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Dispute Settlement with Chinese Characteristics: Assessing China's International Commercial Court

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Table of Contents

Executive Summary.....	3
Introduction	3
China’s Interests in Establishing the CICC	4
CICC’s Jurisdiction and Structure Likely to Limit Appeal for Foreign Parties	7
Cases Heard by the CICC.....	7
Judges, Lawyers, and International Experts in the CICC.....	9
Judges	9
Lawyers	9
International Experts	9
Foreign Law in CICC Cases.....	10
Procedure and International Enforceability.....	11
Enforcing CICC Judgments Abroad.....	12
Implications for the United States	14
Appendix	16

Executive Summary

In 2018, China’s Supreme People’s Court launched the China International Commercial Court (CICC), which offers a “one-stop shop” for dispute resolution, including mediation, arbitration, and litigation for international business disputes with a connection to China. China’s government has cited the CICC as evidence of the country’s increasing openness. In many respects, however, the CICC prevents effective foreign participation, including by preventing foreign lawyers from participating in proceedings. The unusually restrictive nature of the CICC compared with other international dispute resolution forums has raised concerns that the CICC will be biased in favor of Chinese parties.

The CICC has only adjudicated a handful of cases since its establishment, making its impact relatively limited so far. Nevertheless, its establishment represents a significant step in Beijing’s stated ambitions to influence the development of international legal norms. Cases accepted by the CICC to date, as well as the composition and procedural rules of the court itself, suggest that the Chinese Communist Party (CCP) hopes to make the CICC yet another international forum in which the Chinese government can promote its preferred outcomes. In doing so, the CICC could allow the CCP to take advantage of foreign business opportunities while insulating Chinese parties from international agreements and norms that run contrary to Beijing’s interests. This, in turn, is part of a greater push by the CCP to shape the international order to reflect the its own interests.*

Introduction

In June 2018, China’s central government directed the Supreme People’s Court to launch an international commercial court consisting of two branches and to set up a committee of international commercial experts to assist the court. According to a circular co-issued by the CCP Central Committee and State Council General Offices, the court and committee would support the establishment of a one-stop dispute resolution center for Belt and Road Initiative (BRI)-related commercial disputes, consisting of two branches: one in Shenzhen, Guangdong Province, and the other in Xi’an, Shaanxi Province.^{† 1} That month, the Supreme People’s Court issued a judicial interpretation[‡] officially establishing the CICC.² The interpretation also outlined the court’s framework, jurisdiction, and procedural rules.³ By the end of 2018, judges were appointed to the CICC and the court accepted its first cases.⁴ As of August 2022, the CICC has accepted 27 cases.⁵ It has issued public rulings in seven cases and a final judgment in one case.⁶

Chinese experts argue the CICC is needed because the existing international dispute settlement regime is too costly and time consuming and disadvantages Chinese parties. Foreign observers, however, have expressed concerns that China may pressure BRI recipient countries to settle disputes in the new court and place foreign parties at risk of biased judgments.^{§ 7} (For more on the CICC’s jurisdiction, see “Cases Heard by the CICC” later in this paper.) This concern stems from the fact that China’s judiciary system is entirely subservient to the CCP, undermining its ability

* For more on the CCP’s efforts to influence the international order, see U.S.–China Economic and Security Review Commission, Chapter 1, Section 2, “The China Model: Return of the Middle Kingdom,” in *2020 Annual Report to Congress*, December 2020, 80–135.

† Early reports indicated the distribution of cases would be geographical, with the Shenzhen-based court hearing cases related to the Maritime Silk Road and the Xi’an-based court hearing cases related to the land-based Silk Road Economic Belt. This does not appear to be the case in practice, with the Shenzhen-based court hearing cases with parties from Japan, Italy, and the British Virgin Islands and the Xi’an Court hearing cases from Thailand and the British Virgin Islands. Ben Bury, “China’s International Commercial Courts,” HFW, September 13, 2018. <https://www.lexology.com/library/detail.aspx?g=ee271656-1145-4ab5-b2dd-4d55967c77c1>.

‡ In China’s legal system, judicial interpretations are rule-like pronouncements made by the Supreme People’s Court that are ranked below national legislative acts in terms of legal force. The significance of the CICC being established through a judicial interpretation—as opposed to through a constitutional amendment or legislative action, as has been the case in other jurisdictions—is that the CICC is constrained by existing Chinese law. For example, because current Chinese law requires the language of the courts to be Chinese, the judicial interpretations creating the CICC could not establish English as the language of the CICC, as has been common in many other international commercial courts. Susan Finder, “Comments on China’s International Commercial Courts,” *Supreme People’s Court Monitor*, July 9, 2018. <https://supremepoplescourtmirror.com/2018/07/09/comments-on-chinas-international-commercial-courts/>; Mark Jia, “Chinese Common Law? Guiding Cases and Judicial Reform,” *Harvard Law Review* 129 (June 2016): 2227. <https://harvardlawreview.org/wp-content/uploads/2016/06/2213-2234-Online.pdf>.

§ In the one case where the CICC has issued a final judgment, the court found in favor of the Chinese party. Not all CICC judgments have been in the Chinese party’s favor, however. In several instances, CICC judges have dismissed the claims of Chinese parties. For more on the CICC’s rulings in select cases, see the Appendix.

to independently decide cases, particularly those that are politically sensitive or affect China’s economic interests in a significant way.

The CICC also represents an effort by the CCP to expand China’s “discourse power”^{*} in the realm of dispute settlement, a motivation reflected in key CCP policy documents. The political basis for the CICC rests on the 2014 CCP Central Committee Fourth Plenum Decision, which directs the Party to “vigorously participate in the formulation of international norms ... strengthen our country’s discourse power and influence in international legal affairs, [and] use legal methods to safeguard our country’s sovereignty, security, and development interests.”⁸ The CICC allows the Chinese government to highlight China’s supposedly greater integration with the international legal system, even as it introduces norms that could further insulate Chinese parties from unfavorable rulings by existing foreign dispute resolution forums not controlled by the Chinese government.

This report explores the CCP’s motivations for establishing the CICC, which include both international and domestic aims. It then discusses jurisdictional and structural features of the CICC, including the extent to which the court incorporates foreign law and foreign influences. Next, it examines the procedural features of the CICC, including the international enforceability of the court’s decisions. It concludes by describing the implications of the CICC for the United States and the international legal system.

China’s Interests in Establishing the CICC

In establishing the CICC, the CCP aims to advance its own domestic and international policy objectives. The CCP’s perceived need for creating a new dispute resolution forum has arisen in part due to the increase in international commercial disputes involving Chinese parties. BRI, General Secretary Xi Jinping’s signature economic and foreign policy project designed to finance and build infrastructure and connectivity around the world, has fueled demand for international commercial dispute resolution services.⁹ As BRI-related cases began to be litigated in Chinese courts, in 2015 the Supreme People’s Court issued a judicial regulatory document on BRI that called on the judiciary to support the development of diversified dispute resolution mechanisms and efficiently resolve BRI disputes.[†] The document also called on the judiciary to “actively participate in the formation of relevant international rules.”¹⁰

Amid the growth of BRI disputes, Chinese experts have voiced concerns about dispute resolution in foreign legal systems:

- Chinese scholars have argued that established international dispute resolution options fail to protect the interests of Chinese companies.¹¹ This is in part because the current dispute resolution system largely relies on English or U.S. common law, with proceedings generally conducted in English.¹² According to Susan Finder, a professor at the Peking University School of Transnational Law and member of the CICC’s International Commercial Expert Committee, the court is “part of a push to move the locus of China-related dispute resolution from London and other centers in Europe (or elsewhere) to China, where Chinese parties will encounter a more favorable dispute resolution system.”¹³
- At the same time, Chinese scholars have noted concerns with the legal systems of BRI countries, many of which are developing countries. Shan Wenhua, dean of the law school at Xi’an Jiaotong University and member of the International Commercial Expert Committee, noted in 2019 that Chinese companies face “great risks” in BRI countries with lower-quality legal systems, adding that relying on foreign legal systems is “out of keeping with [China’s] status as a major power.”¹⁴

The creation of the CICC comes in a broader context of the Chinese government’s efforts to shape international processes and standards to China’s advantage. The *Plan on Building a Rule of Law in China (2020–2025)*, a policy document issued by the CCP Central Committee in January 2021, calls for the CCP to “strengthen rule of law work

^{*} Discourse power is a concept promoted by the CCP. According to Nadège Rolland, senior fellow for political and security affairs at the National Bureau of Asian Research, it refers to “the ability to exert influence over the formulations and ideas that underpin the international order.” Nadège Rolland, “China’s Vision for a New World Order,” *National Bureau of Asian Research*, January 2020. https://www.nbr.org/wp-content/uploads/pdfs/publications/sr83_chinasvision_jan2020.pdf.

