
China International Commercial Court and the New World Order: A Critical Evaluation

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This research concentrates primarily on the foundation of the China International Commercial Court (CICC), considering the structure and functions of the Court. The main objective of CICC is to develop a dispute resolution mechanism for the Belt and Road Initiative (BRI). Given its predominant Chinese orientation, CICC may encounter various challenges as the BRI's contracting members possess diverse judicial systems. This article will focus on the jurisdiction of the court and the procedures of enforcement of its judgments, orders, and direction. The authors also discuss the types of legal and administrative changes necessary to make CICC an effective and successful dispute resolution body. The BRI is a crucial element of Chinese strategies to control the global economic system. Therefore, CICC can provide critical insight into the present Chinese goals about international order. This paper finally examines that CICC symbolizes a Chinese ambition to strengthen, modify, or challenge the current international system.

Keywords

China International Commercial Court, Court Jurisdiction, Belt & Road Initiative, Dispute Resolution Mechanism, World Order, Tianxia

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I. Introduction

Justice is one of the fundamental and essential elements for socioeconomic and political stability within state, as well as peaceful existence in the world. Human beings always attempt to avoid conflicts, but such instances can arise as a result of diverging interests. Likewise, in the contemporary globalized world, every sovereign political entity wants a harmonious and peaceful existence. For this purpose, every state attempts to devise a comprehensive network of defined and determined principles, rules, and regulations,¹ primarily with the intent of avoiding injustices and establishing justice in every aspect. The process of globalization has made the world interconnected and interdependent, particularly in economic matters. Similarly, the People's Republic of China (PRC) has launched a silk road economic belt and a 21st century maritime silk road, collectively called the Belt and Road Initiative (BRI), for connecting majority of states and nations for economic purposes.²

In this regard, the PRC perceived the necessity to establish a judicial system with respect to international economic projects particularly under the BRI, which can interpret the concerned laws, principles, rules, and regulations to avoid injustice, inequality, and conflicts. The Supreme People's Court (SPC) of the PRC, following the proposal of the central leading group of the Chinese Communist Party (CCP) on January 23, 2018, recommended the establishment of the China International Commercial Court [国际商事法庭] (CICC).³ Later on, the SPC launched two international commercial courts collectively called CICC on June 29, 2018 to provide judicial support for the BRI. These courts are respectively based in the southern Chinese city Shenzhen and the northern city Xi'an.⁴

As far as the establishment of CICC is concerned, it had been perceived as an essential instrument of a legal system with respect to the BRI to safeguard developmental interests, internal security, and sovereignty, given China's unyielding commitment to these factors. In a broader spectrum of global legal history, and specifically in the context of the PRC, CICC is a unique and precious institution with respect to commercial dispute resolution with innovative legal mechanism,

¹ Alan James, *The Practice of Sovereign Statehood in Contemporary International Society*, 47(3) POL. STUD. 457-73 (1999).

² Tai-Wei Lim, *Introduction*, in CHINA'S ONE BELT ONE ROAD INITIATIVE 3 (Tai-Wei Lim eds., 2016).

³ Stephan Wilske, *International Commercial Courts and Arbitration - Alternatives, Substitutes or Trojan Horse?*, 11(2) CONTEMP. ASIA ARB. J. 153-92 (2018).

⁴ Zhengxin Huo & Man Yip, *Comparing the International Commercial Courts of China with the Singapore International Commercial Court*, 68(4) INT'L & COMP. L. Q. 903-42 (2019).

particularly at the international level.

