

Litigation Jurisdiction of China International Commercial Court under the "Belt and Road" Initiative

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Abstract: The China International Commercial Court (CICC) plays a crucial role in the context of the "Belt and Road" initiative, providing a platform for the fair and efficient resolution of international commercial disputes. Despite its strategic importance, the CICC faces significant jurisdictional challenges. These include blurred boundaries of case acceptance, insufficient innovation in distinguishing international cases, overly broad applicability due to exclusionary practices, and inadequate consideration of international investment disputes. This article thoroughly examines these issues and offers comprehensive solutions to enhance the CICC's functionality. Key recommendations include clarifying the CICC's positioning as a one-stop platform integrating mediation, arbitration, and litigation; refining the boundaries of case acceptance through detailed legal provisions and judicial interpretations; strengthening the standards for determining international cases to better reflect the complexity of international commercial activities; and enhancing the mechanisms for resolving international investment disputes. Addressing these challenges will improve the CICC's operational efficiency, bolster its international credibility, and better support the "Belt and Road" initiative.

Keywords: China International Commercial Court, Belt and Road Initiative, international commercial disputes, litigation jurisdiction.

1. Introduction

The expansion of jurisdiction is a powerful prerequisite for enhancing competitiveness. In the context of countries vying to establish international commercial dispute resolution mechanisms, the global competitive landscape is taking shape. The "Belt and Road" initiative has brought substantial benefits to participating countries. As a major strategy of China, this initiative is not only related to China's economic development, but also involves the economy of the participating countries. Due to significant differences in political systems, economic development, religious beliefs, and legal systems among these countries, there is a pressing need for China to enhance its influence and rule-making power in the international business arena. To fairly and efficiently resolve commercial disputes and better support the "Belt and Road" construction, the China International Commercial Court (CICC) was established.

The international commercial court model has gained popularity among various countries in recent years. Economically developed countries and those aspiring to elevate their international status are actively establishing their own international commercial courts. As the world's second-largest

economy and initiator of the “Belt and Road”, China faces a complex international environment. The CICC is essential in supporting China's global strategy, improving its image, maintaining stability, and building judicial credibility. The CICC has a precise positioning and has made a name for itself in international commercial dispute resolution through specialized personnel allocation, flexible mechanisms, and information management.

However, the early stages of the CICC's establishment have been constrained by conservative regulations and foundational limitations. Currently, the CICC's jurisdiction faces several shortcomings, including an insufficient international vision, poor institutional connection, and inadequate protection of the rights of the parties involved. These issues not only constrain the practical functioning of the CICC, but also affect China's position and reputation in international commercial dispute resolution. Therefore, this article will conduct in-depth research on these issues and identify specific solutions to improve the operational efficiency and international recognition of the CICC.

This article is divided into five parts. After the introduction, the second part will introduce the current situation of the CICC litigation jurisdiction under the "Belt and Road" initiative, and analyze its jurisdiction, case determination standards, judge composition, trial level system and its "one-stop" international commercial dispute resolution mechanism. Next, the third part explores the shortcomings of jurisdiction, including vague boundaries for accepting cases, extensive involvement in the return of priorities, overly broad applicability due to exclusionary practices, and inadequate consideration of international investment disputes. Then, the fourth part proposes corresponding solutions, such as clarifying the positioning of the court, improving the flexibility of evidence rules, perfecting the system of international commercial expert committees, and creating a comprehensive information-based litigation system. Finally, the fifth part summarizes the entire text and proposes directions and suggestions for future development.

2. The Current Provisions on the Jurisdiction of Litigation of the CICC under the "Belt and Road" Initiative

To advance the “Belt and Road” initiative and enhance judicial services, the Supreme People's Court of China issued the Provisions on Several Issues Concerning the Establishment of International Commercial Courts in June 2018. These Provisions, based on principles of fairness, impartiality, professionalism, efficiency, and international openness, established the First and Second International Commercial Courts in Shenzhen and Xi'an. The 19 articles define the CICC's jurisdiction, case determination, judge composition, trial level, positioning, and other relevant issues.

