

Improvement of China's International Commercial Courts in the Context of Belt and Road

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Abstract: The establishment of the China International Commercial Court (CICC) is a strategic move to safeguard the high-quality advancement of the Belt and Road Initiative, which is a key economic and diplomatic endeavor aimed at fostering global connectivity and cooperation. The CICC is envisioned to be a central hub for resolving disputes arising from the myriad of international transactions and investments that the initiative encompasses. However, the current procedural rules of the CICC are not without their shortcomings, and they struggle to keep pace with the rapidly evolving and intricate international business environment. This has led to a critical need to enhance the CICC's global competitiveness and its capacity to effectively address international commercial disputes. The urgency of this issue cannot be overstated, as the CICC's ability to adapt and improve will directly impact the success of the Belt and Road Initiative and China's role as a global economic leader. This paper will undertake a comprehensive analysis of the CICC's procedural rules, their implementation, and their evolution. It will also draw upon a comparative study with the Singapore International Commercial Court (SICC) to identify areas where the CICC's rules may fall short and suggest concrete measures for improvement. By doing so, the paper aims to provide actionable insights that can guide the CICC's future development, ensuring it remains a relevant and effective institution in the realm of international dispute resolution.

Keywords: China International Commercial Court (CICC), Singapore International Commercial Court (SICC), Rules of Procedure, "One-Stop" Dispute Resolution Mechanism, Improvement.

1. Introduction

In order to ensure that the construction of the Belt and Road Initiative can proceed smoothly in a stable and fair environment, Chinese courts are committed to constructing and perfecting the international commercial dispute resolution mechanism. The emergence of CICC not only marks a quantum leap in China's resolution of international commercial disputes, but also provides a convenient and efficient dispute resolution platform for stakeholders. By deepening international cooperation in the judicial field, optimising the trial process and introducing advanced international

judicial concepts and practices, the CICC is gradually becoming an important venue for handling international commercial disputes related to the Belt and Road. However, there are many problems in the process of handling international cases in CICC, and these problems in the procedural rules greatly impact the motivation of parties to international commercial disputes to seek help from CICC [1]. This thesis firstly outlines the current procedural rules of the CICC and its main achievements since its establishment; secondly, it explores the similarities and differences in the procedural rules of the CICC through a contrastive analysis with the SICC, and at the same time, refer to the results of the comparative study, it analyses the limitations of the existing procedural rules of the CICC and puts forward the corresponding suggestions for improvement. It is hoped that this study will provide useful references for the future development of the CICC, so that it can better create a rule of law environment conducive to international trade and investment, and thus inject new impetus into global economic cooperation and development.

2. Existing Procedural Rules of CICC and the Refinement

The Supreme People's Court issued the Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of International Commercial Tribunals (hereinafter referred to as the "Provisions") in June 2018, and established international commercial tribunals in Shenzhen and Xi'an on 29 June of the same year. On December 5, 2023, at the 1908th meeting of the Judicial Committee of the Supreme People's Court, the Decision of the Supreme People's Court on Amending the Regulations on Several Issues Concerning the Establishment of International Commercial Courts by the Supreme People's Court was passed. The amended "Regulations" will come into effect on January 1, 2024 [2]. Since its establishment in 2018, CICC has formed a unique set of procedural rules and has continued to improve and develop on this basis, with a view to better adapting to the ever-changing international situation.

2.1. Rules of Procedure of the CICC

2.1.1. Rules on the Jurisdiction of CICC

Articles 2 and 3 of the Provisions make clearer provisions on the range of cases received by CICC. CICC lawfully accepts first-instance international commercial cases involving an amount exceeding 300 million yuan, where the parties involved are willing to be under the jurisdiction of the Supreme People's Court. The second type is first-instance international commercial cases that fall under the jurisdiction of the High People's Court but are intended to be transferred to the Supreme People's Court for trial and have received approval; First-instance international commercial cases with significant impact nationwide. According to Article 14 of the Provisions: applications for the preservation of arbitration and for the annulment or enforcement of international commercial arbitral awards. The last scenario is that the Supreme People's Court believes this international commercial case should be heard by the International Commercial Court.

Regarding the identification of international commercial cases in the "Provisions" there are the following four situations: One of the parties involved is not Chinese, nor is it a Chinese enterprise or organization; One or both parties is living outside the territory of the People's Republic of China; The subject matter is not within the territory of the People's Republic of China; The legal facts of the business relationship do not occur within the territory of China.

