

Chinese International Commercial Courts: Overview and Potential Questions Around It

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Abstract: People’s Republic of China (PRC) established China’s International Commercial Courts (CICC) and became one of the global competitors that offers international commercial dispute settlement service. Basically, the CICC formed to assist the enhancement of the “Belt and Road Initiative”. The formation of the CICC was an important progress in the judicial system of the PRC. The Supreme People’s Court (SPC) of the PRC equips the CICC with the necessary judicial interpretation. This article analyses the establishment of the CICC and its significant features. The goal of this research is to illustrate a detailed overview and thorough research regarding to the CICC. The current work also provides answers to the potential misunderstandings around the CICC. Based on the existing works of distinguished scholars some improvements regarding to CICC is incorporated in the research. The author also provides a comprehensive analysis of the functioning and structure of the CICC.

Keywords: Belt and Road Initiative; China; International Commercial Court

1. Introduction

The international commercial courts have been prepotent means of international business dispute settlement mechanism over the years. Many countries are gradually establishing international commercial courts in the recent years. The establishment of the China’s International Commercial Courts (hereinafter CICC) aimed to facilitate China’s Belt and Road Initiative (hereinafter BRI). The authorities of the People’s Republic of China (hereinafter PRC) promulgated two principal documents regarding to the dispute resolution framework within BRI in June 2018. First was “Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions”¹ and the next one is “Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court”.² The primary declaration of the both documents envisaged the organization of the CICC as a dispute settlement structure for BRI. Moreover, this endeavor also assisted to promote and consolidate international dispute

¹ “Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions. 关于建立‘一带一路’国际商事争端解决机制和机构的意见,” accessed September 15, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/819.html>.

² “Provisions of the Supreme People’s Court on Several Issues Concerning the Establishment of the International Commercial Courts,” accessed September 14, 2020, <https://cgc.law.stanford.edu/belt-and-road/b-and-r-texts/20180701-provisions-re-intl-commercial-courts/>.

settlement mechanism of the PRC. The CICC offers international dispute settlement mechanism in a distinctive way compared to usual litigation practice of the PRC.

The formation of the CICC marked the pivotal stage in the headway of the BRI. Moreover, the CICC reflected historical milestone of the leading policy of the PRC to integrate international trade and broader foreign policy since 2013.³ In addition, the CICC can be viewed as a competent member of the following international commercial courts' family (Table 1).

Table 1. List of International Commercial Courts

Country	Court	Year of Establishment
ICC constituting the branch of the domestic judicial system⁴		
Great Britain	The English Commercial Court (ECC) ⁵	1895
Singapore	Singapore International Commercial Court (SICC) ⁶	2015
Germany	Chamber for International Commercial Disputes at the Landgericht Frankfurt am Main ⁷	2018
PRC	Chinese international commercial courts (CICC)	2018
Netherlands	Netherlands Commercial Court (NCC) ⁸	2019
ICC connected to the special economic zones practicing common law⁹		
Qatar	The Qatar International Court and Dispute Resolution Centre ("QICDRC") ¹⁰	2009
UAE	Dubai International Financial Centre (DIFC) ¹¹	2014
UAE	Abu Dhabi Global Market Courts (ADGM Courts) ¹²	2015
France	The International Chambers of the Paris Commercial Court and the Paris Court of Appeal (Paris ICCs) ¹³	2010 2018
Kazakhstan	Astana International Financial Centre (AIFC) ¹⁴	2018
An autonomous business court¹⁵		
Belgium	Brussels International Business Court (BIBC) ¹⁶	2020

³ David Holloway, *The New Chinese International Commercial Court and the Future of Dispute Resolution in the Belt and Road Initiative*, 2020.

⁴ Long Fei (龙飞), Deputy Director of the Office of Coordination and Leadership of the International Commercial Arbitration Court of the 4th Civil Division of the Supreme People's Court, Lecture on Rule of Law in Eurasia under the Belt and Road Initiative program "Specifics and experience of the International Commercial Court of the PRC" on 21 September 2020.

⁵ Sheng Zhang, "China's International Commercial Court: Background, Obstacles and the Road Ahead," *Journal of International Dispute Settlement* 11, no. 1 (2020): 150–74, <https://doi.org/10.1093/jnlids/idz029>.

⁶ "Report of the Singapore International Commercial Court Committee," 2013, https://www.sicc.gov.sg/docs/default-source/modules-document/news-and-article/-report-of-the-singapore-international-commercial-court-committee-_90a41701-a5fc-4a2e-82db-cc33db8b6603-1.pdf.

⁷ Burkhard Hess and Timon Boerner, "Chambers for International Commercial Disputes in Germany: The State of Affairs," *Erasmus Law Review* 12, no. 1 (2020): 33–41, <https://doi.org/10.5553/elr.000121>.

⁸ Jeroen A. van der Weide, "The Netherlands Commercial Court (NCC): Its Challenges and Perspectives" (Springer, Cham, 2020), 81–108, https://doi.org/10.1007/978-3-030-42974-4_4.

⁹ Long Fei (龙飞).