One key aspect of the Provisions is the jurisdiction. The CICC has jurisdiction over five types of cases: major foreign-related commercial cases, cases chosen by agreement, applications for recognition and enforcement of foreign judgments or arbitration, cases designated by the Supreme People's Court, and cases transferred from lower courts. This includes statutory, contractual, transfer, and designated jurisdiction, ensuring broad authority.

The second is the recognition of international commercial cases. The Provisions refer to Article 1 of the Supreme People's Court's Interpretation on Foreign-related Civil Relations Law to define international commercial cases. These cases fall into three categories: civil and commercial disputes between equal parties, which the CICC primarily handles; investment disputes between entities and countries, which are excluded from CICC jurisdiction; and treaty-related disputes between countries, also excluded and managed by other mechanisms like the Washington Convention and WTO dispute resolution. Thus, the CICC mainly resolves civil and commercial disputes between equal parties.

The third is the composition of judges. The CICC has hired a group of judicial personnel who can handle work in both Chinese and English. These judges have a theoretical understanding of precedents and legal provisions and are well-versed in trade and investment practices, with extensive

judicial experience. Their professional background and language proficiency enable the CICC to efficiently handle complex international commercial disputes.

The fourth is the review level of the CICC. The CICC implements a final adjudication level model, where the parties do not actually have the right to appeal, making it the first of its kind among many international commercial courts. This model aims to improve the efficiency and finality of rulings, reducing the uncertainty and prolonged litigation that parties might otherwise face. By providing a definitive resolution, the CICC enhances the predictability and reliability of its judicial outcomes.

The fifth feature is the "three-in-one" one-stop international commercial dispute resolution mechanism. The Supreme People's Court has introduced the International Commercial Expert Committee, a new institution with specialized personnel that embodies Chinese characteristics. This mechanism includes qualified international commercial mediation and arbitration institutions working with the CICC to provide a comprehensive dispute resolution platform. The CICC respects the parties' independent wishes and supports dispute resolution through mediation, arbitration, and litigation, ensuring convenience, efficiency, and professionalism.

The sixth is the simplification and convenience of litigation procedures. If the evidence materials submitted by the parties are in English and approved by the other party, they can be used directly in the trial without needing a Chinese translation. The CICC can flexibly adopt audiovisual transmission technology or other information methods during the investigation and cross examination stages of evidence. At the same time, the litigation procedure is based on the principle of convenience and efficiency, and all procedural processes support online methods, providing services to the parties through various electronic public platforms. In addition, the parties can choose the applicable law around the substantive issues of the dispute. The Provisions list the ways to determine relevant foreign laws and provide comprehensive convenience services for the parties.

In summary, the current provisions on the jurisdiction of the CICC demonstrate a comprehensive and multifaceted approach to handling international commercial disputes. The CICC's broad jurisdictional scope, the precise categorization of international commercial cases, the composition of highly qualified judges, the final adjudication model, the integration of multiple dispute resolution methods, and the streamlined litigation procedures all contribute to its effectiveness. However, there remain challenges related to jurisdictional clarity and the need for further refinement to enhance its international perspective, institutional integration, and the protection of parties' rights. Addressing these issues is crucial for improving the CICC's operational efficiency and strengthening its role in the global commercial dispute resolution landscape.

3. Insufficient Litigation Jurisdiction of CICC under the “Belt and Road”

3.1. Blurred Boundary of Case Acceptance

As the CICC is subordinate to the Supreme People's Court, its judgments are legally binding, and parties cannot appeal except in specific circumstances for retrial. Once a case is transferred to the CICC, the original right to appeal is lost. To clarify the scope of cases accepted by the CICC versus other courts with foreign-related jurisdiction, the "Provisions of the Supreme People's Court on Several Issues Concerning the Jurisdiction of Lawsuits in Foreign-related Civil and Commercial Cases" introduced "significant impact" restrictions in higher-level jurisdiction and subject matter limits in agreement jurisdiction and arbitration judicial review. However, this approach cannot fundamentally solve the problem of the boundary between the CICC and foreign-related commercial trial courts. Instead, it may create new issues, such as granting the Supreme People's Court excessive discretion in escalating cases. For example, parties might question the fairness of the court's jurisdiction, believing it deprives them of their right to appeal and thereby undermining their acceptance and trust in the court's ruling.