[†] Judicial regulatory documents are opinions used by the Supreme People’s Court to change judicial policy and guide the behavior of lower courts. Susan Finder, “How the Supreme People’s Court Guides the Court System through Judicial Documents (1),” *Supreme People’s Court Monitor*, May 19, 2020. <https://supremepeoplecourtmonitor.com/2019/05/19/chinese-judicial-documents-1/>.

involving foreign interests” and “actively participate in the formulation of international rules” while “accelerat[ing] the advancement of the construction of a legal system applicable outside the jurisdiction of China.”¹⁵ The policy document singles out the importance of “advancing the construction and improvement of international commercial courts.”¹⁶

The Chinese government also hopes the CICC can address existing shortcomings in China’s domestic courts, which have seen an increase in foreign-related cases.¹⁷ Chinese courts heard 21,000 first-instance foreign-related civil and commercial cases[†] in 2021, compared with 14,800 in 2013.¹⁸ Chinese experts believe there are serious deficiencies in the ability of China’s court system to properly adjudicate international business disputes, however. For instance, a lengthy referral process and requirements for the translation of documents make the system an inefficient venue for foreign-related cases. Moreover, legal uncertainty due to “changeable standards in judicial interpretations and in the courts’ practices” is a source of frustration for both commercial actors and judges when enforcing foreign arbitral awards, according to Qisheng He, professor of law at Peking University Law School.¹⁹

The CICC is intended to address these shortcomings by providing a more efficient forum for international commercial dispute resolution within China’s own court system. Although the CICC, which functions part time, has limited caseload capacity, the CCP intends for the CICC’s innovations to reverberate through China’s broader judicial system and increase the efficiency of Chinese courts.²⁰ Indeed, in spite of the CCP’s goals for influencing international dispute resolution norms, the CICC’s most significant function may currently be to provide guidance to other courts in China’s judicial system. At an August 2021 webinar, Ms. Finder opined that “the short-medium focus of the CICC is to be a model or a guide for China’s lower courts in unifying ‘foreign-related’ substantive and procedural law—it is currently domestically focused, rather than focusing on hearing large numbers of foreign-related cases.”²¹

International Commercial Disputes and the Shift toward Hybrid Dispute Mechanisms

The CICC’s use of a one-stop shop model is part of a global shift toward hybrid dispute mechanisms, which combine several methods of dispute resolution in one forum. The shift toward hybrid dispute mechanisms is partly a response to shortcomings of existing dispute resolution options. International commercial disputes can generally be resolved through three methods, conventionally separate prior to the development of hybrid dispute resolution: litigation, mediation, or arbitration.

1. *Litigation.* In litigation, parties resolve a dispute using the court system of a particular jurisdiction. While litigation is a long-established method of commercial dispute resolution, it has several disadvantages, including a lengthy, often costly process. Additionally, courts may not always have the specialized knowledge necessary to handle certain complex commercial issues.²² Moreover, enforcing court decisions in foreign countries often poses a hurdle: court decisions in one country are not automatically enforceable in another country unless the countries have signed a treaty agreeing to mutually recognize each other’s court judgments.[‡] Even then, parties are often reluctant to pursue litigation in the court system of the other party’s home country out of fear of “home

* The CCP uses the phrase “rule of law” for official translations of the phrase 法治. According to many scholars, however, this translation is misleading, because “rule of law” carries an implication that laws and regulations constrain political leaders as well as citizens. These scholars argue that a more accurate translation is “rule by law,” which connotes an authoritarian legal system that does not necessarily constrain political leaders. *Wall Street Journal*, “‘Rule of Law’ or ‘Rule by Law’? In China, a Preposition Makes All the Difference,” October 20, 2014. <https://www.wsj.com/articles/BL-CJB-24523>.

† First-instance cases are cases that are heard for the first time by a court, rather than cases that have been appealed to a higher court.

‡ The 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (known as the Hague Judgments Convention) addresses automatic recognition of court decisions but has not yet taken effect. Under the Hague Judgments Convention, courts in one participating country are to recognize and enforce civil and commercial judgments rendered by courts in other participating countries, subject to certain limitations (notably, certain types of judgments, including on intellectual property cases, are excluded). The United States became the sixth country to sign the treaty in March 2022 but has not ratified it, meaning that even when the treaty takes effect, the United States will not be bound by its terms until the U.S. Senate ratifies it. China has not signed the treaty. In August 2022, Ukraine and the EU (except Denmark) acceded to the treaty. Kenneth D. Beale et al., “The United States Signs the 2019 Hague Judgments Convention,” *King & Spalding*, March 9, 2022. <https://www.kslaw.com/news-and-insights/the-united-states-signs-the-2019-hague-judgments-convention>; Hague Conference on Private International Law, “Status Table: Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.” <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137>.

court” bias.²³ (For more on the international enforceability of Chinese court decisions, see “Enforcing CICC Judgments Abroad” later in this paper.)

2. *Mediation.* A type of informal dispute resolution, mediation is generally faster and often less expensive than other forms of dispute resolution. Unlike litigation or arbitration, however, mediation outcomes are generally not enforceable unless the parties decide to enter into a legally binding settlement agreement following the mediation or if the mediation itself had been court ordered.²⁴
3. *Arbitration.* Like mediation, arbitration is a type of private dispute resolution conducted outside of courts. Of the three methods, international commercial arbitration is the most popular because it offers several important advantages for the parties involved in a dispute.^{*} ²⁵ Most importantly, arbitral decisions rendered in one country can be enforced in any other country provided that both countries are parties to the Convention on the Recognition of Foreign Arbitral Awards (commonly known as the New York Convention). Currently, 170 countries are signatories, including the United States, China, and many large countries participating in BRI.²⁶ Additionally, arbitration offers logistical advantages over litigation: parties can generally alter procedural rules in arbitration to streamline dispute resolution, reducing time and cost, and there is no threat of a lengthy appeals process because arbitral decisions typically cannot be appealed.²⁷ Despite its popularity, international commercial arbitration has important shortcomings. Unlike litigation in common-law jurisdictions such as the United States, previous arbitral decisions do not serve as binding precedent, so there is potential for inconsistency between awards.²⁸ Moreover, the procedures in international arbitration have grown more complex over the past several decades, undercutting the logistical advantages of arbitration over litigation.²⁹

Over the past 20 years, a number of international commercial courts have been established in several different jurisdictions, including the Singapore International Commercial Court, established in 2015, and the Dubai International Financial Center Courts, established in 2004.³⁰ According to Pamela Bookman, professor at Fordham University School of Law, countries establishing these international commercial courts have done so for various reasons, including attracting foreign investment, taking advantage of the growing dispute resolution market, and gaining geopolitical influence.³¹ Like the CICC, some of these international commercial courts also seek to serve as a “one-stop shop” legal hub: institutions that offer integrated mediation, litigation, and arbitration services. In a study on these new legal hubs, Matthew Erie, professor of modern Chinese studies at the University of Oxford, notes that many operate in nondemocratic countries and serve as “exceptional zones” that attempt to provide the impartiality and rule of law necessary for cross-border rulings.[†] ³²

The CICC aims to compete with these other new international commercial courts as well as more established options to resolve international commercial disputes, including international arbitration institutions (e.g., London Court of International Arbitration and Hong Kong Arbitration Center). Several international arbitration institutions, including the International Chamber of Commerce and the Hong Kong International Arbitration Center, have created new bodies to hear BRI-related cases.³³ After the International Chamber of Commerce created the Belt and Road Commission in 2018, the number of cases involving Chinese parties grew 78 percent between 2018 and 2019.³⁴ Cases involving a mainland Chinese party and a party from a BRI participant country accounted for one-third of cases handled by the Hong Kong International Arbitration Center in 2017.³⁵ Prompted by a potential decline in enforceability of judgments by London’s commercial court due to the United Kingdom’s (UK) departure from

^{*} According to a 2021 survey, the most popular institutions for international arbitration were the International Chamber of Commerce, the Singapore International Arbitration Center, the Hong Kong International Arbitration Center, the London Court of International Arbitration, and the China International Economic and Trade Arbitration Commission. White & Case and Queen Mary University of London School of Arbitration, “2021 International Arbitration Survey: Adapting Arbitration to a Changing World,” 5. https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf.