2.1.2. Originating "One-stop" Diversified Dispute Resolution Mechanism

According to Article 11 of the Provisions, the "one-stop" mechanism for resolving international commercial disputes effectively amalgamates mediation, arbitration, and litigation. This system is

collaboratively established by the International Commercial Expert Committee, qualified international commercial mediation bodies, international commercial arbitration entities, and international commercial courts. The "one-stop" dispute resolution mechanism offers a very expedient platform for parties to resolve commercial disputes, and the CICC effectively links the three procedures of mediation, arbitration and litigation, so that parties involved can independently choose the method of handling the case.

Typically, the operational process of the one-stop dispute resolution mechanism is as follows: within 7 days of the International Commercial Court accepting a case, the involved parties may select members from the International Commercial Expert Committee or international commercial mediation organizations to facilitate mediation. Subsequently, if the parties reach a mediation agreement, the International Commercial Court may proceed to issue a conciliation document in accordance with legal provisions. Additionally, the parties have the option to mutually decide to refer their dispute to an international commercial arbitration institution for an arbitral award. Following this, they can request the international commercial court to either enforce or annul the arbitral decision. In instances of litigation, a panel comprising three or more judges will preside over the case. It is essential to highlight that the China International Commercial Court (CICC) employs the final appeal system in the first instance, and the judgements and rulings made are considered legally binding. This approach evidently contributes to significant reductions in litigation costs and enhances the simplicity and efficiency of the legal process. Scholar Zhu Weidong has acknowledged the benefits of this final appeal system in the first instance but has also pointed out several issues. He believes that to a certain extent, it improves the efficiency of the court, achieves the finality of the judgement, is conducive to the saving of judicial costs, and is beneficial to the extraterritorial recognition and enforcement of the judgement, but it deprives the parties of the opportunity to seek an appeal [3].

2.2. The Improvement of CICC

2.2.1. Refinement of the Arbitration System

China is still applying the 1994 arbitration law, many stripes are more strict and rigid, many foreign-related arbitration agreement is directly identified as invalid, so the parties are reluctant to hand over the case. At the same time, before the country in diplomatic practice has always insisted on the principle of absolute immunity, many arbitral awards can not be enforced in our country. However, the Ministry of Justice (MOJ) adopted a new relaxed standard for the decision of arbitration agreements in the 30th July 2021 draft of the amended Arbitration Law, and added an ad hoc arbitration system [4]. The Law of the People's Republic of China on Foreign State Immunity also no longer adheres to the preceding position of absolute immunity, but adopts the principle of limited immunity, it provides a legal basis for domestic arbitration institutions to resolve disputes between investors or between investors and the host country. and increases the confidence of external countries in CICC.

2.2.2. Upgrading the Online "One-stop" Dispute Resolution Platform

Currently, the operation of the CICC's "one-stop" dispute resolution platform is increasingly sophisticated. In order to enhance the services provided to involved parties, the Supreme People's Court's own "one-stop" platform for diverse international commercial dispute resolution has received significant upgrades and renovations. This platform features four service categories: conciliation, arbitration, proceedings, and ancillary services. It is integrated with the International Commercial Court of the Supreme People's Court's website, the Supreme People's Court's proceeding service network, the online preservation system of the People's Court, the mediation platform of the People's Court, and the Internet unified identity authentication system of the People's Court. Additionally, it

connects to the case handling platform of the Supreme People's Court and systems from 10 international commercial arbitration institutions, as well as 2 international commercial mediation institutions that are part of the "one-stop" diversified resolution mechanism for international trade disputes. Users can select their preferred dispute resolution method from the "one-stop" platform and can easily transition between different platforms, providing great convenience [5].

3. Gaps between the CICC and the SICC

3.1. Procedural Differences in the Handling of Cases

SICC and the CICC handle matters differently in a number of significant ways. Firstly, Articles 5 and 11 of the Provisions state that A collegial panel consisting of three or more judges will make up the CICC. Moreover, In order to create a "one-stop" international commercial dispute resolution mechanism, the Supreme People's Court will appoint a committee of international commercial experts and choose qualified international commercial mediation organizations, international commercial arbitration organizations, and international commercial tribunals to work together in developing a dispute resolution platform that naturally connects mediation, arbitration, and litigation [6]. In contrast, Singapore's international commercial courts, international mediation centres and arbitration tribunals interact positively and follow a set of litigation procedures that are closer to the common law system, but they also show a high degree of flexibility, being able to adopt rules from different legal traditions according to the particular facts of the situation, including the rules of evidence and procedural provisions. In addition, in terms of language use, while both accept English as one of their working languages, CICC also emphasises the importance of Chinese, and official documents and decisions are usually issued in bilingual form, while the SICC operates mainly in English. Finally, in terms of appeal mechanisms, awards made by CICC are in principle final, unless there are specific circumstances in which an application for review can be made to the People's Supreme Court, whereas SICC judgements is appealable through the normal channels within the Singaporean judicial system.