Due to the blurred boundaries of cases, the functions of the CICC cannot be effectively utilized, which may also lead to the waste of judicial resources. If the parties choose an unsuitable court due to unclear boundaries when choosing litigation channels, it will not only prolong the litigation time, but may also increase litigation costs. In addition, in cases where boundaries are blurred, jurisdictional disputes between courts may also increase, further affecting the efficiency and fairness of case trials.

3.2. Local Regression Involves a Wide Range of Aspects

The term "international cases" is currently confined to the existing legal provisions for 'foreign-related cases' and is limited to a strict three-element standard. This limitation has stifled innovation within the CICC, making it operate similarly to domestic courts and failing to highlight its role as an international institution. The fundamental difference between the CICC and domestic foreign-related commercial courts lies in correctly determining the scope of "international cases". International cases should correspond to the positioning of international institutions, emphasizing neutrality and focusing on whether the legal relationships involved in commercial disputes have cross-border connection factors. In contrast, foreign-related cases are assessed from a national perspective, aiming to restore the disrupted legal order within the country and focusing on whether the legal relationship is related to the country.

The current legal framework defines international cases too narrowly and fails to fully consider the complexity and diversity of international commercial activities. For example, some complex commercial cases involving multiple parties and legal relationships may be excluded from the jurisdiction of the CICC under the current definition. This recognition standard not only limits the scope of cases accepted by the CICC, but also affects its authority and attractiveness in international commercial dispute resolution.

3.3. Exclusion-Based Approach Leads to a Wide Range of Applicability

The Provisions do not clearly define commercial cases. The Supreme People's Court noted that the CICC excludes two types of cases: trade or investment disputes between countries, and investment disputes between host countries and investors [1]. This exclusionary approach significantly broadens the scope of commercial cases, suggesting that most commercial disputes between parties are included, except for these two excluded categories and cases involving fundamental national interests.

Due to China's integration of civil and commercial affairs, the boundary between civil and commercial cases is not clear. According to China's consistent practice, in order to protect public order and good customs, property disputes involving identity relationships are not allowed to be governed by agreement, and such disputes cannot be simply classified as commercial cases. From the perspective of the parties involved, there is a certain risk when choosing the CICC as the jurisdictional court when it is uncertain whether the dispute meets commercial standards due to the lack of clear legal basis and sufficient case studies for reference. Therefore, the current regulations on commercial cases are unclear and incomplete, which may reduce the possibility of parties choosing the CICC's jurisdiction.

Moreover, the exclusionary approach's broad applicability may lead to the CICC operating at overload. A wide range of cases might cause a surge in case numbers, increasing the court's workload. Furthermore, the undefined scope of cases may also lead to inconsistent criteria for accepting cases, affecting the fairness and consistency of case trials.

3.4. Poor Consideration of International Investment Disputes

The current international investment arbitration has always faced legitimacy issues. Although sovereign states agree to accept the jurisdiction of certain arbitration institutions through bilateral

investment agreements, the arbitrator's decision is often seen as a policy choice of their home country [2]. Stakeholders are highly skeptical of the existing investment dispute resolution mechanism [3] and have reached a consensus on its urgent need for reform [4].

China, with its high participation in international investment arbitration, also grapples with issues of legitimacy and fairness. The CICC's consideration of investment disputes between host countries and investors appears insufficiently comprehensive and in-depth. Mediation lacks binding force, and unsuccessful mediation can result in wasted time and capital. Consequently, resolving international investment disputes solely through mediation is not practical. The independence and neutrality of arbitrators are often questioned, casting doubt on the fairness of arbitration results.