¹⁰ Anselmo Reyes and Kevin Tan, *Recognition and Enforcement of International Commercial Court Judgments*, 2020.

¹¹ Stephen Thomas, Kamaldeep Panesar, and Christina Makris, "Dubai as an International Financial Centre Threats and Opportunities," 2013, www.cassknowledge.com/cass-consulting.

¹² Anselmo Reyes and Kevin Tan, *Recognition and Enforcement of International Commercial Court Judgments*, 2020.

¹³ Anselmo Reyes and Kevin Tan.

¹⁴ "The Astana International Financial Centre: AIFC Court and International Arbitration Centre Legal Systems to Be Based on English Common Law," accessed September 24, 2020, <http://arbitrationblog.kluwerarbitration.com/2017/08/06/astana-international-financial-centre-aifc-court-international-arbitration-centre-legal-systems-based-english-common-law/>.

¹⁵ At the time of writing this research work the Brussels International Business Court (BIBC) has not been established.

¹⁶ Erik Peetermans and Philippe Lambrecht, "The Brussels International Business Court: Initial Overview and Analysis," *Erasmus Law Review* 12, no. 1 (2019): 42–55, <https://doi.org/10.5553/elr.000117>.

Initially, the current research article examines background of the BRI and followed by the construction of the CICC. Next, depicts the CICC’s unique characteristics, unsolved questions and common misunderstandings around the CICC. Finally, in accordance with the existing research works, the author concludes by presenting own comments on the perspectives and some concerns regarding to the CICC.

2. Background of the BRI and its finance

In Kazakhstan (2013) the PRC President Xi Jinping declared the establishment of the BRI. The BRI intends to enhance trade and economic cooperation in a greater level by revitalizing historic network of the Silk Road. The initiative promotes to expand economic partnership, boost long-term trade and investment cooperation.¹⁷ The government of the PRC announced the BRI is open to all countries and organizations across the globe. At the commencement of the BRI, it has 64 member-economies while it is scope largely expanding.¹⁸

Table 2. List of BRI-Participating Economies¹⁹

Region	Economy
East Asia	People’s Republic of China, Mongolia
Southeast Asia	Brunei, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste, Viet Nam
South Asia	Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka
Central Asia	Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan
Middle East and North Africa	Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Palestinian Authority, Syria, United Arab Emirates, Yemen
Europe and Central Asia	Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Turkey, Ukraine
21 st Century Maritime Silk Road	Ethiopia, Kenya, Morocco, New Zealand, Panama, Korea, South Africa

The BRI has two main divisions: Silk Road Economic Belt for the land routes and 21st Century Maritime Silk Road for the marine routes. The BRI includes three routes in land:²⁰

- 1-route. Links PRC and Europe via Russia and Central Asia;
- 2-route. Connects PRC and the Middle East via Central Asia;
- 3-route. Connects PRC, South East Asia and the Indian Ocean.

¹⁷ Holloway, *The New Chinese International Commercial Court and the Future of Dispute Resolution in the Belt and Road Initiative*.

¹⁸ “China’s Belt and Road Initiative in the Global Trade, Investment and Finance Landscape,” *OECD Business and Finance Outlook*, 2018, 61–101, https://doi.org/10.1787/bus_fin_out-2018-6-en.

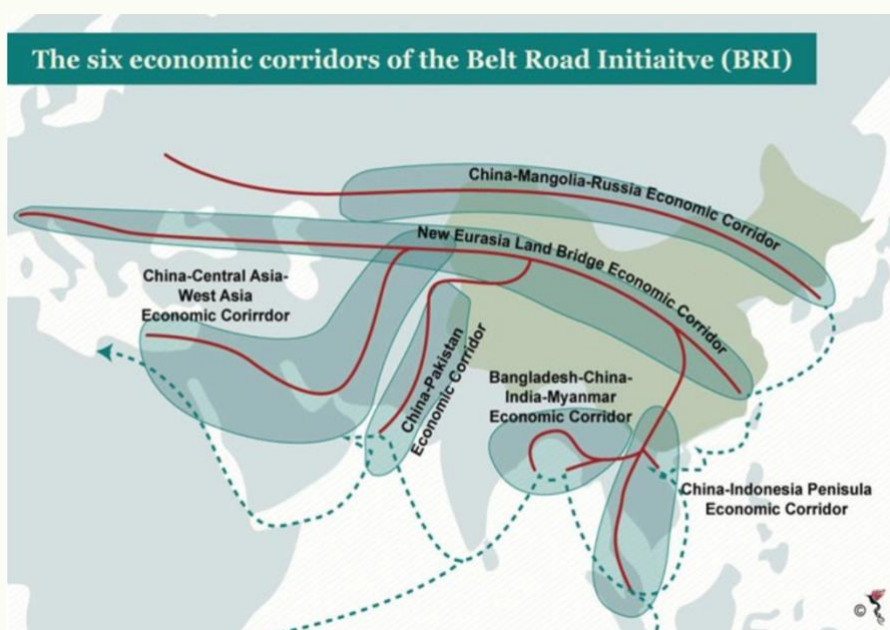
¹⁹ “China’s Belt and Road Initiative in the Global Trade, Investment and Finance Landscape.”; China International Trade Institute.