[†] The effectiveness of international commercial courts in providing greater legitimacy to their home countries’ legal systems remains a point of debate. The popularity of the Singapore International Commercial Court demonstrates the potential for such courts to be viewed as world-class dispute resolution forums. On the other hand, Lucas Clover Alcolea, a lecturer at the University of Otago School of Law in New Zealand, argues that “[a]ny guarantees of independence or a ‘common law court’ regarding such international commercial courts are written with water, given that they exist in jurisdictions that neither recognize judicial independence nor the idea of the rule of law more generally. We can therefore conclude that international commercial courts do not advance the rule of law but rather constitute trojan horses which undermine it by threatening state sovereignty, and the proper functioning of state legal systems, enabling states which do not believe in the concept of the rule of law to engage in ‘whitewashing.’” Lucas Clover Alcolea, “The Rise of the International Commercial Court: A Threat to the Rule of Law?” *Journal of International Dispute Settlement* 13:3 (2022): 441.

the EU, several other countries have established or are considering establishing their own commercial courts that could also hear BRI-related disputes.³⁶

CICC’s Jurisdiction and Structure Likely to Limit Appeal for Foreign Parties

As part of the CPP’s attempts to increase international use of Chinese dispute resolution mechanisms, the CICC has several structural, jurisdictional, and procedural features that are more liberal than those found in other Chinese courts. Perhaps most significantly, the CICC incorporates foreign laws and expertise to a greater degree than elsewhere in the Chinese system. Despite these innovations, the CICC remains less accommodating of foreign parties than other international commercial courts. For example, both the Singapore International Commercial Court and the Dubai International Financial Center Courts include foreign judges and allow foreign lawyers to participate in proceedings.³⁷ These limitations, along with larger concerns over the judicial independence of the CICC, are likely to undermine the appeal of the CICC as a dispute resolution hub.

Cases Heard by the CICC

While the number of cases accepted by the CICC remains low four years after its establishment, the court theoretically has jurisdiction over a broad range of international commercial cases that are between equal parties* and have a connection to China.³⁸ According to article 3 of the Supreme People’s Court judicial interpretation establishing the CICC, a case is “international” in nature if one or both parties are foreign or regularly reside outside China; the subject matter of the dispute is outside China; or the events that created, changed, or terminated the commercial relationship occurred outside China (see textbox below).³⁹ The CICC accepted its first cases in December 2018, issuing its first set of rulings in September 2019 and its first judgment in March 2020.⁴⁰ As of August 2022, the CICC has accepted 27 cases and has published six rulings and one final judgment.⁴¹ Despite the court’s stated focus on BRI, cases do not require a connection to BRI to be heard by the CICC.[†]⁴² Additionally, the provisions establishing the CICC do not require all BRI-related cases to use the CICC in dispute settlement.[‡]

The CICC’s structure has allowed for more streamlined judicial review of certain business disputes. For instance, by delegating three related cases involving the judicial review of arbitration to the CICC, the Supreme People’s Court circumvented the lengthy tiered review system, which requires lower courts to refer cases upward through intermediate courts. (For more on CICC rulings and judgments, see the Appendix). Instead, the CICC was able to hear the cases as first-instance cases without reference to the lower courts and more efficiently set a uniform

* The “equal parties” requirement means that the CICC cannot hear cases on investor-state disputes, since investors and countries are not equal parties. Guiguo Wang and Rajesh Sharma, “The International Commercial Dispute Prevention and Settlement Organization: A Global Laboratory of Dispute Resolution with an Asian Flavor,” *AJIL Unbound*, January 5, 2021. <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/international-commercial-dispute-prevention-and-settlement-organization-a-global-laboratory-of-dispute-resolution-with-an-asian-flavor/BEA2CEFB3DD15926DE41F30DB6E2854>.

† None of the rulings on the CICC website specifically mention BRI. Nevertheless, the CICC has promoted its cases as a way to improve implementation of BRI. A 2019 article posted to the CICC website cites Shen Sibao, a member of the CICC’s International Commercial Expert Committee, saying that the CICC’s rulings “effectively unify the guidelines and standards for establishing such cases, and demonstrate the determination and strength of the CICC to serve the ‘Belt and Road’ construction.” *People’s Court Daily Qiao Wenxin*, “The First International Commercial Court of the Supreme People’s Court Effectively Concluded the First Five Cases,” December 30, 2019. <https://cicc.court.gov.cn/html/1/219/208/209/1547.html>.

‡ Due to the secretive nature of many contracts involved in BRI projects, it is difficult to say if the terms of individual BRI contracts require a particular forum for dispute resolution. According to a recent study of approximately 100 Chinese lending contracts to foreign governments between 2000 and 2020, the China Export-Import Bank usually requires the use of Chinese arbitration venues. The study noted that while these provisions attracted attention among scholars, the practice of a lender requiring a dispute resolution forum in its own country is common among other bilateral lenders. Anna Gelper et al., “How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments,” *Peterson Institute for International Economics, Kiel Institute for the World Economy, Center for Global Development, and AidData at William & Mary*, March 2021, 8. <https://www.cgdev.org/sites/default/files/how-china-lends-rare-look-100-debt-contracts-foreign-governments.pdf>.

precedent on arbitration. According to one analysis of the CICC’s cases, this could serve as a model to improve efficiency in courts across China.⁴³

CICC Jurisdiction Limited Compared with Other One-Stop Shops

The CICC has jurisdiction over five categories of international commercial cases:

- First-instance international commercial cases in which the parties have submitted to the jurisdiction of the Supreme People’s Court according to Article 34 of China’s Civil Procedure Law,^{*} where the amount in dispute is at least \$44 million (RMB 300 million);
- First-instance international commercial cases that are subject to the jurisdiction of a high people’s court[†] but that have been referred to the CICC by a high people’s court with the approval of the Supreme People’s Court;
- First-instance international commercial cases that have “a significant nationwide impact”[‡] in China;
- Cases involving applications for interim measures in arbitration for setting aside or enforcement of international commercial arbitration awards when they involve arbitration conducted by arbitral institutions in cooperation with the CICC, according to article 14 of the Supreme People’s Court judicial interpretation;
- Other international commercial cases that the Supreme People’s Court considers appropriate for the CICC.⁴⁴

While the first category of cases permits parties to choose the CICC as their forum, it is subject to the requirement under Chinese Civil Procedure Law that Chinese courts must have a connection with the underlying dispute.⁴⁵ By contrast, many other international commercial courts allow parties to opt in even if neither party has an underlying connection with the jurisdiction.^{§ 46} Many legal scholars have questioned the CICC’s restrictive jurisdiction.⁴⁷ According to Zhengxin Huo, professor at China University of Political Science and Law, and Yip Man, associate professor at Singapore Management University School of Law, “The only plausible explanation—and not a particularly convincing one—is that cases unconnected with China should not consume the resources of the CICC.”⁴⁸

^{*} Article 34 of China’s Civil Procedure Law requires that the court chosen by the parties have a connection to the dispute, such as that the court is located where the defendant or plaintiff is domiciled, where the contract is signed or performed, or where the subject matter of the dispute is located. Nicholas Lingard et al., “China Establishes International Commercial Courts to Handle Belt and Road Initiative Disputes,” *Freshfields Bruckhaus Deringer*, July 20, 2018. <https://www.lexology.com/library/detail.aspx?g=7cc76e29-129b-4531-b60a-d782131499be>.

