



**RESEARCH PAPER**

**China International Commercial Court (CICC) in the Context of Commercial Disputes under Belt and Road Initiative: Organizational Structure, Rules and Jurisdiction**

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<b>PAPER INFO</b>	<b>ABSTRACT</b>
<b>Received:</b> October 23, 2021	Belt and Road Initiative (hereinafter called BRI) is increasing the regional connectivity of China and encouraging trade. It is regarded as China's ongoing nationwide and comprehensive socioeconomic expansion strategy for forging innovative imperatives through the promotion of overseas trading and investments. The happening of commercial disputes is very common with the increase of international commercial transactions and the Chinese government is well aware of this fact. That's why, Chinese Government has established "China International Commercial Court" (hereinafter called CICC) through the "Supreme People's Court" (hereinafter called SCP) as a mode of resolving cross border commercial conflicts with the objectives that Such a platform must be considered as relatively impartial, globalized, reliable, effective, and fair, with appropriate experience for settling complicated and high-stakes transnational corporate cases relating to BRI. Keeping in view the importance of the CICC for BRI, organizational structure, legal rules and jurisdiction of CICC will be the center of discussion in this research paper.
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**Introduction**

China faced rising numbers of commercial and civil cases with cross-border elements due to outward economic expansion under BRI (Zhou Q. , 2018). But BRI was in quest of a dispute resolution mechanism (Wang, 2017). A specialized institution was very much needed for the fair and speedy adjudication of international commercial cases under BRI to protect and promote the international businesses and trade (Gu, 2018). So, "The General Office of the Communist Party Central Committee

and the General Office of the State Council of the People's Republic of China" passed the "Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions" (hereinafter called "The Opinion") with a notice of enabling the competent officials and agencies to enforce it conscientiously for the establishment of an institution to resolve the international commercial cases under BRI. The Opinion pointed out certain principles for the establishment of an international commercial dispute resolution mechanism and institutions. These principles are the following:

- "Uphold the principle of planning together, building together, and benefiting together".
- "Uphold the principle of justice, efficiency, and convenience".
- "Uphold the principle of party autonomy".
- "Uphold the principle of diversified dispute resolution".

The Opinion authorized the Central Steering Group for BRI to coordinate the works relating to the establishment of international commercial dispute resolution mechanisms and institutions for BRI on a unified basis. SPC was responsible to lead and implement specific work plans and the National People's Congress Supervisory and Judicial Affairs Committee, the National People's Congress Standing Committee Legislative Affairs Commission, Ministry of Foreign Affairs, Ministry of Justice, the Ministry of Commerce and the China Council for the Promotion of International Trade had to participate in the relevant works. It set forth guidelines for the establishment of a mechanism for the settlement of international commercial disputes which includes:

- a. Establishment of International Commercial Courts
- b. Constitution of International Expert Committee
- c. Establishment of a diversified dispute resolution mechanism that effectively connects litigation, arbitration, and mediation, and forms a one-stop dispute resolution center that is convenient, efficient, and cost-effective for users

The Opinion stressed that this institution shall not only strive to achieve the goals of justice, high efficiency, and convenience but also must respect the principle of party autonomy to achieve a diversified and integral dispute resolution mechanism. SPC followed the complete and rapid implementation of The Opinion to establish a highly diverse dispute settlement system to resolve the international commercial

dispute under BRI through litigation, mediation, and arbitration (Zhou Q. , 2018). SPC established CICC in June 2018 in the light of The Opinion to hear commercial disputes with foreign elements in a timely and fair manner. Its formation aims to secure the legal right and privileges of parties working under BRI on a level playing field and to establish a secure, equitable, effective, and efficient market environment based on the rule of law (CICC, 2018).

### **Organizational Structure of CICC**

As per vision of The Opinion, SPC established CICC as a diverse dispute settlement system that effectively links litigation, mediation, and arbitration in the form of a one-stop dispute solution institution as being theoretically the most creative in offering various procedures (Erie, 2018). CICC consists of three parts as an organizational structure which includes the following:

- a. International Commercial Courts
- b. International Commercial Expert Committee
- c. International Commercial Mediation and Arbitration Institutions

### **International Commercial Courts**

SPC established International Commercial Courts to try commercial issues among the Chinese and foreign entities through litigation in a timely and fair manner as per the vision of The Opinion under the law and to secure the legal right and privileges of commercial entities to international commercial disputes (Tao & Zhong). SPC unveiled two following courts affiliated with it in June 2018 (CICC, 2018):

- a. First International Commercial Court
- b. Second International Commercial Court

