hoc* arbitration, and clarified the concept of the seat of arbitration. The proposed revisions will to some extent

relieve the above difficulties and will help to create an arbitration-friendly environment, which will promote the international credibility and competitiveness of arbitration in China.⁷⁶ The *Draft of the Law on Foreign Sovereign Immunity of the PRC* deliberated at the 38th session of the Standing Committee of the 13th National People's Congress abandoned the previous practice of absolute sovereign immunity and clearly adopted the restrictive sovereign immunity, which will remove the obstacles in recognizing and enforcing the awards arising out of the investor-state arbitration in China.⁷⁷ To better facilitate the cross-border recognition and enforcement of the investor-state arbitral awards and create a more friendly arbitration environment, it is time for China to withdraw its commercial reservation made when ratifying the *1958 New York Convention* so that the investment may be covered by the concept of commerce in this Convention,⁷⁸ which will also make it possible to have the investor-state arbitral awards be recognized and enforced under this Convention in China.

As far as mediation is concerned, the major problem at present is that 'China has not yet enacted a commercial mediation law, and there are few influential commercial mediation organizations at home and abroad, which makes it difficult to meet the needs of parties for a diversified dispute resolution'.⁷⁹ For example, almost all the dispute settlement clauses in the bilateral investment treaties between China and the BR countries incorporate the pre-set procedure of consultation and mediation, and most of the commercial contracts between the parties from China and BR countries also provide such pre-set procedure of consultation and mediation, but from the

76 NOTICE OF THE MINISTRY OF JUSTICE OF THE PEOPLE'S REPUBLIC OF CHINA FOR PUBLIC CONSULTATION FOR THE REVISION OF THE ARBITRATION LAW, at http://www.moj.gov.cn/pub/sfbgw/lfyjzj/lflfyjzj/202107/t20210730_432967.html (Last visited on August 11, 2023).

77 THE DRAFT OF THE LAW ON FOREIGN SOVEREIGN IMMUNITY OF THE PRC, FOR PUBLIC CONSULTATION, at <http://www.npc.gov.cn/flcaw/more.html> (Last visited on January 8, 2023). The *Draft of the Law on Foreign Sovereign Immunity of the PRC* has been enacted into law by the 5th session of the Standing Committee of the 14th National People's Congress on September 1, 2023 with minor revision and will come into effect as of January 1, 2024.

78 China has made two reservations, namely the reciprocity reservation and commercial reservation upon its accession to the *New York Convention* on December 2, 1986. 'The reciprocity reservation' means that China will apply the Convention only to recognition and enforcement of arbitral awards made in the territory of another contracting states of the Convention; while 'the commercial reservation' means that China will apply the Convention only to the disputes arising out of legal relationships, whether contractual or not, that are considered commercial under the national law. According to the *Notice of the Supreme People's Court on the Enforcement of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 'contractual and non-contractual commercial legal relationship' means the economic rights and duties arising from contracts or torts or stipulated in the regulations, such as goods sale, property lease, project contract, processing contract, technique transfer, joint venture, joint business operation, exploration and development of natural resources, insurance, financial credit, personal services, agency, consulting services and marine, air, railway and road transportation of cargo and passengers, product liability, environment pollution, accidents at sea and ownership disputes, except the disputes between the foreign investors and the government in the host country.

79 REPORT OF THE SUPREME PEOPLE'S COURT ON FOREIGN-RELATED TRIAL WORK OF THE PEOPLE'S COURTS, at <https://cicc.court.gov.cn/html/1/218/149/156/2315.html> (Last visited on January 8, 2023).

judicial practices of the CICC, so far no parties have ever made resort to the mediation of the ‘one-stop’ diversified international commercial dispute settlement mechanism. Therefore, in the future, it is necessary to ‘timely enact the commercial mediation law, giving full play to the advantages of the mediation mechanism, and provide a sufficient legal basis for the vigorous development of China’s international commercial dispute settlement mechanism’.⁸⁰ Moreover, the enactment of the commercial mediation law can also pave the way for China to ratify the *Singapore Convention on Mediation* and provide favorable conditions for the cross-border enforcement of the international settlement agreements arising from mediation, which will of course enhance the use of international commercial mediation in China.