The establishment of CICC is a ground-breaking innovation of the judicial system in China, potentially exerting a significant influence on resolving cross-border disputes arising from international commercial transactions related to the BRI. Since their foundation, these courts have administered more than a dozens of cases. The SPC has issued several judicial documents to guide the operation of CICC, such as the Provisions on Several Issues regarding the Establishment of CICC,⁵ the Procedural Rules for CICC, and Working Rules of the International Commercial Expert Committee.⁶ In December 2020, the first international commercial court in China was established in Suzhou, with Supreme Court's endorsement, to adjudicate foreign-related disputes in this city.⁷

Against this backdrop, this research aims to highlight all the existing structural and procedural flaws in the process of judicial advocacy, means of communication, impartiality, role and appointment of judges. Likewise, it also analyzes the concerns of all participant member countries regarding the establishment of CICC. Also, it focuses on the significance of CICC with respect to the rising financial dispute among the member states in BRI. This paper is divided into five parts including Introduction and Conclusion. The first part of the paper is concerned with the introduction. The second part is related to the brief features of CICC. Likewise, the third part focuses on China's traditional World Order and the fourth part is going to analyze the perspective of China's World Order in relation to CICC. The final part is concerned with the conclusion.

II. Overview of CICC

CICC Provisions, which consist of 19 Articles, address various aspects including the extent of CICC's jurisdiction, selection of judges, ascertainment of foreign law, collection of overseas-generated evidence, "one-stop" diversified solution for international commercial disputes, formation of international commercial expert

⁵ Supreme People's Court, *Provisions of the Supreme People's Court on Several Issues Regarding Hearing Futures Dispute Cases*, 43(4) CHINESE L. & GOV'T 80-90 (2010).

⁶ Lance Ang, *International Commercial Courts and The Interplay Between Realism and Institutionalism - A Look at China and Singapore* (NUS Centre for Asian Legal Studies Working Paper 19/10), at 12, <https://law.nus.edu.sg/cals/wp-content/uploads/sites/4/2020/05/CALS-WPS-1910.pdf>.

⁷ *Id.*

committee, language, and the formality of document filing, among other matters.⁸ CICC has several characteristics that distinguish it from other PRC courts.

A. Structure and Mechanism

According to its official site of CICC, 14 judges from the SPC have been nominated in CICC.⁹ However, according to Huo and Yip, CICC currently has 15 judges.¹⁰ Selections are usually made from among the most senior judges of the judicial system of the PRC. Although SPC judges are commonly appointed in CICC, Article 4 of the judicial interpretation pertaining to CICC also allots opportunities for judges from the lower hierarchy of the PRC's Judiciary.¹¹

Article 4 of the judicial interpretation on CICC describes the procedure and mechanism for the appointment of judges to CICC. The judges appointed to CICC must be Chinese nationals.¹² Article 4 sheds light on the qualifications required for judges to be appointed to CICC.¹³ The judicial interpretation on CICC emphasizes that court proceedings should primarily be in Chinese.¹⁴ However, if the disputing parties agree, then evidence and other concerned procedural documentation can be presented in English without requiring translation into Chinese.¹⁵ To assist CICC with legal procedures and interpretation of the complex network of laws concerning international trade and investment, the SPC has established an expert committee composed of a total of 32 members including foreign individuals permitted.¹⁶ This committee mainly provides suggestions and comments to CICC.¹⁷ Technically, the

⁸ Jingzhou Tao & Mariana Zhong, *The China International Commercial Court (CICC): A New Chapter for Resolving International Commercial Disputes in China*, 13(2) DISP. RESOL. INT'L 153 (2019).

⁹ Sheng Zhang, *China's International Commercial Court: Background, Obstacles and the Road Ahead*, 11(1) J. INT'L DISP. SETTLEMENT 158 (2020).

¹⁰ Wei Cai & Andrew Godwin, *Challenges and Opportunities for the China International Commercial Court*, 68(4) INT'L & COMP. L. Q. 875 (2019).

¹¹ *Id.*

¹² Judges Law of the People's Republic of China (2017 Amendment), art. 9.

¹³ Sundaresh Menon, *International Commercial Courts: Towards A Transnational System of Dispute Resolution*, Opening Lecture for the DIFC Courts Lecture Series 2015, at 9-10, https://www.judiciary.gov.sg/docs/default-source/news-docs/chief-justice_keynote-opening-lecture-address-delivered-at-the-international-commercial-courtsdific-courts-lecture-series-2015-international-commercial-courts-towards-a-transnational-system-of-dispute-resolution.pdf.