[†] In China’s court system, the Supreme People’s Court—as the highest judicial organ—supervises the work of local people’s courts and special people’s courts. Local people’s courts are divided into three levels: high people’s courts at the level of provinces, special municipalities (i.e., Shanghai, Tianjin, Beijing, and Chongqing), and autonomous regions; intermediate people’s courts at the prefecture level; and basic people’s courts at the level of counties and municipal districts. Special people’s courts are courts that hear specific types of cases and include military courts, intellectual property courts, financial courts, and maritime courts. Wei Cai and Andrew Godwin, “Challenges and Opportunities for the China International Commercial Court,” *British Institute of International and Comparative Law* 68 (October 2019): 872.

[‡] It remains unclear what cases would be deemed as having “significant nationwide impact.”

[§] For example, the Singapore International Commercial Court Rules specifically state that “the Court must not decline to exercise jurisdiction in a case solely on the ground that the action between the parties is connected to a jurisdiction other than Singapore, if there is a written jurisdiction agreement between the parties.” Singapore International Commercial Court, *Singapore International Commercial Court Rules 2021, Order 20, rule 3(3)*. <https://sso.agc.gov.sg/SL/SCJA1969-S924-2021?DocDate=20211202&ProvlDs=PO2-#PO2-pr1->

^{**} While the majority of commentary about the CICC’s jurisdiction has noted its relatively high bar for claiming jurisdiction, even in instances when parties might prefer to use the CICC, it is theoretically possible for the opposite to occur—that is, for the CICC to claim jurisdiction over a case even when the parties have agreed for another country’s court system to have exclusive jurisdiction. This is because Chinese law requires foreign courts to have a connection with a case. There are, however, no examples of the CICC claiming jurisdiction in this manner. Wei Cai and Andrew Godwin, “Challenges and Opportunities for the China International Commercial Court,” *British Institute of International and Comparative Law* 68 (October 2019): 16–17.

Judges, Lawyers, and International Experts in the CICC

Judges

The CCP has attempted to increase the appeal of the CICC by emphasizing the international knowledge of its judges. Article 5 of the Supreme People’s Court judicial interpretation establishing the CICC stipulates that judges will be “selected and appointed by the Supreme People’s Court from senior Chinese judges who are experienced in trial work, familiar with international treaties and customs and international trade and investment practices, and capable of using Chinese and English proficiently as working languages.”⁴⁹ Consistent with these requirements, the 14 judges currently appointed to the CICC are experienced Supreme People’s Court judges with expertise in international commercial law. Seven of the judges have studied overseas.⁵⁰

Despite the requirements for familiarity with international law, the slate of judges in the CICC is considerably less ambitious in scope than the judges in other “one-stop shops.” For example, both the Singapore International Commercial Court and the Dubai International Financial Center Courts allow for foreign judges to serve on the courts.* China’s Judges Law requires judges in Chinese courts to be Chinese nationals.⁵¹ Additionally, CICC judges do not serve on the courts in a fulltime capacity and continue to have additional responsibilities in the Supreme People’s Court.⁵² The part time nature of the CICC limits the judges’ bandwidth in hearing cases.⁵³

Lawyers

Parties to CICC proceedings can only be represented by Chinese lawyers, a marked difference from other international commercial courts—such as those in Dubai and Singapore—which allow parties to be represented by foreign counsel.⁵⁴ Foreign lawyers can only play an indirect role in CICC proceedings, such as helping Chinese lawyers prepare for hearings.⁵⁵ Though this requirement is consistent with Chinese law, which does not grant foreign lawyers a right of audience before Chinese courts, the absence of international lawyers in the CICC is likely to undermine international parties’ confidence in the CICC.†

International Experts

The International Commercial Expert Committee, a group of 47 foreign and Chinese nationals, provides advice and suggestions on issues related to the CICC’s development and comments on the Supreme People’s Court’s judicial interpretations and policies on the CICC.‡⁵⁶ The International Commercial Expert Committee can also provide pretrial mediation or mediation services, which can be converted into a binding order by the CICC. Committee members have expertise in international commercial law with “internationally recognized authority” and are selected by the Supreme People’s Court for a four-year renewable term.⁵⁷ (For more on the members of the International Commercial Expert Committee, see the Appendix.)

The International Commercial Expert Committee is meant to confer a degree of internationalism to the courts, but it is unclear whether they exercise influence over the actual procedure and rulings of the CICC.⁵⁸ According to Dr. Huo and Professor Man, the expert committee is “a concession by China to allow limited international influence on CICC processes.”⁵⁹ Nonetheless, the extent to which foreign experts have been consulted in CICC cases remains in question. In August 2021, Ms. Finder noted that at least several experts have not yet been consulted in any CICC cases and wrote that “it appears the Supreme People’s Court is still trying to determine a proper role for the expert committee (at least on the foreign side).”⁶⁰ There has also been at least one resignation of a foreign expert from the International Commercial Expert Committee in protest of recent Chinese government actions. In announcing his

* Eighteen of the 47 judges in the Singapore International Commercial Court are international judges, while eight of the 13 judges in the Dubai International Financial Center Courts are international judges. Dubai International Financial Center Courts, *Judges*, <https://www.difccourts.ae/about/court-structure/judges>; Singapore International Commercial Court, *Judges*, <https://www.sicc.gov.sg/about-the-sicc/judges>.

† According to a 2018 survey of international arbitration by White and Case, “neutrality/internationalism” ranked fourth in respondents’ reasons for choosing an arbitration organization, following reputation, “high level of administration,” and previous experience. White and Case, “2018 International Arbitration Survey: The Evolution of International Arbitration.” <https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-19.pdf>.

‡ The CICC website includes a section on “Foreign Law Ascertainment,” which provides a reference list of international disputes, many of which predate the establishment of the International Commercial Expert Committee.

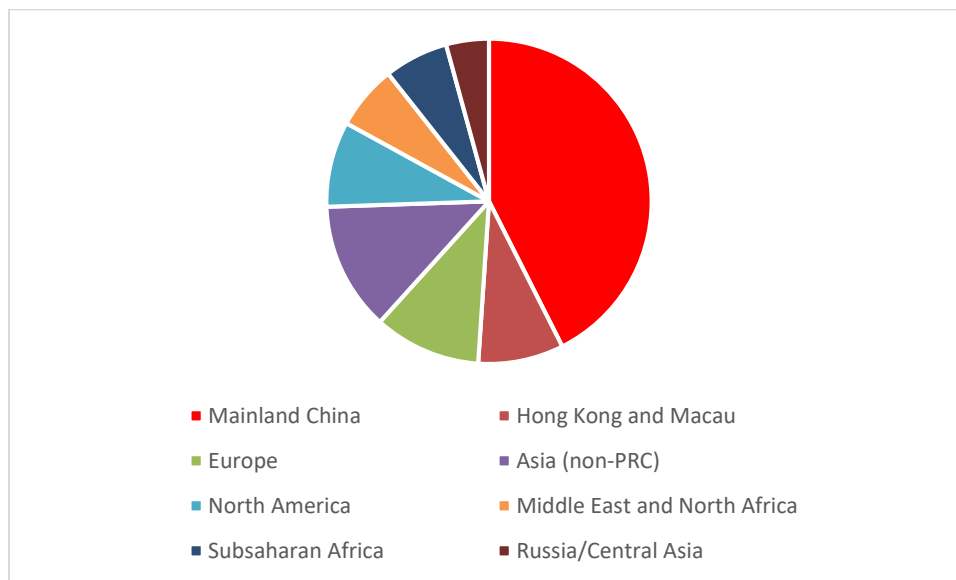
January 2022 resignation from the expert committee, U.S. arbitration expert Gary Born wrote, “I believe the rule of law and protection of fundamental human rights and civil liberties are better served through my resignation than through continued association with the court’s work.”⁶¹

Forging Foreign Legal Ties with the International Commercial Expert Committee

In addition to gaining insights from foreign legal experts, the Supreme People’s Court’s selections of foreign experts may also be driven by the Chinese government’s efforts to build legal cooperation with specific countries or regions. The Supreme Court of Singapore described the appointment of Singaporean Judge of Appeal Steven Chong to the International Commercial Expert Committee in December 2020 as “yet another significant milestone in the deepening bilateral relations and cooperation between the Supreme Court of Singapore and the Supreme People’s Court.”⁶² Mr. Chong is one of three Singapore-based experts appointed to the expert committee, making Singapore the largest source of experts.^{* 63}

Similarly, the appointment of four experts from Africa is indicative of the Chinese government’s focus on the continent, which it views as playing a critical role in advancing the China model worldwide.⁶⁴ China plays a major role in infrastructure financing and construction on the continent, making it likely that Chinese actors will be involved in commercial disputes on the continent and increasing the gains from widespread acceptance of the CICC in Africa.[†] The inclusion of experts from Africa provides critical regional legal expertise to the CICC while also “[providing] a local face to the dispute resolution formal processes,” according to Martin Rupiya, innovation and training manager at the African Center for the Constructive Resolution of Disputes in Durban, South Africa.⁶⁵

Figure 1: Members of the International Commercial Expert Committee by Region, February 2023



Source: China International Commercial Court, *Expert Committee: Expert Directory*. <http://cicc.court.gov.cn/html/1/219/235/237/index.html>.