²⁰ Holloway, *The New Chinese International Commercial Court and the Future of Dispute Resolution in the Belt and Road Initiative*.

21st Century Maritime Silk Road consists two routes: 1-route. Links PRC and Europe via the South China Sea and the Indian Ocean; 2-route. Connects PRC and the South Pacific Ocean via the South China Sea.

Within BRI six economic corridors established along above counted routes. These economic corridors reflect the essential factors of the PRC development paradigm. The economic corridors of the BRI cover a massive territory that is rich in resources and energy. Six economic corridors can be viewed in the following map. Moreover, on *Appendix I* one can see the whole picture of the BRI involved economies and respective economic corridors.

Figure 1. Map of BRI's six economic corridors²¹



The initiation of the Asian International Investment Bank (hereinafter AIIB) was promulgated in October 2013 during the visit of the PRC President Xi Jinping to Indonesia. The AIIB started its functioning in January 2016 and it has more than 82 affirmed member countries.²² The bank provides funds for infrastructure projects that targeting to advance economic relations and regional connectivity. Moreover, it also envisages to increase social and economic output in whole Asia and worldwide. The AIIB has the cooperation with private financial institutions, banks and other organizations both public and private. The bank provides sponsorship for variety of projects.²³

²¹ Angaindrankumar Gnanasagaran, "Dealing with the Belt Road Initiative," The ASEAN Post, accessed September 26, 2020, <https://theaseanpost.com/article/dealing-belt-road-initiative>.

²² "Members and Prospective Members of the Bank of the AIIB," accessed September 26, 2020, <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html>.

²³ AIIB offers sovereign and non financing for sound and sustainable projects in energy and power, transportation and telecommunications, rural infrastructure and agriculture development, water supply and sanitation, environmental protection, and urban development and logistics. accessed September 26, 2020, <https://www.aiib.org/en/about-aiib/who-we-are/our-work/index.html>.

According to the latest statistics, the AIIB funded more than 95 approved projects²⁴ worth around 20.37 billion USD.²⁵ On 29 December 2014 the government of the PRC launched 40 billion USD Silk Road Fund in order to finance economic cooperation and trade within BRI. The Silk and Road Fund intends to invest medium and long-term financing via different systems *i.e.*, investment in funds/debt or equity investment.²⁶ It is anticipated that the total amount of the net investment in the region included in BRI projects is approximately one trillion USD.²⁷ (On *Appendix II* one can see broader picture of the finance of the BRI)

3. Formation of International Commercial Courts

Since the promulgation of the BRI, the government of the PRC has been investing a great deal of international trade agreements and other projects between companies and BRI states.²⁸ In fact, with the rapid growth of the economic globalization and cooperation, the international commercial disputes began occurring relatively more. According to the reported data, in total above 200,000 international civil and commercial disputes were recorded between 2013 and 2017 in all levels of the People's Courts of the PRC. This is two folds more than the last five years in the history of the judicial system of the PRC.²⁹ Therefore, the PRC has an opportunity to become an essential center of the international dispute settlement system within investment and trade related disputes of the BRI.³⁰ The SPC designed and constructed the CICC in order to facilitate the BRI with efficient, neutral, convenient, internationalized and fair dispute resolution system.³¹ The establishment of the CICC conforms with the universal tendency of the existing international financial centers and commercial court.³²

The notion of the CICC was primary announced to public according to the Opinion regarding Establishing One Belt One Road International Commercial Dispute Resolution Mechanism and Institution (Opinion) in January 2018.³³ The Opinion envisaged that the SPC will initiate the followings:

- a. The international commercial court;
- b. An expert committee of international commercial matters;
- c. A "one-stop" dispute resolution center.

²⁴ "AIIB Approved Projects," Status as at September 24, 2020, accessed September 26, 2020, <https://www.aiib.org/en/projects/list/index.html?status=Approved>.

²⁵ "AIIB Approved Financing Projects," para. Status as at September 24, 2020, accessed September 26, 2020, <https://www.aiib.org/en/projects/summary/index.html>.

²⁶ Holloway, *The New Chinese International Commercial Court and the Future of Dispute Resolution in the Belt and Road Initiative*.

²⁷ Joshua Kelly and Mariia Puchyna, "Investment Protection and Dispute Resolution on the Belt and Road," accessed September 26, 2020, <https://riskandcompliance.freshfields.com/post/102f1it/investment-protection-and-dispute-resolution-on-the-belt-and-road>.

²⁸ Lu Yanan, "China's Merchandise Trade with Belt and Road Countries Tops \$5 Trillion in 5 Years," 2018, para. China has signed 118 cooperation agreements with 103 countries and international organizations on developing the Belt and Road, <http://en.people.cn/n3/2018/0831/c90000-9496013.html>.

²⁹ Liu Tingmei, "The China International Commercial Court (CICC) in 2018," 2019, <http://cicc.court.gov.cn/html/1/219/208/209/1316.html>.