3.2. Differences in the System of Appointment and Removal of Judges

SICC and CICC have clear distinctions in how judges are appointed and dismissed. Article 4 of the Provisions states that the judges of CICC will be chosen by the President of the People's Supreme Court from among the incumbent judges who have rich experience in adjudication and knowledge of international law, and who are adept at using both Chinese and English as their working languages, so as to ensure that they are capable of dealing with complex instances involving foreign commerce [7]. The SICC's judges will be made up of both foreign and current High Court of Singapore judges. One of the SICC's key innovations is the hiring of foreign judges to decide cases, which circumvents the nationality restrictions placed on judges in most other nations. An important SICC innovation is that it transcends the limitations imposed by most national laws on the nationality of judges [8]. In addition, in terms of the term of office, CICC does not set a clear fixed term for judges, but rather adjusts it according to the needs of the work, which reflects the general practice in the Chinese court system; In contrast, SICC has a clear stipulation regarding the specific term of office for international judges. These judges are appointed for a term of three years, may be reappointed for successive terms, and are permitted to hear only certain specific cases within a designated timeframe. However, they retain the same powers and immunities as judges of the High Court. They may be appointed for successive terms of three years and may serve only for a specified duration in certain specific cases; however, they retain the same powers and immunities as High Court judges.. Moreover, international judges may be re-appointed for a longer period of time, thus ensuring continuity and stability in the operation of the Tribunal. Generally, the judges of the CICC are selected from among the senior judges of the Supreme People's Court, all of whom possess significant trial experience. These judges

typically have a robust legal background and extensive expertise in handling foreign-related cases. Although CICC has established a system of International Commercial Expert Committees (ICECs), the functions of these committees are confined to mediation, advisory services, and extraterritoriality. This scope is more restricted compared to the system of expatriate judges [9]. In addition to having local Singaporean judges, SICC can also appoint internationally renowned foreign judges to sit as Special Judges in specific cases. In addition to having local Singaporean judges, SICC can also appoint internationally renowned foreign judges to sit as special judges in specific cases. This practice increases the international recognition of SICC decisions and enhances its position as an international dispute resolution centre.

3.3. Attitudes towards Foreign Lawyers

In CICC, although Chinese lawyers are the main litigators, foreign lawyers may appear as expert witnesses or participate in certain proceedings with permission, such as providing advice. As stipulated by Article 263 of the Civil Procedure Law, when foreigners, stateless persons, foreign enterprises, and organizations engage in civil litigation in China, the parties to the dispute are only permitted to appoint lawyers of Chinese nationality to represent them. Lawyers of foreign nationality are not allowed to act as litigation agents for the parties in a legal capacity [10]. This limitation may restrict the role of foreign lawyers in litigation activities, potentially impacting the fairness and impartiality of the judicial processes involved. The SICC, on the other hand, is open to foreign lawyers and allows qualified foreign lawyers to appear directly on behalf of their clients in court, provided that they are accredited by the relevant Singaporean authorities and meet certain eligibility criteria. The SICC permits registered foreign lawyers to act as solicitors in cases before the SICC through the establishment of two categories of foreign lawyer registration: full registration and restricted registration. This is contingent upon the case having no substantial connection to Singapore and the foreign lawyers adhering to Singapore's regulations governing the practice of law while litigating in their capacity as solicitors [11]. This enables SICC to better serve its clients globally and enhance its internationalisation.

4. Procedure of CICC and Measures for Improvement

4.1. The Parties Shall be Allowed to Choose by Consent English or Another Foreign Language as the Language of the Proceedings

Currently, the China International Commercial Court (CICC) permits the trial language to be exclusively Chinese. Designating Chinese as the sole working language presents significant translation expenses for parties and businesses from various nations. This situation necessitates a thorough comprehension of the legal culture and context that emerge from translating Chinese into other languages, which may deter foreign entities from considering this court as a viable option for dispute resolution. To align with the global trend of internationalization, CICC could adopt Chinese as the primary official language while also permitting parties to select English as the language of the trial. Furthermore, it should be recognized that, under specific conditions, parties might have the option to use their native language, identifying it as the trial language for their cases within the court.

4.2. Appropriate Relaxation of Restrictions on Foreign Lawyers

Parties from a range of resources who involved in lawsuits in the people's courts and need to appoint lawyers to represent them in litigation must appoint lawyers. Lawyers as a litigation agent in the legal process plays a pivotal role, if every parties of other countries in that court to seek help can be entrusted to the Chinese lawyers, is not conducive to the international commercial disputes fairly and

efficiently, comprehensive solution. With the process of modernisation, China has involved in some special areas involving some special legal professional business, with conditions to allow Hong Kong and Macao Special Administrative Region as well as a small number of foreign lawyers to conduct legal agency activities or respective business field [12].