First International Commercial Court has been established in Shenzhen, Guangdong Province (FICC, n.d.) and the Second International Commercial Court is in Xi'an, Shaanxi Province (SICC, n.d.). SPC appointed the panel of judges as a trial body of CICC from the judges of SPC and currently, 14 judges of the SPC are appointed to serve in CICC. All selected judges are senior SPC judges and specialized to handle commercial disputes of global nature. The SPC's Fourth Civil Trial Division is duty-bound for organizing and directing the business of these two courts (List of the judges, 2020). Certain guidelines have been made for dividing the cases between these two courts. Though, it is not strictly final and fixed. Specifically, this distribution among these two courts is made as per the routes of BRI. The First Court is assigned

to hear the cases relating to the route of “the Road”, and the Second has to handle the disputes relating to the area of “the Belt”. The term “Belt” is called for the “Silk Road Economic Belt” which are referring the routes overland as roads and rails transportations; whereas the term “Road” is used for “21st Century Maritime Silk Road” involves to sea-based areas (Guangyu., 2020).

### **International Commercial Expert Committee (ICEC)**

After the creation of courts as per directions of The Opinion, the next duty of the SPC was the constitution of the “International Commercial Expert Committee” (hereinafter called the ICEC) as per directions of The Opinion which narrates that “an international commercial expert committee will be established consisting of experts who are well versed in international laws and domestic laws in their respective jurisdiction”. Furthermore, The Opinion has also explained for the enactment of the rules for the ICEC (Guangyu., 2020). SPC constituted ICEC on August 24<sup>th</sup>, 2018. Its purposes are to enhance the professionalism of international commercial trials, improve or reinforce the cross border exchanges and cooperation, and smooth development in the working capacity of CICC. ICEC consists of experts from China and abroad who are commissioned in providing mediation and related other assistance for disputants involved to settle cross-border commercial cases under BRI (ICEC, 2020). These expert members belong to different legal systems of fourteen states and territories include leaders of mainstream global organizations, legal scholars, senior jurors, and international lawyers. They are skilled in international law and have considerable practical experience apart from their domestic laws. The selection of ICEC members is based on their specialties in relevant areas of international commerce (Experts, 2020). Initially, the expert committee was comprised of thirty-two (32) members but currently, thirty-one members (31) are working in the ICEC (Experts, 2020). The objectives of ICEC are to conduct mediation between the disputing parties of cross-border commercial disputes with their consent and to provide expert opinion to the courts in any case where the foreign laws need to be applied (Experts, 2020).

### **International Commercial Arbitration and Mediation Institutions**

The third direction of The Opinion was the support of domestic arbitration and mediation institutes having a good capacity and reputation for conducting international commercial arbitration and mediation among the BRI countries. SPC issued the “Notice of the General Office of the Supreme People’s Court on Determining the First Group of International Commercial Arbitration and Mediation Institutions to be incorporated into the One-Stop Multilateral Solution Mechanism for International Commercial Disputes” and included Chinese domestic institutions for

resolving international commercial conflicts through CICC. The following are the Chinese institutions which are added in the one-stop-shop of CICC:

- a. "China International Economic and Trade Arbitration Commission"
- b. "Shanghai International Economic and Trade Arbitration Commission"
- c. "Shenzhen Court of International Arbitration"
- d. "Beijing Arbitration Commission"
- e. "China Maritime Arbitration Commission"
- f. "Mediation Center of China Council for the Promotion of International Trade"
- g. "Shanghai Commercial Mediation Center"

These institutes are selected under the declarations submitted by the institutions concerned after analyzing the number of officially recognized international cases, international impact, and development of the digital design. The parties to a commercial case can select any institution which is mentioned in the list of institutes for mediation as per mutual agreement. Such an institution will precede the mediation between the parties and if such parties reach on a meditation agreement under the statute, CICC is authorized to provide conciliation statements. CICC could also release judgment on the application of the disputants on the bases of a mediation agreement. The parties may apply to CICC for the protection of proof, resources, or acts either before the request for arbitral proceedings or after its commencement concerning international commercial conflicts entertained by any arbitration institute which is added as mentioned above. The commercial entities may apply to the CICC for the setting aside or enforcement of the arbitration award (Legal Affairs Office , 2018).

### **Legal Basis to Resolve International Commercial Cases through CICC**

SPC has constituted rules and regulations for conducting trial and hearing of the cases before CICC. Following are the rules and regulations under which CICC can decide a case by trial, mediation, or arbitration:

- a. "Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court" (Provisions, 2018)
- b. "Rules of Procedure for the International Commercial Court of the Supreme People's Court (For Trial Implementation)" (Fabanfa, 2018)

- c. “Rules of the International Commercial Expert Committee (ICEC) of the Supreme People’s Court (For Trial Implementation)” (Rules, 2018)