³⁰ Jingzhou Tao and Mariana Zhong, "The China International Commercial Court (CICC): A New Chapter for Resolving International Commercial Disputes in China," *The Journal of the Dispute Resolution Section of the International Bar Association*, no. Vol 13 No 2 (2019): 103–196.

³¹ "国际商事法庭 - Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)."

³² Such as Astana International Financial Centre Court, Dubai International Financial Centre Courts, Singapore International Commercial Court and so on.

³³ "Opinion Concerning the Establishment of the Belt And Road International Commercial Dispute Resolution Mechanism and Institutions. 关于建立'一带一路'国际商事争端解决机制和机构的意见."

The Opinion defined the formation of the CICC. In June 2018, the SPC issued Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court as guidelines of the Opinion (CICC Provisions).³⁴ The CICC Provisions provide articles on CICC jurisdiction, choice of law, selection of judges, rules of evidence, language, the establishment of the international commercial expert committee, a "one-stop" dispute resolution center and other related formalities.³⁵ Soon after promulgation of the CICC Provisions, on 5th December 2018 the SPC circulated three Ancillary Rules that elucidates undetermined matters of the CICC Provisions and assists to its implementation. The Ancillary Rules are the followings:

1. Notice of the General Office of the Supreme People's Court on the Determination of the First Batch of International Commercial Arbitration and Mediation Institutions Incorporated into the 'One-stop' International Commercial Dispute Diversified Resolution Mechanism (the 'One-stop Solution Notice');³⁶
2. Procedural Rules of the China International Commercial Court of the Supreme People's Court (Trial) (the 'Procedural Rules of CICC');³⁷
3. Working Rules of the International Commercial Expert Committee (hereinafter ICEC) of the Supreme People's Court (Trial) (the 'Working Rules of ICEC').³⁸

On 29th June 2018 the SPC announces the establishment of the first and second International Commercial Courts in Shenzhen and Xi'an, respectively. The first batch of eight judges of the CICC has been appointed by the SPC.³⁹ All those judges served in the SPC and specialized in dealing with international commercial disputes.⁴⁰ On 24 August 2018, the SPC unveiled the formation of an ICEC that includes Chinese and foreign specialists expertized in international investment and commercial arbitration, international trade, construction and so on.⁴¹

4. Characteristic Features of the CICC

The current section discusses the characteristic features of the CICC mechanism. The CICC constitutes the permanent adjudicatory body of the SPC.⁴² The SPC appointed 15 judges by April 2019, who has in-depth knowledge and expertise in trial work,

³⁴ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts."

³⁵ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," accessed September 16, 2020, <https://cgc.law.stanford.edu/belt-and-road/b-and-r-texts/20180701-provisions-re-intl-commercial-courts/>.

³⁶ "Notice of the Supreme People's Court on Inclusion of the First Group of International Commercial Arbitration and Mediation Institutions in the 'One-Stop' Diversified International Commercial Dispute Resolution Mechanism," accessed September 17, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/1144.html>.

³⁷ "Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)," accessed September 17, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/1183.html>.

³⁸ "Working Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)," accessed September 17, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/1146.html>.

³⁹ "Eight Judges of China International Commercial Court Were Appointed," accessed September 17, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/821.html>.

⁴⁰ Jingzhou Tao and Mariana Zhong, "The China International Commercial Court (CICC): A New Chapter for Resolving International Commercial Disputes in China."

⁴¹ "Decision of the Supreme People's Court on the Appointment of the First Batch of Expert Members of the International Commercial Expert Committee - 最高人民法院关于聘任国际商事专家委员会首批专家委员的决定," accessed September 17, 2020, <http://cicc.court.gov.cn/html/1/218/149/192/949.html>.

⁴² "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 1.

proficient in working languages, acquainted with international treaties and practices.⁴³ According to the Law on Judges of the PRC, Chinese judges must have the nationality of the PRC.⁴⁴ As it is said above the CICC is the branch of the SPC which means Law on Judges of the PRC applies to it. Therefore, the unique feature of the CICC is that all its judges have Chinese nationality while other international commercial courts worldwide welcome foreign judges as well.

The next particular feature of the CICC is the expert committee (ICEC) which comprised leading practitioners from PRC and various jurisdictions. The ICEC is professional, international, inclusive and universal. The ICEC experts preside over mediation; provide advisory opinion on particular legal issues regarding to international treaties, laws, regulations; assist in the formulation of the judicial interpretation and judicial policy of the SPC and they also provide their valuable suggestion on the further development of the CICC. The ICEC provides advice on various legal issues. Besides, as the ICEC experts can act only as mediators, they cannot decide a case as a judge.⁴⁵