Foreign Law in CICC Cases

Parties may agree to have foreign law apply to CICC cases, but a pattern of bias toward application of Chinese law in other Chinese court cases where foreign law applies sets a concerning precedent.⁶⁶ According to the judicial interpretation establishing the CICC, there are eight ways for CICC judges to determine foreign law, including on

* Colin Ong, who is also a member of the International Commercial Expert Committee, is a Brunei national based in Singapore.

† China financed 20.4 percent and built 31 percent of construction projects valued at \$50 million and above in Africa between 2018 and 2019, according to Deloitte. Deloitte, “Africa Construction Trends Report,” 2019, 7. <https://www2.deloitte.com/za/en/pages/energy-and-resources/articles/africa-construction-trends.html>.

the basis of submissions by the parties and members of the International Commercial Expert Committee.* It remains unclear, however, whether submissions from the International Commercial Expert Committee hold greater weight than submissions from other experts. In the event that the CICC is unable to determine the correct application of the foreign law, the courts will default to Chinese law.† 67 This is similar to other cases in Chinese courts where foreign law applies. According to Dr. Huo and Professor Man, however, Chinese courts have traditionally manipulated this rule and used it to expand the application of Chinese law, a trend that “is likely to undermine the CICC’s credibility as a neutral and trustworthy forum.”68

Procedure and International Enforceability

Parties to the CICC can choose between mediation, arbitration, and litigation to resolve their disputes.69 While the CICC touts the “international” nature of its procedures, foreign organizations have so far been excluded from participating in mediation and arbitration, raising concerns over potential bias. Additionally, while arbitral awards from CICC-approved institutions are broadly enforceable in other countries, enforcement of CICC litigation judgments remains more limited, further undermining the appeal of the CICC.

Before cases are accepted by the CICC, the Case Management Office meets with parties about the process.70 Following the meeting with the Case Management Office, the case can proceed in one of three ways:

- *Litigation.* With litigation, cases are heard by a panel consisting of three or more CICC judges.71 Unlike other Chinese court decisions, dissenting opinions in CICC cases may be issued in an effort to increase transparency of CICC decisions.72 Since the CICC is a branch of the Supreme People’s Court, judgments are final and binding, although parties can apply for a retrial with the Supreme People’s Court.73
- *Mediation.* If both parties agree to pretrial mediation, which is promoted in the Supreme People’s Court’s procedural rules for the CICC, the Case Management Office will arrange for mediation with members of the Expert Committee or an approved international mediation organization. There are currently only two approved third-party mediation institutions, both of which are based in China.‡ If pretrial mediation fails, then the Case Management Office sets the schedule for litigation.74 Once a mediation agreement is reached, the CICC can issue a judgment based on the mediation agreement, converting it into a binding order.75
- *Arbitration.* If the parties choose arbitration, the CICC will refer the dispute to an international arbitration institution but can provide parties with judicial assistance on the preservation of evidence, property, or conduct before or during the arbitration proceedings. According to the Supreme People’s Court judicial interpretation establishing the CICC, the Supreme People’s Court will select “international arbitration and mediation institutions” to work alongside the CICC.76 However, because China’s arbitral market is closed to foreign arbitration institutions, the list of approved institutions is limited to Chinese institutions that

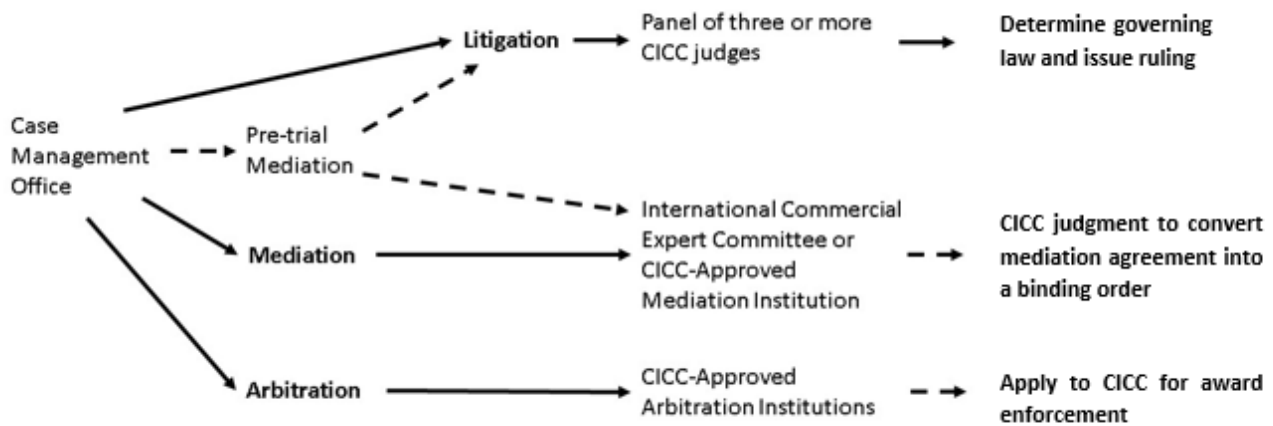
* The ways to determine the law are: (1) provided by the parties; (2) provided by the legal expert from China or abroad; (3) provided by the institution rendering law finding services; (4) provided by the member of the International Commercial Expert Committee; (5) provided by the central authority of the other contracting party that has entered into a judicial assistance treaty with China; (6) provided by the Chinese Embassy or Consulate in the relevant country; (7) provided by the embassy of the relevant country in China; or (8) other reasonable ways to find foreign law. China’s Supreme People’s Court, *Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court*, June 27, 2018. <https://cicc.court.gov.cn/html/1/219/208/210/817.html>.

† Of the six rulings and one final judgment published on the CICC website, the CICC judges have applied Chinese law in each case. There has been no indication that the parties have disputed the application of Chinese law in any of the cases.

‡ These are the China Council for the Promotion of International Trade Mediation Center and the Shanghai Commercial Mediation Center. China International Commercial Court, *Directory of Third Party Mediation Institutions*. <https://cicc.court.gov.cn/html/1/219/399/402/index.html>.

accept international commercial disputes.* Following the issuance of an arbitral award, parties can apply to the CICC to set aside or enforce the award.⁷⁷

Figure 2: CICC Structure and Procedure



Source: Various.⁷⁸

Enforcing CICC Judgments Abroad

Judgments by the CICC can be automatically enforced in the 35 jurisdictions where China has signed bilateral judicial assistance treaties that include provisions on the recognition and enforcement of judgments (Figure 3).^{† 79} Outside of those jurisdictions, enforcement of CICC decisions is not automatic. Parties seeking to enforce a Chinese judgment in the United States, for instance, must apply to a U.S. court to recognize and enforce the judgment, and the court can decline to enforce the judgment on a number of grounds, including procedural unfairness in the Chinese litigation.[‡] According to the CICC, China played a leading role in the creation of the Hague Convention on Foreign Judgments in Civil and Commercial Matters, an international treaty governing the recognition and enforcement of foreign court judgments, with a particular focus in the areas of antimonopoly and intellectual property.⁸⁰ However, China has yet to ratify the treaty, which currently has 33 signatories.^{§ 81}

Other international commercial courts also face hurdles in enforcing their judgments abroad, yet they have taken more steps than the CICC to enable such enforcement. For instance, like China, Singapore is not a party to the Hague Convention on Foreign Judgments. Unlike China, however, Singapore is a party to a separate treaty, the

* The Chinese arbitration institutions are: China International Economic and Trade Arbitration Commission, Shanghai International Economic and Trade Arbitration Commission, Shenzhen Court of International Arbitration, Beijing Arbitration Commission, China Maritime Arbitration Commission, China Council for the Promotion of International Trade Mediation Center, the Guangzhou Arbitration Commission, the Shanghai Arbitration Commission, the Xiamen Arbitration Commission, the Hainan International Arbitration Court, and the Shanghai Commercial Mediation Center. The Hong Kong International Arbitration Center was added as an international arbitration institution in June 2022, but there are significant questions about the autonomy of Hong Kong’s institutions from the influence of the CCP. For more on rule of law issues in Hong Kong, see U.S.-China Economic and Security Review Commission, Chapter 5, “Hong Kong,” in *2022 Annual Report to Congress*, November 2022, 675–679.