With regard to the effective integration of the litigation, arbitration and mediation, although both the Opinion Concerning the BR Dispute Settlement and the Provisions on Several Issues put forward to set up a dispute settlement platform with the effective integration of mediation, arbitration, and litigation, and the CICC has specially established the International Commercial Expert Committee, one of the functions of whose members is to preside over the mediation,⁸¹ in terms of the judicial practices, ‘there is still great room for the members of the International Commercial Expert Committee to exercise their function and the ‘one-stop’ diversified dispute settlement mechanism needs to be further improved.’⁸² For example, according to the Provisions on Several Issues, with the parties’ consent, the members of the International Commercial Expert Committee may be entrusted by the CICC to mediate the dispute, but there is no provision that the members of the International Commercial Expert Committee may also arbitrate the dispute. As a result, if the parties want to settle the dispute through arbitration, they will have to seek arbitration from the arbitral institutions included in the ‘one-stop’ dispute settlement platform. To effectively integrate the functions of arbitration and mediation of the Expert Members, they may be entrusted by the CICC to arbitrate the commercial disputes after the *Arbitration Law* adopts the *ad hoc* arbitration upon revision.

Pursuant to the Provisions on Several Issues and the CICC Procedural Rules, the current mediation, arbitration and litigation in the ‘one-stop’ diversified international commercial dispute settlement mechanism may be summarized as a ‘parallel optional’ model, in which when the parties submit their disputes to the CICC, they freely choose one from the three parallel dispute settlement means, namely mediation, arbitration and litigation. This model respects the parties’ autonomy but it cannot effectively integrate

80 *Id.*

81 Article 3 of the *Working Rules of the International Commercial Expert Committee of the SPC.*

82 *Id.*

the three dispute resolution means. To realize the effective integration of the three dispute resolution means, perhaps a ‘linear preset’ model may be accepted in the future. In such a model, when the parties submit their dispute to the CICC, the CICC may first let the Expert Members or the mediation institutions included in the ‘one-stop’ dispute settlement platform mediate their disputes; If the parties do not agree to the mediation, or a settlement agreement cannot be reached, then the CICC may let the Expert Members or the arbitral institutions included in the ‘one-stop’ dispute settlement platform to arbitrate the disputes; If the parties do not agree to the arbitration or if the arbitration award cannot be made within the prescribed time limit, then the CICC will finally decide the disputes through litigation.

V. CONCLUSION

The BRI has entered the stage of high-quality development after nearly 10 years since it was first put forward. The economic, trade and investment cooperation between China and the BR countries is increasingly closer, and the BRI has also been accepted by more and more international organizations and countries. China is now vigorously promoting high-quality development of the BRI with other countries. In order to properly resolve the BRI-related commercial disputes and ensure the sound and long-term development of the BRI, the SPC established the CICC in accordance with the opinions of the Central Leading Group for Deepening Overall Reform. Since its establishment, the institutional design of the CICC has been under way and now it has a sound organizational system, a set of feasible procedural rules and an adequate supportive system, all of which provide a solid institutional foundation for the operation of the CICC. In terms of its judicial practice, the operational mechanism of the CICC can generally achieve its initially set goals. However, after the survey of its judicial practice and the analysis of the features of the BRI-related commercial disputes, there is still much room for the CICC to improve in the future. Specifically speaking, under the current operational framework, some relevant existing laws or rules such as the *Civil Procedure Law*, the *Arbitration Law*, and the CICC Procedural Rules may be revised, and some relevant new laws such as the law on the foreign sovereign immunity and the commercial mediation law may be soon passed in China, so as to provide a more supportive legal framework for the work of the CICC and to create favorable conditions for the CICC to become the preferred choice of the parties from the BR countries to settle their disputes. In fact, China is moving in this direction. The legislation and revision programs in China in the past two years have manifested the legislature’s support for the

CICC in China. When the relevant laws or rules are revised or new laws or rules are enacted, the operation mechanism of the CICC will be more sound. But a well-thought institutional design does not necessarily guarantee the anticipated result. Doubtlessly, the future judicial practice of the CICC will attract more attention at home and abroad.

(Edited by Gong Li)

“一带一路”背景下的中国国际商事法庭： 运行机制、实践考察与未来发展

内容提要 2023年是“一带一路”倡议提出十周年。自提出以来，“一带一路”倡议得到越来越多国际组织和国家的响应。“一带一路”的高质量发展离不开有力的司法保障。为此，中国在2018年设立了中国国际商事法庭，以解决“一带一路”相关商事案件。经过近5年的建设，中国国际商事法庭建成了多平台的、创新的运行机制，包括完备的组织体系、可行的程序规则和充分的保障体系，如设立“一站式”纠纷解决平台、成立专家委员会、建设外国法查明平台等。这些举措对于妥善解决涉“一带一路”国际商事案件、维护我国当事人的合法权益、保障“一带一路”行稳致远发挥了重要作用。但通过对中国国际商事法庭运行实践的考察，可以看出，中国国际商事法庭还可以进一步完善。在现有框架体系下，可以通过修改或采纳相关支持性法律制度如采用更加宽松的管辖权制度、采用主权相对豁免制度、便利的判决承认和执行制度等，更好地推动中国国际商事法庭的工作。