¹⁴ China International Commercial Court Provisions, art. 9.

¹⁵ *Id.*

¹⁶ CICC, *The Decision on Appointment of the First Group of Members for the International Commercial Expert Committee* (2018), <https://cicc.court.gov.cn/html/1/219/235/245/index.html>.

¹⁷ The Supreme People's Court, *Working Rules of the International Commercial Expert Committee of the Supreme People's Court, the Supreme People's Court (For Trial Implementation)*, Fabanfa [2018] No. 14, art. 3, <https://cicc.court.gov.cn/html/1/219/208/210/1146.html>.

participation of foreign lawyers in court procedures is restricted, as the judicial interpretation on CICC does not formally accommodate them. As such, foreign lawyers cannot directly engage in the litigation and court procedures, whereas Chinese lawyers can.¹⁸

According to Article 8, the judicial interpretation on CICC has made room for foreign laws for ascertainment in the litigation and procedure at CICC in various ways.¹⁹ Article 5 of the judicial interpretation on CICC states that for every commercial dispute, a panel of at least three judges must be constituted for hearing and judgment.²⁰ At CICC, judgments must be made through majority decision of the sitting panel of judges.²¹

CICC is self-evident in the entire process of proceeding and litigations. The judicial interpretation on CICC has made the Court an integral part of the SPC. Therefore, the judgments of CICC are issued by the SPC.²² The judicial interpretation on CICC does not specify any rules and regulations regarding the legalization and notarization of evidence in the procedure and mechanism of CICC. Evidence gathering, oral testimony, and hearings can be conducted remotely using telecommunication and other technological tools.²³

Article 11 of the judicial interpretation on CICC explicitly states that when the expert committee, or other mediation and arbitration institutions, provide assistance to the CICC in handling cases, the SPC must provide the disputing parties with the option of choosing mediation, arbitration, or litigation to reach a conclusive resolution for the dispute. In this regard, Article 12 of the judicial interpretation on CICC emphasizes the acceptance of the dispute within seven days.²⁴

B. Jurisdiction and Judgement of CICC

The jurisdiction of CICC is considerably limited in terms of its nature and scope. It primarily pertains to countries associated with the BRI, and its scope is further confined largely to financial, commercial, and civil matters. CICC is designed only to adjudicate commercial and civil challenges or disputes that may arise among BRI

¹⁸ Xiangzhuang Sun, *A Chinese Approach to International Commercial Dispute Resolution: The China International Commercial Court*, 8(1) CHINESE J. COMP. L. 45-54 (2020).

¹⁹ CICC, Foreign Law Ascertainment, <https://cicc.court.gov.cn/html/1/219/206/207/index.html>.

²⁰ Huo & Yip, *supra* note 4.

²¹ Hansel Pham, *The China International Commercial Court*, White & Case (Mar. 4, 2021), <https://www.whitecase.com/insight-alert/china-international-commercial-court>.

²² Huo & Yip, *supra* note 4.

²³ China International Commercial Court Provisions, art. 9.

²⁴ Judicial interpretation on CICC, art. 12.

participants. Specifically, Article 2(1) and (4) of the judicial interpretation of CICC define its jurisdiction; it can decide on any dispute worth RMB 300 million or more between parties, provided that the concerned countries have given their consent in writing.²⁵ The provisions of the aforementioned Article 2(1) and (4) allow CICC to determine the alternative measures for the establishment of its jurisdiction. Likewise, the judicial interpretation on CICC has made the Court a constituent body of the SPC for the purpose of dispensation of justice and resolution of commercial and civil matters. In this regard, the judicial interpretation on CICC has empowered it to exercise its jurisdiction over the following main five types of issue and related cases:²⁶

1. When the amount of the case is worth RMB 300 million;
2. When the High People's Court consider any case to be tried at CICC but permission to be taken from SPC for transferring the case to CICC;
3. When any case is of national significance for China;
4. When any case seeks preservation of arbitrary measures through application within CICC (i.e., one-stop shop);²⁷ and
5. When the SPC considers any case apposite to be heard by CICC.