In this context, the CICC needs to establish itself as a fair, efficient, and authoritative platform for resolving investment disputes [5]. Currently, the trend of resolving international investment disputes through litigation is on the rise, as seen in the European Union's proposal for an investment court, which is gradually being implemented [6]. In negotiating free trade agreements with the US, Canada, and Singapore, the EU insists on submitting investment disputes to court rather than arbitration. The European Court of Justice in *Slovakia v Achmea BV* has made a ruling that the arbitration conducted between two EU countries under a bilateral investment treaty does not comply with EU legal provisions [7]. This trend indicates that the role and positioning of the CICC in resolving international investment disputes need to be further clarified and strengthened to cope with the increasingly complex international investment environment.

4. Solutions to the Issues of Litigation Jurisdiction of CICC under the “Belt and Road” Initiative

4.1. Clarifying the Positioning of the CICC

The CICC, as a one-stop platform that integrates mediation, arbitration, and litigation, needs to further clarify the key issues of arbitration and mediation. The review of mediation agreements reached by Chinese courts in out of litigation mediation procedures should adopt a combination of non-key clause form review and limited substantive review of key clauses. However, the effectiveness of mediation agreements reached under the auspices of expert committees is higher than that of ordinary mediation agreements outside of litigation. Therefore, the review of these agreements should be different from traditional models, mainly focusing on formal review.

Specifically, if substantive examination is conducted on mediation agreements reached in international commercial disputes, the procedures will inevitably be more cumbersome and complicated due to the complexity of the case [8]. Given that members of the International Business Expert Committee can provide legal advice and possess sufficient qualifications for mediation, their involvement should ensure that the work is not duplicated during the review process. Simplifying the review procedure of mediation agreements facilitates the connection between litigation and mediation mechanisms, aligning with the CICC's goal of forming a trinity dispute settlement platform. Parties will likely prefer submitting disputes to mediation based on convenience and efficiency, consistent with the “Belt and Road” concept of valuing peace and win-win cooperation. Conducting only a formal review of mediation agreements made by the International Commercial Expert Committee further clarifies its positioning and role.

4.2. Clarifying the Boundaries of Accepting Cases

The scope of cases accepted by the CICC and domestic foreign-related commercial courts overlaps. It is necessary to further clarify through legislation or judicial interpretations which cases fall within the jurisdiction of CICC and which fall within the jurisdiction of domestic foreign-related commercial courts, ensuring that parties have clear guidance when choosing litigation channels [9]. For this

purpose, detailed legal provisions and judicial interpretations can be formulated to clearly list the specific jurisdictional divisions for different types of cases. For example, by adding specific case types and subject matter limits, the rationality and fairness of hierarchical jurisdiction can be ensured. In addition, in order to address the issue of excessive applicability caused by exclusionary practices, it is necessary to clearly define the definition of commercial cases. Detailed case classification standards should be established to clarify which cases belong to commercial cases and which do not, especially property disputes involving identity relationships, in order to avoid confusion. For cases excluded from the jurisdiction of the CICC, clear exclusion criteria and rules should be established to ensure the clarity and transparency of the scope of acceptance. At the same time, by regularly updating and explaining the scope of cases accepted by the CICC, we ensure that the legal and business communities have an accurate understanding and application of the CICC's scope of cases, thereby further enhancing the CICC's authority and credibility.

Secondly, more detailed standards should be established in the promotion of jurisdiction to clarify which cases can be promoted to the CICC, in order to avoid affecting the litigation rights of the parties due to unclear boundaries. On the one hand, by refining the "significant impact" criteria, it is possible to clarify to what extent disputes can be considered as having a significant impact on national interests or the international business environment, and thus be elevated to the CICC. On the other hand, it is possible to consider establishing an independent jurisdiction review committee, where independent legal experts review and confirm cases subject to higher-level jurisdiction, to ensure fairness and impartiality in such cases.