The disputes in the CICC are handled by a collegial panel with three or more judges. The novelty here is the collegiate panel follows the decision of the majority and the opinions of the minority may be provided in the judgment.⁴⁶ Moreover, the CICC hears the cases as the first instance and its judgments is final, does not subject to appeal. However, pursuant to Article 16 of the CICC Provisions, the parties of a dispute can apply the SPC for retrial over the judgment, ruling or mediation statement. Furthermore, the CICC has some lucid requirements for the admissibility of evidence obtained outside the territory of the mainland of the PRC. The evidences are cross-examined in court regardless weather they were notarized, certified or went through other formalities of certification.⁴⁷ More interestingly, the CICC can utilize audiovisual transmission technology for investigation and cross-examination.⁴⁸ Unlike PRC's current litigation system, the CICC allow to submit documents in English without Chinese translation, with the consent of the other party.⁴⁹ Besides the CICC has preservation ruling that helps to designate a lower-level People's Court to enforce its ruling.⁵⁰

The CICC Provisions do not provide rules for the enforcement of the judgments issued by foreign courts or enforce CICC judgments in foreign jurisdiction. Thus, the enforcement and recognition matters are governed only by Chinese Civil Procedure Law (hereinafter CCPL) and bilateral treaties on judicial assistance.⁵¹ This aspect can

⁴³ Wei Cai and Andrew Godwin, "Challenges and Opportunities for the China International Commercial Court," *International and Comparative Law Quarterly* 68, no. 4 (2019): 869–902, <https://doi.org/10.1017/S0020589319000332>.

⁴⁴ "中华人民共和国法官法 (2019年) Judges Law of the P.R.C.," Article 12, accessed September 19, 2020, <https://www.chinalawtranslate.com/en/judges-law-of-the-prc-2019/>.

⁴⁵ Cai and Godwin, "Challenges and Opportunities for the China International Commercial Court."

⁴⁶ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 5.

⁴⁷ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 9.

⁴⁸ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 10.

⁴⁹ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 9 (2).

⁵⁰ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 6.

⁵¹ "Civil Procedure Law of the PRC," 1991, <https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn012en.pdf>; Cai and Godwin, "Challenges and Opportunities for the China International Commercial Court."

pose significant problems to enforce the CICC judgment, especially compared to arbitration. Because the arbitral awards have better mechanism of enforcement due to New York Convention.⁵²

Remarkably, in the CICC electronic litigation service platforms and several other platforms are created. As the result numerous tasks *i.e.*, registration of cases, payment of fees, review of files, exchange of evidence, service of process, initiation of courtroom proceedings, etc., can be accomplished through electronic data network.⁵³ More interestingly, the CICC provides the diversified international dispute resolution system. An innovative approach of the CICC is that SPC chooses high professionalized international commercial arbitration and mediation institutions that can create platform to merge arbitration, mediation with litigation. Which forms the one-stop dispute settlement hub. Afterwards, they cooperatively inaugurate a dispute resolution platform with the CICC.⁵⁴ This practice definitely provides considerable convenience to the parties of a case.

5. Jurisdiction of the CICC

The CICC has jurisdiction over international commercial disputes. Other types of disputes are excluded from the scope of the CICC such as the investor-state or state to state disputes. According to the Article 8 of the Rules of Procedure of the CICC, the parties' consent to the jurisdiction of the CICC of the SPC, First or Second International Commercial Court, must be in written form.⁵⁵ Pursuant to the Article 2 of the CICC Provisions, the CICC has jurisdiction over following cases:

- 1) Pursuant to Article 34 of the CCPL when the parties of a dispute selected that the SPC has jurisdiction as a first-instance and the subject of a dispute amounted no less than 300 million RMB;
- 2) When a Higher People's Court has jurisdiction as a first-instance and considers that the SPC needs to adjudicate the case;
- 3) Cases of first-instance that poses a "significant impact" on the PRC;
- 4) In accordance with the Article 14 of the CICC Provisions, the cases that involves arbitration related preservation procedures *i.e.*, enforcement or setting-aside of an international arbitral award;
- 5) Other cases that the SPC believes the CICC has jurisdiction over them.

The jurisdiction of the CICC incorporates the statutory jurisdiction (see above items 2 and 5) and consensual jurisdiction (above item 1). The scope of Article 2 of the CICC Provisions expands the SPC jurisdiction through CICC. Before pursuant to Article 21 of the CCPL⁵⁶, as a first instance the SPC had jurisdiction over the cases that has substantial impact on entire country and cases that should be tried by the SPC. Moreover, formerly the foreign related cases amounted above 300 million RMB could be submitted to a

⁵² Convention on the Recognition and Enforcement of Foreign Arbitral Awards. New York Convention, 1958.

⁵³ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 18.

⁵⁴ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 11.

⁵⁵ "国际商事法庭 - Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)."

⁵⁶ "Civil Procedure Law of the PRC," Article 21.