The jurisdiction of the SPC was extended to commercial cases, with the establishment of CICC in 2018.²⁸ The SPC has a jurisdiction to hear international commercial cases through CICC, but limitations to this capacity have been formally outlined in the judicial interpretation on CICC. CICC is granted authoritative jurisdiction over all cases concerning international commercial disputes, in which the conflicting parties mutually agree to forward their case to CICC through a written agreement. CICC has been empowered through judicial interpretation on CICC to hear and adjudicate cases within a determined timeframe. However, the judicial interpretation on CICC fails to address the enforcement and imposition of CICC judgements. It is one of the most important issue that needs ample discussion to transform CICC into an affective international dispute resolution body. Without the determination of proper mechanism and method regarding enforcement and implementation of the judgements of CICC, the institution seems more interest-driven rather than focusing primarily on dispute resolution.²⁹

²⁵ Julien Chaisse & Xu Qian, *Conservative Innovation: The Ambiguities of the China International Commercial Court*, 115 AM. J. INT'L L. UNBOUND 17-21 (2021).

²⁶ Judicial interpretation on CICC, art. 1.

²⁷ CICC, Chinese International Commercial Court [中国国际商事法庭], <https://cicc.court.gov.cn/html/1/219/199/201/782.html>.

²⁸ Mei Gechlik, 3 CHINA L. CONNECT (2018), at 40-7, <https://law.stanford.edu/publications/china-law-connect-issue-3>.

²⁹ Huo & Yip, *supra* note 4.

Internationally, China is a signatory of The Hague Convention on Choice of Court Agreement 2005 but has yet to fully approve the Convention.³⁰ The process of enforcement and implementation of court decrees and judgements basically needs bilateral cooperation and assistance, which is only possible via international judicial treaties in commercial and civil matters with reciprocity. Moreover, in this regard, Article 15 of the judicial interpretation on CICC has laid down the principle that all the judgments, decrees, and orders of CICC for all related parties.³¹ Due to its lack of appellate jurisdiction, the judgments, decrees, and orders of CICC are deemed final.

C. Critical Evaluation

Thus far, almost 140 countries signed the Memorandum of Understanding with China for BRI projects, about 65 countries of which will directly encompass the two BRI routes.³² All the participant states have their distinct judicial systems. Despite the numerous differences among these judicial systems, they all emphasize the judicial systems where enough evidence is available. At present, the official premises of CICC are located in Shenzhen and Xian,³³ which may affect the transparency of the judicial system of CICC.³⁴

D. Remedial Measures

Due to its hasty establishment without proper research into its advantages and disadvantages, there remains room for improvement. In this regard, some important and immediate steps should be considered to address these concerns:

1. The judges need to be selected and appointed through an impartial and independent appointing commission or authority. Likewise, they must be from different countries and regions based on their expertise in relevant specific laws.
2. The number of judges and courts must be increased to effectively resolve

³⁰ Convention of 30 June 2005 on Choice of Court Agreements, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>.

³¹ Judicial Interpretation on CICC, art. 15.

³² Green Finance & Development Center, Countries of the Belt and Road Initiative (BRI), <https://greenfdc.org/countries-of-the-belt-and-road-initiative-bri>.

³³ Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, Court Explanation No 11 of 2018, promulgated by the Supreme People's Court, 27 June 2018, effective as on 1 July 2018. *See also* CICC, A Brief Introduction of China International Commercial Court, <https://cicc.court.gov.cn/html/1/219/193/195/index.html>.