### **Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court”**

SPC framed the generic principles for the CICC in the “Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court (hereinafter called the CICC Provisions)” according to the needs of The Opinion for the establishment of CICC. The CICC Provisions have been released as a legal interpretation of the SPC, they have the force of law in China. This law contains 19 articles. They are dealing with jurisdictional issues, judges appointment, elucidation of overseas laws, collecting of evidence produced outside, one-stop diverse resolution for transnational commercial disputes, the formation of ICEC, linguistic, and documentary formalities, among other things. (Provisions C. , 2018). These provisions are constituted for hearing the international commercial disputes speedily and in fair manners for the protection of legal rights and benefits of foreigners and Chinese enterprises on an equal basis. These rules provide a secure, equal, open, and comfortable rule of law for foreign business climate. Its main objective is to provide services and security to BRI development by following the “People’s Republic of China’s Law on Organization of People’s Courts, the People’s Republic of China’s Law on Civil Procedure” and other laws according to practices of the judiciary. Such regulations deal with the matters relating to the creation of the CICC (Preamble, 2018).

### **Rules of Procedure for the China International Commercial Court of the Supreme People’s Court (For Trial Implementation)**

SPC constituted “Rules of Procedure for the International Commercial Court of the Supreme People’s Court (For Trial Implementation)” (hereinafter called CICC Procedural Rules) to facilitate the disputants for resolving cases through CICC according to the “Civil Procedure Law of the People’s Republic of China” (hereinafter called CPL), CICC Provisions and other legal and judicial interpretations (Provisions C. , 2018). Under these rules, CICC provides the settlement of disputes by way of litigation, mediation, and arbitration (Article 1, 2018). It respects the autonomy of the parties in resolving international commercial disputes (Article 2, 2018). CICC Procedural Rules consists of 9 Chapters and 40 Articles explaining the General Provisions, Case Management Office, Process of cases, Acceptance of cases, Service of Process, Pretrial Mediation, Trial, Enforcement, Dispute Resolution by Arbitration, Application for Retrial, Costs and Supplementary Provisions (Provisions C. , 2018).

### **Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)**

The third legal document drafted by SPC is the "Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)" (hereinafter called ICEC Rules) to regulate the work of the ICEC. These rules are formulated under the CICC Principles. There are 20 rules which provide the procedure of trial and relevant principles of ICEC. These rules explain the purpose of the establishment of ICEC, qualifications of the foreign experts, duties of the expert members, functions of the office of ICEC, and principles relating to presiding over the mediation (Preamble, 2018).

#### **Jurisdiction of CICC**

CICC is a permanent adjudicatory part of SPC for the settlement of international commercial cases (Article 1, 2018). It has the authority to hear the five kinds of cases. These cases are enumerated below (Article 2, 2018):

- a. "The parties agreed to choose the first instance of an international commercial case under the jurisdiction of the Supreme People's Court with a subject amount of more than RMB 300 million under Article 34 of the Civil Procedure Law".
- b. "The High People's Court considers that the first instance of international commercial cases under its jurisdiction needs to be tried and approved by the Supreme People's Court".
- c. "The first instance of an international commercial case that has a significant influence in the country".
- d. "Applying for arbitration preservation, revocation or enforcement of an international commercial arbitration award under Article 14 of these Provisions".
- e. "Other international commercial cases that the Supreme People's Court deems should be heard by the International Commercial Court".

Under the provisions mentioned above, CICC has the legislative authority such as clause (b) to (e) and consensual jurisdiction such as clause (a). The jurisdiction of CICC divided into three following categories:

- a. Subject Matter Jurisdiction

- b. Consensual Jurisdiction
- c. None-Consensual Jurisdiction

### **Subject Matter Jurisdiction**

CICC's jurisdiction relating to the subject matter is only limited to international commercial matters. Article 3 CICC Provisions explains the nature of international commercial disputes or cases in any of the following circumstances (Article 3, 2018) :

1. "One or both parties are foreigners, stateless persons, foreign enterprises, or organizations".
2. "Where the habitual residence of one or both parties is outside the territory of the PRC".
3. "The subject matter is outside the territory of the PRC".
4. "The legal facts that caused, changed, or eliminated the commercial relationship occurred outside the territory of the PRC".

Senior SPC judge Justice Liu Guixiang mentioned that CICC's docket would consist of commercial cases among equals. He continued to emphasize that two conflicts including trade issues between countries and investor-state disputes are exempted from the jurisdiction of CICC and to be solved through systems that already exist at the international level (Provisions, 2018). So, the importance and definition of commercial conflicts under BRI are aimed to be wide.