† Those 35 jurisdictions are: Algeria, Argentina, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Cuba, Cyprus, Egypt, Ethiopia, France, Greece, Hungary, Iran, Italy, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lithuania, Mongolia, Morocco, North Korea, Peru, Poland, Romania, Russia, Spain, Tajikistan, Tunisia, Turkey, United Arab Emirates, Ukraine, Uzbekistan, and Vietnam. Meng Yu, “2022 Guide to Enforce Foreign Judgments in China-CTD 101 Series,” *China Justice Observer*, May 26, 2022. <https://www.chinajusticeobserver.com/a/2022-guide-to-enforce-foreign-judgments-in-china>.

‡ A recent study found 16 instances between 2009 and 2022 where parties requested that U.S. courts enforce Chinese court judgments. Of the 16 requests, only six were granted. Donald C. Clarke, “Judging China: The Chinese Legal System in U.S. Courts” (working paper), *GWU Legal Studies Research Paper No. 34*, December 7, 2022. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4150893.56.

§ Of the signatories to the treaty, 28 are formally parties to the treaty: Ukraine, the EU, and the individual states of the EU (except Denmark). The treaty will go into effect for those parties on September 1, 2023. Five other signatories to the treaty have signed but not ratified and are not bound by the treaty: Costa Rica, Israel, Russia, the United States, and Uruguay. Hague Conference on Private International Law, “Status Table: Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.” <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137>.

Hague Convention on Choice of Court Agreements, which applies to judgments in cases where parties have chosen to exclusively litigate a particular dispute in the courts of one country.⁸² In such a case, a judgment by the Singapore International Commercial Court would be automatically enforceable by courts in the 31 other territories that are parties to the treaty.* Likewise, the Dubai International Finance Center Courts have signed a memorandum with the UK concerning the enforcement of monetary judgments.⁸³ This agreement, while not binding, is an example of the ways other international commercial courts have increased the enforceability of their decisions. The limited international enforceability of CICC judgments presents a key challenge for the CICC, since foreign commercial parties may be reluctant to choose a court where the recognition and enforcement of judgments are not guaranteed.[†]

84

In contrast to CICC judgments in litigation, the international enforceability of arbitration awards from CICC-approved institutions is significantly more far-reaching. China is a contracting state to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[‡] so CICC arbitration awards can be enforced in the more than 170 countries that are contracting states.⁸⁵

Figure 3: China’s Bilateral Judicial Assistance Treaties with Provisions on Recognition and Enforcement of Judgments



Source: Adapted from Guodong Du and Meng Yu, “List of China’s Cases on Recognition of Foreign Judgments,” *China Justice Observer*, July 16, 2019. <https://www.chinajusticeobserver.com/a/list-of-chinas-cases-on-recognition-of-foreign-judgments>.

* The parties to the Hague Convention on Choice of Court Agreements include the EU, all individual states of the EU, Mexico, Montenegro, Singapore, and the UK. Several other countries, including China and the United States, have signed but not ratified the treaty. Hague Conference on Private International Law, “Convention of 30 June 2005 on Choice of Court Agreements.” <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>.

‡ The People’s Republic of China (PRC) ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1987. The convention allows parties to an arbitral award to apply for recognition and enforcement of the award. Recognition of the award can be refused if the agreement is not valid under the law used to determine it, the arbitration rules on issues beyond the scope of the submission, parties to the arbitration were not given proper notice, or the country where the award is being enforced is not capable of settlement by arbitration under the law of that country or “would be contrary to the public policy of that country.” New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. <http://www.newyorkconvention.org/english>.

Implications for the United States

The CICC's establishment is part of a broader push by the CCP to reshape international norms in its favor. While the CCP cites the CICC as a new step in the evolution of China's legal system, the court's basic structure and the fact that it is directly under CCP control mean that foreign parties, including U.S. parties, are at risk of biased judgments. Although the CICC's initial cases have typically been smaller cases that allow the CICC to establish jurisdiction and procedure, Dr. Huo and Professor Man argue that many CICC cases "are likely to involve a State-linked Chinese entity engaged in a State-backed project ... involving substantial Chinese interests (and probably financing) that the Chinese government is keen to protect."⁸⁶ This reduces the likelihood of judicial impartiality from the CICC, which—like other People's Republic of China (PRC) courts—is tasked with "effectively implementing the Party's leadership in all areas and aspects of the work of the people's courts."⁸⁷

While the CICC has features that will allow for the more efficient processing of foreign-related cases within the PRC judicial system, its "internationality" is restrained by existing Supreme People's Court regulations and by the absence of broader recognition within the PRC for international dispute-related conventions and foreign rulings. If Beijing begins to aggressively promote the CICC along BRI, then the CICC would represent a critical expansion of the CCP's broader efforts to promote its discourse power into the realm of jurisprudence and dispute settlement.

While the immediate effects of the CICC may be limited, the court represents another avenue for the CCP to advance its discourse power, allowing for the promotion of Chinese legal venues and approaches alongside Chinese-funded projects abroad. This could allow the CCP to legitimize its dual foreign dispute system, promoting international enforcement of Chinese judgments while reserving the power to disregard foreign judgments when the CCP deems them to be against its interests. Not only does this threaten to disadvantage U.S. and other foreign companies relative to their Chinese counterparts, it also undermines the concept of fair and independent dispute resolution and judicial independence more broadly.

Foreign use of Chinese courts for dispute resolution provides legitimization of the Chinese legal system and economic model, much of which is at odds with the current international system supported by the United States and its allies and partners. A summary of the CICC's activities in 2018 posted on its website claimed "foreign-related cases are ... the barometer of China's open economic development."⁸⁸ However, foreign actors may actually be driven to use Chinese courts by barriers to the enforcement of foreign judgments, including lack of accession to international conventions on foreign litigation rather than increased openness.

The Chinese government's efforts to expand acceptance of the CICC abroad exemplify how the CCP uses economic leverage to promote favorable standards, making it easier for Chinese companies to operate exempt from the current international structure.