At present, the above court can imitate the mature sample in Singapore, through the establishment of registration and restriction of foreign lawyers, two kinds of foreign lawyers registration, allow registered foreign lawyers involved in their own country as representatives in the international listing court cases of the litigation activities, but the cases must be involved in no real connection with the mother land, and foreign lawyers in the capacity of lawyers to represent the litigation, to comply with the host country on the lawyers practice regulations and subject to the local judicial authorities management. The foreign lawyers, when acting in their capacity as lawyers, must consistent with the regulations on practice of law in the host country and be subject to the control of the local judicial authorities. If China can achieve that part of the reform, and appropriately relax the strict restrictions on foreign lawyers in specific cases, it will be beneficial to eliminate the global parties' misgivings about the local protectionism of China's international listing tribunals and increase the sense of trust. It can be said that Singapore's international listing court lawyer registration system is worth learning and improving.

4.3. Fully Improve the Appeal Mechanism of the CICC

Currently, the first instance system of the CICC is defined by its emulation of governmental bodies, aiming for efficiency, convenience, and cost-effectiveness, thereby significantly lowering litigation expenses. However, it also introduces challenges that should not be overlooked. Article 16 states, "If a party is dissatisfied with the result of a decision of the CICC, it may apply to the Supreme People's Court for a retrial." While this wording implies that parties possess the right to seek a retrial if they find the trial outcome unsatisfactory, the actual process of exercising this right and navigating the associated procedures is far more complex than simply submitting an appeal. This complexity may hinder the ability of parties to effectively protect their right to appeal.

A mechanism for appeals, inspired by that of the SICC, enables parties to seek recourse from the Court of Appeal of the Supreme Court if they are unhappy with the ruling [13]. In Singapore, both the High Court and the Court of Appeal are part of the Supreme Court framework, with the International Commercial Court of Singapore functioning at the level of the High Court. This structure offers parties ample opportunities to appeal to the Court of Appeal. In light of the current circumstances in China, it is essential to enhance the aforementioned mechanism by addressing specific situations. Both the safeguarding of parties' interests and the equitable distribution of existing judicial resources must be taken into account. Singapore's appeal framework serves as a primary avenue for the filing of claims by parties, except in instances deemed appropriate for direct Supreme Court intervention or those that hold significant importance. Should parties find the trial outcome unsatisfactory, they can appeal to the Fourth Civil Division of the International Commercial Court. This division works under the coordination and guidance of the Supreme People's Court, facilitating a streamlined appeal process that does not require intricate coordination from the Supreme People's Court itself. Such an arrangement helps maintain and honor the independent status of the CICC while effectively reducing litigation time and costs.

4.4. Continue to Improve the Organisation and Functioning of the Trial

The adjudicative organisation of the CICC is structured as a purely professional judge model, with the advantage that its members have extensive professional experience and are familiar with all fields of laws and regulations. The drawbacks are also quite obvious: it is hard to form accurate judgements

on other areas and industries that require specialised knowledge, and they may know very little, which indirectly affects the outcome of the trial.

In accordance with Article 12 of the Judges Regulation Law, judges must be citizens of the People's Republic of China. Therefore, in order to better tackle international disputes, CICC has created the Experts Committee, whose main function is to assist the trial organisation to resolve international commercial disputes in a professional, effective as well as speedy style, and senior foreign legal talents have been attracted to join the Experts Committee. However, the current practice shows that the functions of the Expert Committee are a little too simple. In the future, the functions of the expert committees should be further expanded to give full play to their professionalism and internationality.

5. Conclusion

This paper demonstrates the important status and role of the CICC under China's Belt and Road Initiative by examining the current procedural rules of the Court and taking into account the actual results it has achieved since its establishment. Through a comparative analysis of the procedural rules of the CICC between China and Singapore, the paper reveals the differences between the two sides in terms of the composition of judges, the participation of lawyers and the diversified dispute resolution mechanism. Although CICC have made remarkable achievements, there is still room for improvement in terms of the degree of internationalisation, the legal environment for arbitration and the legislation on commercial mediation. Therefore, this paper proposes to learn from the experience of SICC to further expand the international perspective of CICC and increase its influence in the domain of global commercial dispute resolution. Specific measures include, but are not limited to, expanding the scope of jurisdiction, deepening the innovation of the arbitration system, etc. It is hoped that CICC can create a more open and inclusive, efficient and convenient international commercial dispute resolution platform.

Authors Contribution

All the authors contributed equally and their names were listed in alphabetical order.

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