Higher People's Court only.⁵⁷ Besides past constraint under the CCPL that the cases regarding to arbitration could be filed to an Intermediate People's Court, is now removed.⁵⁸ Additionally, the Article 3 of the CICC Provisions defined what actually comprises "international commercial case". The term "international" and "foreign-related" resembles to each other.⁵⁹ According to it the followings are determined as "international" commercial cases:

- a. the parties or one of the parties (person or legal entity) has a foreign nationality or stateless status;
- b. permanent residence of the parties or one of the parties is outside the territory of the PRC;
- c. a subject matter of the case located outside the territory of the PRC;
- d. the legal facts triggered the dispute are outside the territory of the PRC.⁶⁰

Pursuant to the Article 2 (1) of the CICC Provisions, the parties of a dispute can select CICC as a dispute settlement forum, if the dispute has actual connection with PRC and amount of the dispute is no less than 300 million RMB. Remarkably, this provision confines the parties' right for consensual jurisdiction. Primarily, drafting a constructive dispute resolution clause by addressing CICC would pose a perplexity. This is mainly because a party cannot estimate the amount of a dispute while drafting an agreement. The relation between overall amount of a contract and the value of the dispute arising within the contract is not always predictable.⁶¹

Moreover, Article 2 of the CICC Provisions allows the SPC to transfer some cases from other courts to the CICC where even the total amount of a dispute is less than 300 million RMB. Interestingly, in this regard the party autonomy remains entirely in question. The quantifiable limit can cause practical problems to the parties.⁶² Furthermore, in order to select the CICC as a dispute settlement forum, a dispute should have an actual connection with PRC. According to the Article 34 of the CCPL, a consensual venue should have an actual connection with the forum.⁶³ For this reason the CICC can fail to constitute a neutral dispute settlement venue for the BRI disputes. In essence, the other types of jurisdiction in the Article 2 of the CICC Provisions can be viewed as an inner designation of jurisdiction within PRC judicial system. Obviously, by imposing limitation on consensual jurisdiction, the CICC can only handle the disputes which are normally under PRC court's jurisdiction.⁶⁴ Additionally, unlike CICC other international commercial courts *i.e.*, Singapore International Commercial Court (SICC) or

⁵⁷ Jingzhou Tao and Mariana Zhong, "The China International Commercial Court (CICC): A New Chapter for Resolving International Commercial Disputes in China."

⁵⁸ Jingzhou Tao and Mariana Zhong.

⁵⁹ Article 522 of the SPC's Interpretation of the Civil Procedural Law. See. Jingzhou Tao and Mariana Zhong.

⁶⁰ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts," Article 3.

⁶¹ Li Huanzhi, "China's International Commercial Court: A Strong Competitor to Arbitration?," 2018, accessed September 23, 2020, <http://arbitrationblog.kluwerarbitration.com/2018/09/30/chinas-international-commercial-court-a-strong-competitor-to-arbitration/>.

⁶² Wei Sun, "International Commercial Court in China: Innovations, Misunderstandings and Clarifications," 2018, accessed September 23, 2020, <http://arbitrationblog.kluwerarbitration.com/2018/07/04/international-commercial-court-china-innovations-misunderstandings-clarifications/>.

⁶³ "Civil Procedure Law of the PRC," para. Article 34.

⁶⁴ Huanzhi, "China's International Commercial Court: A Strong Competitor to Arbitration?"

Dubai International Financial Centre Courts (DIFCC) requires a jurisdiction agreement in written form without having any actual connection with the forum.⁶⁵

6. Procedure of the CICC

The CICC shares the virtually identical procedural rules with People's Courts in PRC. There are no specific rules on recognition, enforcement or choice of law. However, the Procedural rules of the CICC have particular features. The following paragraph discusses the unique characteristics of the CICC litigation procedures.

The CICC created flexible system of ascertaining foreign law. Article 8 of the CICC Provisions enlarges the methods of ascertaining foreign law in the PRC. Previously, "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)"⁶⁶ (1988) defined five approaches of establishing foreign law (Article 193).

The CICC facilitated convenience and flexibility for the parties. According to the Article 9 (2) of the CICC Provisions a party can submit evidentiary materials in English language, without Chinese translation, but only if the other party agrees to do so. Regardless whether the evidentiary materials generated outside the territory of the PRC are notarized, certified or undergone other process of certification, they are be accepted and cross examined in court. Moreover, Article 10 of the CICC Provisions utilizes state-of-the-art innovative audiovisual technology and other Internet related virtual methods in order to conduct investigation, compile evidence and arrange cross-examination.

The electronic litigation platform is organized within the CICC practice. It reflected in the Article 18 of the CICC Provisions, it defines that the parties can be informed about trial process through platforms and they facilitate to pay fees, to get acquainted with case documents, evidence exchange, service of process, trial by video-conference via Internet connection. Besides, the Article 5 of the CICC provides innovative approach of judgment. Which determines the minority opinions in the collegial panel can be incorporated in the judgment.

The first public hearing of the dispute related to the product liability held in the First International Commercial Court situated in Shenzhen on 31st May 2019⁶⁷. The first case associated with shareholder qualification confirmation in the Second International Commercial Court located in Xi'an held on 29th June 2019.⁶⁸ According to the statistics by June 2019, the International Commercial Courts in Shenzhen and Xi'an accepted 11

⁶⁵ Huanzhi.