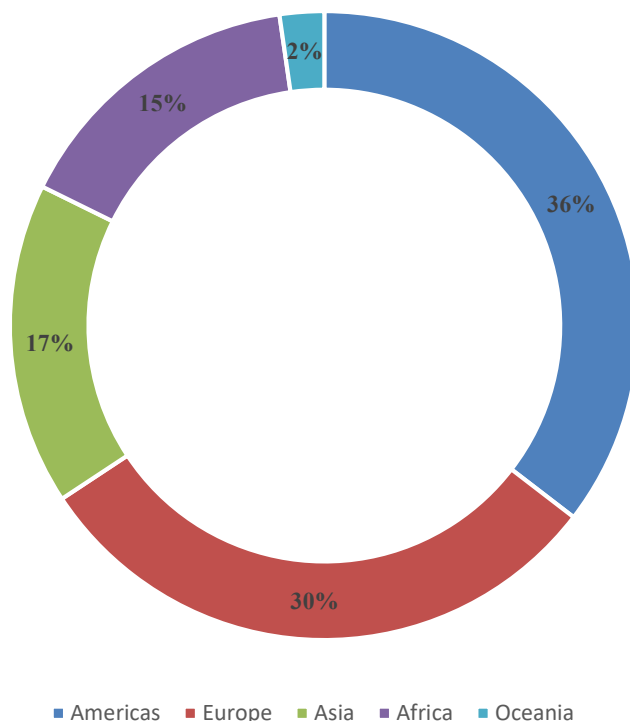
- According to Meg Utterback, a partner at King & Wood Mallesons, "One of the biggest influences of the Belt and Road Initiative will be the export of the Chinese approach to contracting and the rule of law."⁸⁹ The Chinese approach to resolving disputes tends to focus on peaceful resolution of disputes through mediation and arbitration. This is reflected in the emphasis on pretrial mediation and mediation options in the CICC as well as the focus on arbitration in early CICC judgments.
- Since many BRI projects are national-level projects, one way Beijing could ensure the CICC takes precedence would be for Chinese government bodies to designate it as the venue for dispute resolution in the memorandum of understanding (MOU) signed with the host country.⁹⁰ According to Dezan Shira & Associates, MOUs signed on BRI cooperation between China and 70 BRI participant states do "not appear to suggest any differing mechanisms for dealing with disputes other than the usual terminology referring to 'friendly consultations.'"⁹¹ At the project level, China Export-Import Bank usually requires the use of Chinese arbitration venues, according to a study of 100 Chinese lending contracts from 2000 to 2020, which found that this practice was also common among other bilateral lenders.⁹² The opacity of many BRI-related

* Chris Devonshire-Ellis, founder of Dezan Shira & Associates, argues that the absence of clauses in BRI MOUs specifically designating the CICC as the venue for dispute resolution suggests that the creation of the CICC was "driven by China's internal judiciary rather than by the foreign ministry." Chris Devonshire-Ellis, "Vassal States? Understanding China's Belt and Road MoU," *Silk Road Briefing*, February 13, 2018. <https://www.silkroadbriefing.com/news/2018/02/08/vassal-states-understanding-chinas-belt-road-mou/>.

project contracts makes it difficult to judge the current extent and rigidity of this practice.⁹³ By applying China's economic leverage to force the usage of the CICC, the CCP may artificially legitimize the usage of courts under its control, making it more difficult to hold Chinese companies accountable in international commercial court proceedings.

Appendix

Figure 1: Number of International Dispute Forums by Region, 2021



Source: Various.⁹⁴

Table 1: Select CICC Cases

Case and Parties	Description and Status	CICC
<p>ZuiGaoFaShangChu No. 4 (2020)</p> <ul style="list-style-type: none"> Plaintiff: Guangzhou Aircraft Maintenance Engineering Company Limited (GAMECO) (China) Defendant: Orient Thai Airlines Company Limited (Thailand) 	<p>This dispute stems from a 2016 agreement between GAMECO and Orient Thai Airlines under which GAMECO performed repairs and maintenance on several airplanes owned by Orient Thai Airlines. GAMECO claimed Orient Thai Airlines owed it money and, pursuant to the agreement, arbitrated the claims at the China International Economic and Trade Arbitration Commission (CIETAC), winning an award of more than \$2.6 million. Based on the arbitral award, GAMECO applied to a court to confirm the legality of a lien on Orient Thai Airlines' airplanes. Orient Thai Airlines objected to the court's jurisdiction, saying this was a contractual dispute subject to CIETAC's jurisdiction.</p> <p>The CICC found that the dispute fell under the scope of the arbitration agreed to in the original contract and determined that the proper way to resolve the conflict was through arbitration. It dismissed GAMECO's claims on August 12, 2021.⁹⁵</p>	Shenzhen
ZuiGaoFaShangChu No. 7 and No. 8 (2019)	The CICC accepted several cases relating to the confirmation of shareholder qualifications involving Red Bull. Two cases, No. 7 and	Xi'an

<ul style="list-style-type: none"> • Plaintiff: Ruoychai International Group (Thailand) • Defendant: Red Bull Vitamin Drink • Third party [in No. 7]: Red Bull Vitamin Drink (Thailand) • Third party [in No. 8]: Inter-Biopharm Holding 	<p>No. 8, had the same panel of five CICC judges for pretrial conferences.⁹⁶</p> <p>Timeline:</p> <ul style="list-style-type: none"> • May 15, 2019: Pretrial conference [No. 7 and No. 8] • May 29, 2019: Trial [No. 8] <p><i>Note:</i> The trial for case No. 8 was the first trial for the Xi’an branch of the CICC.⁹⁷ The CICC has also accepted three other cases relating to shareholders of Red Bull, Ltd., but detailed information on these cases is not available.⁹⁸</p>	
<p>ZuiGaoFaMinTe No. 1, No. 2, No. 3 (2019)</p> <ul style="list-style-type: none"> • Claimant [No. 1]: Luck Treat (British Virgin Islands) • Claimant [No. 2]: Newpower Enterprises (British Virgin Islands) • Claimant [No. 2]: Beijing HK CTS Grand Metropark Hotels Management • Claimant [No. 3]: Shenzhen Metropark Hotel • Respondent: Zhong Yuan Cheng Commercial Investment Holdings 	<p>Zhongyuan Cheng signed contracts provided by Luck Treat regarding the purchase of these shares that included the designation of Shenzhen Court of International Arbitration as the arena for arbitration, but the contract was not formally signed. Zhongyuan Chen applied for arbitration regarding disputes connected to the contracts. Following review by the Shenzhen Intermediate Court, the Supreme People’s Court delegated the cases to the CICC based on their legal significance. The CICC ruled that an arbitration agreement held independently of the contract.</p> <p>Timeline:</p> <ul style="list-style-type: none"> • March 26, 2019: Formal inquiry <ul style="list-style-type: none"> ◦ All parties agreed to use PRC governing law, but lawyers cited foreign and international law and submitted reference materials in English.⁹⁹ • September 18, 2019: Civil rulings <p><i>Note:</i> The CICC’s review of international commercial disputes can allow for the circumvention of the tiered reporting mechanisms—which requires intermediate courts to report and receive approval for requests by the high people’s court and subsequently the Supreme People’s Court—by allowing the CICC, a branch of the Supreme People’s Court, to hear such cases directly, creating a more efficient process with no need for multiple reviews.¹⁰⁰</p>	Shenzhen
<p>ZuiGaoFaShangChu No. 2 (2019)</p> <ul style="list-style-type: none"> • Plaintiff: Asia Optical (Taiwan) • Plaintiff: Dongguan Sintai Optical • Defendant: Fujifilm (Japan) • Defendant: Fujifilm (China) Investment Co. • Defendant: Fujifilm Optoelectronics (China) 	<p>Asia Optical and Sintai Optical filed for arbitration with Fujifilm in Japan after being sued for patent royalties in connection with products that Fujifilm Japan had contracted them to produce. The companies argued that it should be responsible for the patent royalties, but the Japan Commercial Arbitration Association dismissed the case. Asia Optical and Sintai Optical then filed within China and the case was ultimately referred to the CICC, which ruled that the dispute was governed by the arbitration agreement and that the CICC did not have jurisdiction. The CICC therefore dismissed the case.¹⁰¹</p> <p>Timeline:</p> <ul style="list-style-type: none"> • December 29, 2018: CICC accepted the case • October 25, 2019: Case dismissed <p><i>Note:</i> Unlike other CICC rulings, an English-language version of this ruling has not been posted on the CICC website.</p>	Shenzhen