### **Consensual Jurisdiction**

Parties may institute the commercial case with foreign elements in CICC by a written agreement subject to compliance with other requirements (Article 2(1), 2018). To the extent that CICC is a fundamental component of SPC, the commercial entities are permitted to select the SPC for the resolution of the commercial case with foreign parties. It is an important evolution in the law of China and court practices (Huo & Yip, 2019). Before the establishment of CICC, different limitations were applicable regarding the autonomy disputing party in the light of CPL for selecting a Chinese court by agreement. One of the limitations is that a Chinese court's choice must be compatible with tier jurisdiction rules of CPL. Under these jurisdictional rules, the Basic People's Courts usually hear corporate conflicts in the first instance, including international cases, and important international cases in the first instance come under the jurisdictional authority of the Intermediate People's Courts. The commercial cases



with foreign elements can be heard exceptionally at first instance by Higher People's Courts. It is further given that the jurisdiction in which such cases occurred will have a substantial effect. There are two situations available in Chinese law when SPC can hear the case directly at a first instance. Firstly, the case has a special effect in China, and secondly if the court thinks that the conflict is within the authority of SPC (Chinese Law, 2017). However, SPC has not entertained any dispute of commercial nature at first instance since its establishment in 1949. SPC held many times that lower People's Courts should try commercial disputes with foreign elements. SPC released legal documents in 2017 which explains that all the subordinate court of the SPC has the authority to hear the cases of commercial entities with foreign subjects (SPC, 2017). As per provisions of that document, commercial cases with foreign entities cannot be filed in the SPC directly and the disputants cannot select SPC as a forum for the solution of the commercial cases by the SPC at first instance. Therefore, CICC Provisions modified the norm by allowing disputants in selecting the SPC in the shape of CICC to try international commercial disputes at first instance (Article2, 2018).

### **None-Consensual Jurisdiction**

Apart from the consensual jurisdiction, there are three other kinds of international cases that can be heard by CICC at first instance and the agreement of the parties is not relevant in those situations (Article38). The first one is a conflict that would have been heard at the provincial level by a Higher People's Court but it was referred to CICC by that Higher People's Court with the SPC's approval. This involves exercising the power to disburse jurisdiction internally among two courts of China. The second situation is a matter of foreign trade with a major nationwide effect in China. These cases can be sent directly to CICC without the need for a written contract of jurisdiction or the need that the volumes in disputes exceed RMB 300 million. Unless these lawsuits were to be lodged for the first time with several other courts of China, these cases likely had to be moved to CICC on confirmation by the SPC to get a major national effect in China (Article2, 2018). The third situation includes all other foreign trade cases which the SPC finds suitable for CICC hearing. The broad range of authority in the rules of jurisdiction helps the SPC to manage CICC's caseload in full from the forum management perspective. It is necessary to be approved by Higher People's Courts that would choose to require CICC to hear complicated commercial cases with foreign subjects to prevent an incorrect or contentious verdict in wide-ranging cases (Huo & Yip, 2019).

### **Conclusion**

BRI is a trading channel and Chinese participation in the global economy which will shape a new structure for global economic governance. It has resulted in the signing of a wave of transnational trading treaties and constructions projects

between Chinese enterprises and those from other BRI nations. The Chinese government was well aware of the legal issues relating to BRI especially expected international commercial disputes between commercial enterprises. China faced an increasing number of civil and commercial disputes with foreign dimensions due to outward economic expansion under BRI. So, the Chinese government issued the “Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions” for the establishment of a specified institution to resolve commercial cases between foreign and Chinese parties BRI. As per the vision of the Chinese government, SPC established CICC as an institution to redress commercial disputes relating to BRI with adequate legal safeguards to protect the legitimate rights and interests of Chinese and foreign parties on an equal basis. CICC is a diversified dispute settlement mechanism with the unique feature of a one-stop dispute resolution platform through litigation, mediation, and arbitration. International commercial cases are resolved through litigation by the International Commercial Courts established in Shenzhen, Guangdong Province, and Xi’an, Shaanxi Province. International Commercial Expert Committee (ICEC) has been constituted with the object to resolve cases through mediation with the consent of the parties and to support CICC for the application of foreign laws. ICEC is a distinctive part of CICC that insures its internalization in the commercial word. Some domestic mediation and arbitration institution of international repute has been included as a part of CICC to settle the international commercial cases through mediation and arbitration according to the choice of parties that shows the Chinese vision for the facilitation of the foreign parties of BRI countries. SPC has issued CICC Provisions, CICC Procedural Rules, and ICEC Rules for the hearing of cases through CICC under the one-stop dispute resolution mechanism. Since the formation, CICC has accepting international commercial cases involving product liability, commission contract, business surplus sale, confirmation of the competence of the applicant, conflicts over responsibility for harming company interests, and confirmation of the validity of the arbitration agreement. Even though these cases are not specifically related to any BRI projects but still they are of significant importance. The judgments and rulings made by CICC are receiving a positive reaction from society. The businessmen claim that they have included or will incorporate CICC as a dispute resolution clause in their agreements.

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