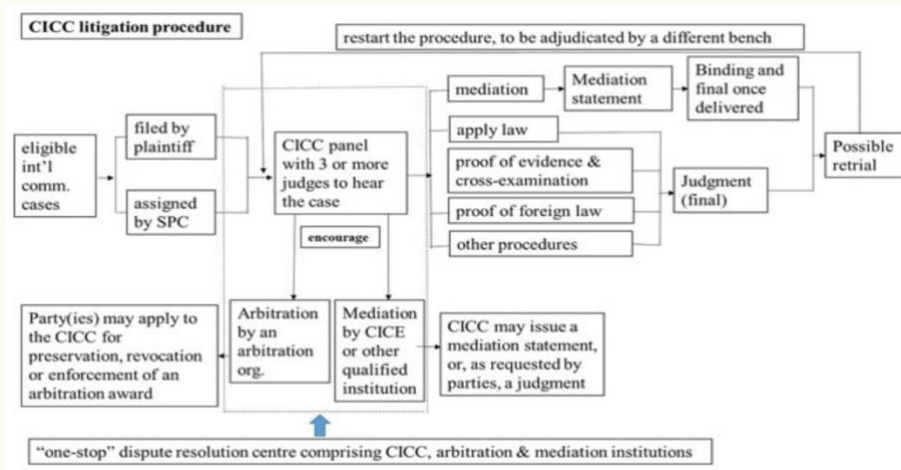
⁶⁶ "Notice of the Supreme People's Court on Issuing the 'Opinions on Several Issues Concerning the Implementation of the 'General Principles of the Civil Law of the People's Republic of China' (for Trial Implementation)," accessed September 20, 2020, http://pkulaw.cn/fulltext_form.aspx?Gid=3689&Db=chl.

⁶⁷ "The Dispute between Guangdong Bencao Medicine Group Co., Ltd. and Bruschetti S.R.L. over Product Liability," accessed September 21, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/1245.html>.

⁶⁸ "The Dispute of Shareholder Qualification Confirmation between Ruoychai International Group Co., Ltd., Red Bull Vitamin Drink Co., Ltd. and Inter-Biopharm Holding Limited," accessed September 21, 2020, <http://cicc.court.gov.cn/html/1/219/208/210/1231.html>.

different cases from various jurisdictions *i.e.*, Japan, Hong Kong SAR of the PRC, Virgin Islands, Italy and so on.⁶⁹

Figure 2. The description of the CICC litigation procedure⁷⁰



7. Analysis of Common Misunderstandings

As it has been already discussed above the CICC is the permanent division of the SPC. The CICC has jurisdiction over international commercial cases among equal parties. The following paragraph evaluates the potential questions that are not clearly determined. The prominent internationalized commercial courts made the involvement of respected foreign judges and expert lawyers indispensable. Nevertheless, Article 9 of the PRC Judges Law requires judges of the PRC to have a Chinese nationality and prevents foreign judges being accepted to CICC as a judge.⁷¹ Moreover, pursuant to the CCPL, only Chinese-admitted lawyers can represent a party in litigation while limits the participation of foreign lawyers.⁷²

The CICC maintained an innovative approach by creating the ICEC as a mediator. Which is in turn inexplicably withdraw the mediation function of the judicial panel. In addition, the CCPL does not include any prerequisite for evidence disclosure prior to commencement of the hearing. Thus, lawyers, especially from common law jurisdiction, can be concerned about encountering surprising evidences during the trial. Hence, they are more reluctant in determining PRC courts as a dispute resolution forum and opt for the venue which grants more party autonomy.⁷³

The CICC Provisions does not make it clear how to define the relation between arbitration and litigation or among domestic/foreign courts and arbitration institution.⁷⁴ For example, when there is a contract between French company and Chinese company

⁶⁹ "Review: The First Anniversary of China International Commercial Courts," accessed September 21, 2020, <https://www.chinajusticeobserver.com/a/review-the-first-anniversary-of-china-international-commercial-courts>.

⁷⁰ Cai and Godwin, "Challenges and Opportunities for the China International Commercial Court."

⁷¹ "Judges Law of the People's Republic of China," *Revue Internationale de Droit Comparé* 55, no. 1 (2003): 75–82.

⁷² Huanzhi, "China's International Commercial Court: A Strong Competitor to Arbitration?"

⁷³ Huanzhi.

⁷⁴ Sun, "International Commercial Court in China: Innovations, Misunderstandings and Clarifications."

worth 2 billion RMB, the parties decided to select CICC in Xi'an as a dispute settlement forum. When a dispute arose, it amounted only 180 million RMB. The question here is "Does the CICC in Xi'an still have jurisdiction?" Or what happens when the defendant made a counter-claim and the same dispute amounted 500 million RMB?