³⁴ For details on the critical point of CICC, *see* CHENG BIAN, NATIONAL SECURITY REVIEW OF FOREIGN INVESTMENT: A COMPARATIVE LEGAL ANALYSIS OF CHINA, THE UNITED STATES AND THE EUROPEAN UNION 272 (2020).

- disputes within a reasonable timeframe.³⁵
3. Given the international nature of disputes under BRI, experienced and impartial judges from diverse states and regions are essential for effective resolution.³⁶
 4. The expert committee needs to be more than an advising council.
 5. With respect to BRI participants, the litigation process must be permitted in more than one official language.
 6. Lawyers for prosecuting a case need proficiency in the relevant subject matter and concerned laws, not merely expertise in the Chinese language.
 7. The strict jurisdictional requirements and traditional institutional design of CICC must be harmonized with the notions of BRI participants.³⁷
 8. Appellate jurisdiction is needed to maintain its true essence of justice.
 9. To cater to cases valued at less than RMB 300 million, CICC should develop an appropriate mechanism.³⁸

III. CICC and China's World Order

A. Overview

BRI is a large-scale initiative that aims to build the infrastructure required for a commercial network connecting China with Asia, Europe, and Africa and to boast mutual development. It was designed as a contemporary counterpart of the historic Silk Road. If the BRI project went as planned, then it would cost up to USD 6 trillion and provide coverage for 70% of the world's population. In the other side, however, it is believed that BRI would threaten the international order, despite China's portrayal of the initiative as a purely economic enterprise. Cau claimed that "the initiative's launch has sparked mixed feelings, ranging from enthusiasm to outright suspicion about China's true intentions and the ramifications of such an initiative, should it be successful, could have for the delicate equilibriums that characterize the current international order."³⁹ These worries were made worse by the addition of multiple new BRI-supporting organizations, such as the Silk Road Fund, the New Development Bank, and the Asian Infrastructure Investment Bank (AIIB). In particular, the founding

³⁵ Huo & Yip, *supra* note 4.

³⁶ Magdalena Łagiewsk, *International Dispute Resolution of BRI-Related Cases: Changes and Challenges*, J. CONTEMP. CHINA 1-14 (2022).

³⁷ Weixia Gu, *Hybrid Dispute Resolution Beyond the Belt and Road: Toward a New Design of Chinese Arb-Med(-Arb) and Its Global Implications*, 29 WASH. INT'L L. J. 117 (2019).

³⁸ Huo & Yip, *supra* note 4.

³⁹ Enrico Cau, *Geopolitical Implications of the Belt and Road Initiative: The Backbone for a New World Order*, 4(1) CONTEMP. CHINESE POL. ECON. & STRATEGIC RELATIONS: INT'L J. 39 (2018).

of the AIIB has generated considerable controversy because many people now see it as a potential rival to the IMF.⁴⁰

Norton remarked that the usual BRI project will require two sets of contractual arrangement: (1) “performance agreements to construct the railroad, port, industrial project, and underlying financing agreements;” and (2) underlying financing agreements in “China’s Belt and Road Initiative: Challenges for Arbitration in Asia.”⁴¹ Contracts can thus be required to cover infrastructure maintenance after the construction is finished. Furthermore, these initiatives will take several years to accomplish and necessitate large investments of up to billions of US dollars.⁴²

Various categories of disputants involved in international commercial disputes from the BRI can be further classified as follows. First, one state defends the interests of its investors and opposes another on the grounds of international law. Norton says that these allegations are unlikely to be true in the case of BRI, because China will probably want to resolve these disputes diplomatically.⁴³ Second, private parties contend that the host government’s regulatory measures have violated their economic interests (investor-state conflict). The resolution of these disputes is usually determined by bilateral investment treaties, which may specify whether these disputes should be resolved through arbitration.⁴⁴ Finally, some conflicts involve private parties from various countries. Parties involved in these international economic conflicts have three options: litigation, mediation, and arbitration, with the latter two constituting alternative dispute resolutions. China has made a specific effort to position its international commercial courts as a one-stop shop for dispute resolution with the introduction of CICC. In this respect, CICC continues to follow previous international commercial courts’ precedents. It joins the London Commercial International Court (founded in 1895), Singapore International Commercial Court (founded in 2015), Abu Dhabi Global Market Courts (founded in 2016), and Dubai International Financial Center courts (established 2007).⁴⁵ Other countries have also lately declared the creation of their own ICCs, each of which is the result of a particular country’s geopolitical, legal, and economic aspirations.⁴⁶ Through the prism of CICC, this article