<p>ZuiGaoFaShangChu No. 1 (2019)</p> <ul style="list-style-type: none"> Plaintiff: Guangdong Bencao Medicine Group Defendant: Bruschettini SRL (Italy) 	<p>Guangdong Bencao Medicine Group, a Chinese state-owned enterprise, had contracted to be the exclusive distributor of Lantigen, a drug produced by Bruschettini used to treat bacterial infections. In 2016, China’s State Food and Drug Administration held a meeting requiring Bencao to stop selling Lantigen and Bruschettini to recall the drug. However, Bruschettini did not respond to notices conveyed by Bencao and claimed that, as the distributor, Bencao should bear the costs of recall. The CICC ruled that Bruschettini should compensate Bencao approximately \$8.5 million (renminbi [RMB] 59.2 million) for its inventory and related costs.¹⁰²</p> <p>Timeline:</p> <ul style="list-style-type: none"> April 29, 2019: Pretrial conference (first CICC pretrial conference)¹⁰³ May 31, 2019: Formal hearing October 25, 2019: Final judgment <p><i>Note:</i> This is the CICC’s only published final judgment. Both parties agreed to pretrial mediation, but no details are available on whether mediation took place.¹⁰⁴</p>	Shenzhen
<p><i>Case numbers not available</i></p> <ul style="list-style-type: none"> Applicant: Australia and New Zealand Banking Group Limited, Manila Branch Applicant: Australia and New Zealand Bank (China) Limited, Shanghai Branch Respondent: China National Electric Engineering Co., Ltd. Respondent: Bank of Jiangsu Co., Ltd. 	<p>The Manila branch of Australia and New Zealand Banking Group Ltd. and the Shanghai branch of Australia and New Zealand Bank (China) applied for a reconsideration of a suspension order against China National Electric Engineering Company and third party Bank of Jiangsu. The suspension order was involved in a standby letter of credit fraud. This application involves two cases.</p> <p>Timeline:</p> <ul style="list-style-type: none"> November 20, 2020: Inquiries and case management conference¹⁰⁵ December 18, 2020: Public hearing (two Chinese nationals from the International Commercial Expert Committee attended the public hearing)¹⁰⁶ <p><i>Note:</i> Standby letters of credit are binding commitments by banks to pay a third party in the event the bank’s client defaults on an agreement.¹⁰⁷ They are common in transactions where the parties to the transaction do not know each other.¹⁰⁸</p>	Xi’an

Table 2: China International Commercial Court Judges, as of 2022

	Judge	Other Judicial Appointments	Experience Abroad
1.	Wang Shumei 王淑梅	<ul style="list-style-type: none"> Chief Judge, Fourth Civil Division Vice President, China Maritime Law Association National Adjudication Expert 	
2.	Gao Xiaoli 高晓力	<ul style="list-style-type: none"> Deputy Chief Judge, Fourth Civil Division 	Studied 11 months at University of Montreal
3.	Xi Xiangyang 奚向阳	<ul style="list-style-type: none"> Senior Judge, First Circuit Court 	Studied one year at University of London

4.	Sun Xiangzhuang 孙祥壮	<ul style="list-style-type: none"> Senior Judge, First Circuit Court National Adjudication Expert 	Studied one year at University of Warwick; studied at Duke University
5.	Yu Xiaohan 余晓汉	<ul style="list-style-type: none"> Senior Judge, Fourth Civil Division 	
6.	Zhang Xuemei 张雪煤	<ul style="list-style-type: none"> Senior Judge, Second Civil Division 	
7.	Ding Guangyu 丁广宇	<ul style="list-style-type: none"> Senior Judge, Sixth Circuit Court Coordinator of Case Management Office for the Xi'an-based CICC 	Studied 13 months at University of Manchester
8.	Shen Hongyu* 沈红雨	<ul style="list-style-type: none"> Senior Judge, Fourth Civil Division Senior Judge, Supreme People's Court Intellectual Property Court 	Studied one year at University of Hong Kong
9.	Zhu Li 朱理	<ul style="list-style-type: none"> Senior Judge, Third Civil Division Senior Judge, Intellectual Property Court 	Studied at George Mason University for one year
10.	Guo Zaiyu 郭载宇	<ul style="list-style-type: none"> Senior Judge, Fourth Civil Division Senior Judge, Fifth Circuit Court 	
11.	Du Jun 杜军	<ul style="list-style-type: none"> Senior Judge, Second Civil Division 	Exchange visitor at Oxford University for three months
12.	Ren Xuefeng* 任雪峰	<ul style="list-style-type: none"> Presiding Judge, Sixth Circuit Court 	
13.	Hu Fang 胡方	<ul style="list-style-type: none"> Vice President, Adjudication Committee of the Urumqi Intermediate People's Court of Xinjiang Uyghur Autonomous Region 	Law major from Kyushu University, Japan
14.	Huang Xiwu 黄西武	<ul style="list-style-type: none"> Presiding Judge, First Circuit Court 	

*Shen Hongyu is a member of Jiusan Society, one of the eight recognized minority parties in China that are subordinate to the CCP. Ren Xuefeng is a member of the Revolutionary Committee of the Chinese Kuomintang, another of the eight recognized minority parties.

Source: China International Commercial Court, *Judges*. <http://cicc.court.gov.cn/html/1/219/193/196/index.html>.

Table 3: International Commercial Experts Committee Membership, 2022

	Expert	Nationality	Other Affiliations
1.	Huang Jin	China	<ul style="list-style-type: none"> Vice President, China Society of Law President, Chinese Society of International Law President, China Society of Private International Law Vice President, China Human Rights Development Foundation Council Special Counselor, Supreme People's Court Expert Councilor, Supreme People's Procuratorate
2.	Liu Jingdong	China	<ul style="list-style-type: none"> Director, International Economic Law Department, Institute for International Law, Chinese Academy of Social Sciences

			<ul style="list-style-type: none"> • Vice President, WTO Law Research Society, China Law Society • Standing Member, Council of China’s Arbitration Law Society • Special Counselor, Supreme People’s Court • Arbitrator, China International Economic and Trade Arbitration Commission
3.	Lu Song	China	<ul style="list-style-type: none"> • Professor of Law, China Foreign Affairs University • Visiting Professor, Geneva Graduate Institute LL.M. in International Dispute Settlement (MIDS) program • Visiting Professor, International Arbitration and Dispute Settlement (IADS) program, Tsinghua University • Vice Chairman, Chinese Society of Private International Law • Vice Chairman, Mediation Center of the China Council for the Promotion of International Trade • Vice President, Arbitration and Alternative Dispute Resolution (ADR) Committee of ICC China
4.	Shan Wenhua	China	<ul style="list-style-type: none"> • Conciliator, International Center for the Settlement of Investment Disputes (ICSID) • Arbitrator, CIETAC • Senior Counsel, Beijing Kangda (Xi’an) Law Firm • “State Specially Recruited Expert,” China • “State Council Special Allowance Expert,” China • Senior Fellow, University of Cambridge • Titular Member, International Academy of Comparative Law • Member, American Law Institute • President, Commission for Selection and Disciplining of Judges and Prosecutors, Shanxi Province • Vice President, Chinese Society of International Economic Law • Member, Executive Councils of the Chinese Society of International Law
5.	Shen Sibao	China	<ul style="list-style-type: none"> • Director, Institute of International Commercial Law, University of International Business and Economics (UIBE) • Member, Commission of Philosophy and Science, Ministry of Education • Member, Chinese Law Society • Chairman, China International Economic and Trade Law Association • Chairman, Shenzhen Court of International Arbitration

			<ul style="list-style-type: none"> • Chairman, ADR and Arbitration Commission, ICC China • Chairman, Trade Commission of the Grain and Feed Trade Association (Gafta)
6.	Shi Jingxia	China	<ul style="list-style-type: none"> • Director, University of International Business and Economics (UIBE) International Law Institute • Director, Research Center for Belt and Road Initiative and International Law • Director, UIBE Research Center for Unification of Commercial Law
7.	Wang Guiguo	China	<ul style="list-style-type: none"> • President, International Academy of the Belt and Road • President, Academy of International Strategy and Law • National Thousand Talents Program Professor, Zhejiang University • Eason-Weinmann Chair of International and Comparative Law, School of Law, Tulane University • Chairman, Hong Kong WTO Research Institute • Arbitrator, CIETAC, Beijing Arbitration Commission, Hong Kong International Arbitration Center, Panel of Arbitrators of Korean Commercial Arbitration Board
8.	Wang Liming	China	<ul style="list-style-type: none"> • Vice President and Professor, Renmin University • Member, Legal Affairs Committee, National People's Congress • Member, Humanities and Social Science Committee, Ministry of Education • Vice Chairman, CIETAC • Senior Counselor, Supreme People's Court of China
9.	Zhang Yuejiao	China	<ul style="list-style-type: none"> • Professor of Law, Tsinghua University and Shantou University • Vice President, China's International Economic Law Society • President, International Economic Law Research Center, Tsinghua University
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