A common misunderstanding around CICC is whether foreign international arbitral and mediation institutions can be involved in "one-stop" dispute settlement system? The Article 11 of the CICC Provisions provides that the CICC establishes "one-stop" dispute settlement mechanism by linking qualified international mediation, arbitration institutions and litigation in a one platform. The answer here is only Chinese institutions with international practice (like CIETAC, BAC, SIAC, SCIA and etc.)⁷⁵ can be involved in this platform for now. Some of the considerable barriers should be removed prior to foreign international institutions actually get included into this platform.⁷⁶

Pursuant to Article 14 of the CICC Provisions, the parties of arbitral proceedings can apply for interim measures to CICC.⁷⁷ The misconception here is that even the parties are involved to foreign arbitral proceedings outside of PRC can apply for interim measures to CICC. However, Article 14 of the CICC Provisions refers to the Article 11 of the Provisions and defines only the parties of the arbitration proceedings within CICC Platform can apply for interim measures to CICC. Which means the parties pursuing arbitration proceedings abroad cannot apply to CICC for interim measures, even the case involves a Chinese party.⁷⁸

Another misinterpretation is that the procedural language can be English or even other foreign language as the CICC established to assist disputes related to BRI. This mistake occurs because the Article 4 of the CICC Provisions provides that the judges have proficiency in working languages, both Chinese and English. Moreover, the Article 9 of the CICC Provisions defines that the parties can submit their evidences in English language without translating to Chinese language.⁷⁹ In fact, the CICC Provisions do not mention that the proceedings can be conducted in English. According to the Article 240 of the CCPL the court proceedings only can be held in "commonly used language in the PRC" (Chinese language).⁸⁰ Besides, Law on Court Organization of the PRC in Article 6 provides the same provisions.⁸¹ Thus, pursuant to current legislation framework of the PRC, it is impossible to held court proceedings in foreign language in the PRC.⁸² The PRC laws have superior power compared to CICC Provisions and SPC judicial interpretations.

⁷⁵ China International Economic and Trade Arbitration Commission (CIETAC); Beijing Arbitration Commission (BAC); Shanghai International Economic and Trade Arbitration Commission (SIAC); Shenzhen Court of International Arbitration (SCIA).

⁷⁶ Sun, "International Commercial Court in China: Innovations, Misunderstandings and Clarifications."

⁷⁷ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts."

⁷⁸ Sun, "International Commercial Court in China: Innovations, Misunderstandings and Clarifications."

⁷⁹ "Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Courts."

⁸⁰ "Civil Procedure Law of the PRC."

⁸¹ Sun, "International Commercial Court in China: Innovations, Misunderstandings and Clarifications."

⁸² Sun.

8. Conclusion

The development of the international commercial courts is linked to the need of the fast and effective resolution of international commercial disputes. Despite the arbitration plays an important role in international commercial dispute resolution, the international commercial courts are filling its drawbacks and offering larger degree of fairness. Both dispute settlement mechanisms complementary to each other.⁸³ The growth of international commercial courts eventually confers to the further development of the global commerce. It is anticipated that the jurisprudence designed by professional judges and outstanding experts will definitely become an indispensable asset of the *lex mercatoria*.⁸⁴

Undoubtedly, the CICC will fully achieve its contemplated goals. It might seem unluckily that the CICC will become prominent choice of forum in the international business network. Basically, because of the problems regarding to the enforcement of the CICC final judgement in foreign countries Therefore, the CICC is required to create a necessary framework in order to facilitate enforcement mechanism for its judgments. In fact, one of the advantages of the CICC is that the caseload will not be a problem. The CICC ascertains which of the arbitral institutions will be incorporated in the one-stop platform. Moreover, the preservative measures of the CICC attracts more arbitration-related disputes.

The establishment of the CICC was the important breakthrough in stimulating PRC's participation in the world business law-making, further integrate PRC's international organization of judicial cooperation, enforcement and recognition. This matches the PRC's intention to gain more significant position in international business rule making process.⁸⁵ The construction of the CICC marked as opening the door for a new era in the PRC's judicial system. Moreover, it demonstrated the PRC's influential vision towards rule of law.⁸⁶ Even though the PRC has influential international arbitration institutions, it limits the growth of the PRC's ability to contribute to the progress of substantive commercial law.⁸⁷ It is mainly because arbitral centers have *ad hoc* character and confidentiality requirements. The CICC formed a fundamental framework for its functioning. If the CICC will promote more internationalization, transparency and professionalism, it will become one of the leading competitors across the globe in international dispute resolution service.⁸⁸ Even though the CICC has some shortcomings as discussed in the research, but ultimately it can promote to the further development of the international rule of law and judicial cooperation.

⁸³ Zhang, "China's International Commercial Court: Background, Obstacles and the Road Ahead."

⁸⁴ Sheng Zhang (2020).

⁸⁵ See the Supreme People's Court's Several Opinions on Providing Judicial Service and Guarantee for the Construction of the 'Belt and Road' Initiative by People's Court (最高人民法院关于人民法院为 '一带一路' 建设提供司法 服务和保障的若干意见) Issued on 16 June 2015., accessed September 21, 2020, https://www.pkulaw.com/en_law/96f2607d78e93212bdfb.html.

⁸⁶ Jiangyu Wang, "China's Governance Approach to the Belt and Road Initiative (BRI): Relations, Partnership, and Law," *Global Trade and Customs Journal* 14, no. 5 (2019): 222–28.

⁸⁷ Firew Tiba, "The Emergence of Hybrid International Commercial Courts and the Future of Cross Border Commercial Dispute Resolution in Asia," *Loyola University Chicago International Law Review* 14, no. 1 (2016).

⁸⁸ Cai and Godwin, "Challenges and Opportunities for the China International Commercial Court."

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