⁴⁰ *Id.*

⁴¹ Patrick Norton, *China’s Belt and Road Initiative: Challenges for Arbitration in Asia*, 13(2) U. PA. ASIAN L. REV. 84-5 (2018).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Ik Wei Chong, *China Establishes International Commercial Courts to Resolve International Commercial Disputes*, Clyde & Co (Aug. 24, 2018), <http://forwarderlaw.com/2018/09/19/china-establishes-international-commercial-courts>.

⁴⁶ Weixia Gu & Jacky Tam, *The Global Rise of International Commercial Courts: Typology and Power Dynamics*, 22(2)

aims to better understand Chinese international aspirations.

The establishment of CICC comes when China appears to be moving away from its long-held portrayal as a “developing nation” and becoming increasingly assertive in its participation on the global arena. Furthermore, the designation of CICC as a crucial part of a significant Chinese trade program shows that the establishment of CICC will be crucial in expanding China’s global engagement. A few cases had been accepted by CICC at the end of December 2018. Although CICC has not presided over many cases, insights can be derived about China’s ambitions for the current international system by examining how these courts are organized and contrasting them with other international commercial tribunals.⁴⁷

Mollengarden describes CICC as “a product of continuity as well as change” and represents a movement of dispute resolution standards from China outward, as well as from the international arena inward into China.⁴⁸ The discussion regarding China’s place in relation to the global order has become crucial at a time when China appears to redefine its international role and of transformation brought about by a mix of internal and external political and economic reasons. In this regard, many analysts now see the BRI as a crucial element of China’s rising assertiveness internationally. For China to successfully execute BRI, CICC’s formation has been deemed crucial. As a result, CICC’s launch will shed light on China’s objectives toward the current global order.

B. New Chinese World Order

Before delving into Chinese attitudes toward new global governance, it is essential to initially define what “world order” refers to and comprehend how it functions. In addition, the different world systems that may currently govern states should be identified. Tang defined “order” as “the degree of predictability (or regularity) of what is happening within a social system, presumably because agents’ behavior, social interactions, and social outcomes within the social system have all fallen under some form of regulation.⁴⁹ In the same way, the perception of World Order follows the same principles in this regard.” He also identified four ways to assess the strength of a world order: its extent, its relative concentration or distribution of power, its

CHI. J. INT’L L. 443 (2021).

⁴⁷ Sun, *supra* note 18, at 47.

⁴⁸ Zachary Mollengarden, “One-Stop” Dispute Resolution on the Belt and Road: Toward an International Commercial Court with Chinese Characteristics, 36(1) UCLA PAC. BASIN L. J. 65 (2019).

⁴⁹ Shiping Tang, *China and the Future International Order(s)*, 32(1) ETHICS & INT’L AFF. 31-43 (2018).

institutionalization level, and its internalization level.⁵⁰

In this regard, the majority of academics describe the current international order as a combination of the liberal world order and Westphalian ideas of state sovereignty.⁵¹ The Peace of Westphalia was signed in 1648, ushering in the 17th century and the Westphalian system. However, it was invented by Leo Gross, a renowned American international lawyer, in a 1948 essay published in the *American Journal of International Law*.⁵² In this vein, “the equality of states; state sovereignty based on exclusive territorial jurisdiction; the principle of non-intervention; and state consent as the sole acceptable source of international legal obligation” are some of the main tenants of the Westphalian system.⁵³ After World War II, the US assumed leadership of the liberal world order. Despite being contested by the Soviet Union during the Cold War, the liberal order’s position in world affairs only grew once the Berlin Wall fell in 1989.⁵⁴