4.3. Strengthening the Standards for Determining International Cases

To address the issue of narrow international case identification, it is necessary to establish identification standards that are more in line with the actual international commercial activities. Although the existing three element standards provide a basic framework, they are too rigid in practical operation and fail to cover all possible types of international commercial disputes. Therefore, on the basis of existing standards, cross-border connectivity factors should be considered, and complex commercial cases involving multiple parties and legal relationships should be included in the scope of international cases [10]. Expanding the definition of international cases through legal revisions or new judicial interpretations ensures that more types of international commercial disputes fall under the CICC's jurisdiction

In judicial practice, flexible application of international case determination standards should be encouraged to ensure that the CICC can cover more types of international commercial disputes. In terms of specific operations, regular seminars and guidance case studies can be held to help judges and lawyers better understand and apply international case determination standards. In addition, an international legal research center can be established to specifically study the latest developments and trends in international commercial disputes, providing theoretical support and practical guidance for the CICC's case determination and adjudication.

4.4. Strengthening the Jurisdiction of International Investment Dispute Cases

To address the limitations of jurisdiction over international investment dispute cases, it is essential to strengthen international investment dispute resolution mechanisms. Drawing on the EU's experience, establishing a specialized international investment court or dispute resolution mechanism can ensure the independence and neutrality of arbitrators and judges. By legislation or international agreements, clarify the criteria and procedures for accepting international investment disputes, ensuring that the CICC has authority and impartiality in handling such cases. For example, bilateral or multilateral investment agreements can be signed to clearly define the procedures and standards for resolving

investment disputes, ensuring transparency and fairness in international investment dispute resolution [11]. In addition, strengthen international cooperation in the international investment dispute settlement mechanism, clarify the procedures and standards for resolving international investment disputes through the signing of bilateral or multilateral agreements, and enhance the transparency and predictability of the international investment dispute settlement mechanism. This can not only enhance the status and influence of the CICC in international investment dispute resolution, but also strengthen investors' trust in China's judicial system. Meanwhile, through international cooperation, we can learn from the successful experiences of other countries and regions to enhance the level and efficiency of China's international investment dispute resolution mechanism.

5. Conclusion

In the context of diversified dispute resolution mechanisms, future competition among international commercial dispute resolution systems will be defined by jurisdiction rather than by the types of mechanisms. Since its establishment in 2018, the CICC has concluded only 8 cases, with none accepted based on agreement jurisdiction, indicating issues with its jurisdiction system. The most fundamental problem is the lack of international positioning. Equating "international cases" with "foreign-related cases" has caused the CICC to revert to operating more like a domestic court rather than an international institution. Any additional differentiation criteria based on this cannot play an effective role. The combined effect of the minimum amount and the actual connection limit the autonomy of the parties' will. At the same time, the CICC's trial of first instance cases may also lead to disputes over the standards for determining jurisdiction and discretion.

Therefore, it is urgent to redefine the criteria for determining "international commercial cases". International cases should emphasize that disputes are related to more than one country or region, and be examined in conjunction with substantive connecting factors and dispute nature standards. Clarify the criteria for defining commercial cases through enumeration and exclusion, and leave the possibility for the acceptance of international investment dispute cases along the "Belt and Road" initiative. After the scope of cases returns to the international standard, the effect of case diversion will become apparent, and the provisions on the amount of litigation subject matter can also be temporarily removed. Based on China's voice in the "Belt and Road" initiative and the change in the status of Chinese parties, the agreement jurisdiction can also cancel the actual connection. The occupation of some judicial resources will attract more foreign resources to flow into China, improve China's business environment, accelerate the development of industries such as lawyers, form a siphon effect, and jointly help China's judicial influence worldwide.

Given that the CICC serves as both the first and highest level of trial, exercising escalation jurisdiction authority requires greater caution and standardization. It is crucial to safeguard the parties' right to know and object, thereby enhancing the international credibility and attractiveness of China's judiciary. These improvements will enable the CICC to more effectively resolve international commercial disputes, support the in-depth implementation of the "Belt and Road" initiative, and strengthen China's position in the global judicial system.

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