Although its relationship with the liberal economic model is still unclear, China has arguably rejected all liberal political models. Some academics contend that the liberal world order is only liberal from an economic perspective. According to Tang, the current international order is not liberal because it was “forced by winners of World War II and the Cold War,” and a liberal political order only exists when “all subjects voluntarily consent to it.”⁵⁵ As a result, the question of whether a politically liberal world order even exists is up for debate.

Commitment to free trade, multilateralism, and relations based on rules are essential components of a liberal economic world order. Neoliberalism, specifically as defined by the Washington Consensus, which gives a number of guiding principles for the economic activity of developing nations, was incorporated into liberalism at the fall of the Soviet Union.⁵⁶ Institutions such as the WTO and the GATT, which date from the conclusion of the Cold War and the post-World War II era, respectively,

⁵⁰ *Id.*

⁵¹ Fei-Ling Wang, *From Tianxia to Westphalia: The Evolving Chinese Conception of Sovereignty and World Order, in AMERICA, CHINA, AND THE STRUGGLE FOR WORLD ORDER* 45-50 (G. Ikenberry ed., 2015); Hans Kundnani, *What is the Liberal International Order?*, German Marshall Fund of the United States (May 3, 2017), <https://www.gmfus.org/news/what-liberal-international-order>.

⁵² Leo Gross, *The Peace of Westphalia, 1648–1948*, 42(1) *AM. J. INT’L L.* 20-41 (1948). *See also* Detlev Vagts, *Leo Gross (1903-1990)*, 85(1) *AM. J. INT’L L.* 149-50 (1991).

⁵³ Rainer Grote, *Westphalian System, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (Rüdiger Wolfrum ed., 2012).

⁵⁴ Kundnani, *supra* note 51.

⁵⁵ Tang, *supra* note 49, at 32.

⁵⁶ SiTian Zhang, *A Study of Chinese Intentions Towards World Order through the China International Commercial Court 11* (Undergraduate Thesis, Princeton School of Public and International Affairs, 2019), <https://dataspace.princeton.edu/handle/88435/dsp01n870zt66b?mode=full>.

regulate the economic ties between members of the liberal order. The WTO also presented a liberal paradigm of dispute resolution.⁵⁷ Essentially, the International Court for Dispute Resolution (INCODIR) for Trade functions as a supreme court for international trade, specifically tasked with resolving disputes that arise between its member countries. China must decide whether to incorporate, accept, or reject each of these components when determining its position in relation to the liberal international system. Where China stands on the current order can be determined by examining how much the institutions it introduces to the international community (such as CICC) either embrace or clash with the concepts. From this point forward, any reference to the world order will pertain to the fusion of the Westphalian political system and the post-World War II liberal economic order.

C. Range of Potential Chinese Attitudes towards International Order

Hu outlined two types of potential change in the nature of the international order: changes within an order and changes in the type of order.⁵⁸ This finding allows us the extrapolation of two dimensions - a country's position in regard to the international order as a whole and its location within it - to any country's interaction with the order. This section presents two frameworks, each of which covers a different aspect of China's potential objectives about the global system.

Wang claimed that China must decide between (1) further absorption into the post-Cold War world order; (2) active pursuit of the US's replacement as the new global leader while maintaining the status quo; and (3) leveraging its new power to create a new order.⁵⁹ Different from Wang, Tang identified several pathways for change, without supposing that China would seek to alter the current global order. It can first be recognized as a revolutionary state that causes the movement to entirely replace the existing paradigm. The other two positions are predicated on the idea that, despite China's consensual entry into the current liberal order, its elites are not yet wholly content with the status quo and want to see the order continue to evolve. As a result, the second option is the middle position of modifying by leading, where China takes the initiative to push on with what it sees as essential reforms. Particularly, Tang anticipated China to change by taking the lead and exporting China's model. Lastly,

⁵⁷ ERNST-ULRICH PETERSMANN, *THE GATT/WTO DISPUTE SETTLEMENT SYSTEM: INTERNATIONAL LAW, INTERNATIONAL ORGANIZATIONS AND DISPUTE SETTLEMENT* xiv (1997).

⁵⁸ Weixing Hu, *China as a Listian Trading State: Interest, Power, and Economic Ideology, in AMERICA, CHINA, AND THE STRUGGLE FOR WORLD ORDER* 236 (G. Ikenberry eds., 2015).

⁵⁹ Wang, *supra* note 51, at 61.

China may decide to transform the system by cooperating with others, forfeiting a leadership position, and opting to collaborate equally with others.⁶⁰

Wang and Tang’s frameworks share many structural similarities, even though they seem to focus on two separate but inter-connected components of the current international environment. When considering the potential degree of disruption, “further assimilation” can be generally related to “replacing the United States,” “modifying by leading,” and “forging a new world order” to “identifying as a revolutionary state.” The two frameworks are combined, and the result is a thorough knowledge of China’s existing alternatives. China has the option of actively challenging the existing international order in terms of one or both of its components (i.e., Westphalian and economically liberal), changing one or both of its components, or further integrating into the system as it is. If China decides for integration or modification, it will then have the choice of choosing to fight the US for control of the international order.

D. Historical Evolution of Chinese Approaches towards International Order

China’s self-perception in relation to the world has historically been complex and ever-changing. Numerous past viewpoints continue to influence China’s present interactions with the international system. In his introduction to “America, China, and the Struggle for World Order,” Ikenberry noted that Chinese preferences and policies for the global order result from a confluence of power, interests, and “basket three variables,” which are made up of “national traditions, ideas, and historical legacies.”⁶¹ This section will examine the development of China’s understanding of the international order from imperial to modern periods while considering these aspects.

The adoption of a *tianxia* (天下)⁶² worldview by imperial China dates back to the period of national unity during the Qin and Han dynasties. According to the *tianxia* system, everyone must submit to a single ruler “who offers stability and legitimacy for political order and administration for everyone.”⁶³ As the Chinese Empire only interacted with its closest neighbors, a *tianxia* perspective of the world corresponded

⁶⁰ Tang, *supra* note 49.

⁶¹ G. Ikenberry, Introduction, *in in AMERICA, CHINA, AND THE STRUGGLE FOR WORLD ORDER* 2-3 (G. Ikenberry eds., 2015).

⁶² *Tianxia*, literally meaning “under heaven,” is a Chinese term for a historical Chinese cultural concept that denotes either the entire geographical world or the metaphysical realm of mortals, and later became associated with political sovereignty.

⁶³ Wang, *supra* note 51, at 48.

to a regionalized approach to foreign policy.⁶⁴ However, a series of military losses to Western forces in the 19th century shattered China's traditional view of global order. Entering a period of humiliation, China found itself compelled to acknowledge Western supremacy. Chinese belief in *tianxia*'s viability was broken by the experiences, which also drove them to give up a strictly regionalist view of the international order. China did not manage to regain its unity until the Communist victory in 1949. Since then, China has remained hostile to the liberal world order especially for the majority of the Cold War era due to its past experiences as well as its inherent ideological conflict with the capitalist, American-led system. China was almost an insular nation under Mao's rule, with limited involvement in the international community.⁶⁵ In order to unite the world under the Communist ideology, China, according to Wang, continued to exhibit *tianxia* tendencies, although Tang classified China as a revolutionary state because of the same traits.⁶⁶

China "opened up" to the liberal and Westphalian systems under Deng's direction. Following 1978, China portrayed itself as a "growing nation" undergoing a "peaceful rise" for the next three decades. In addition, it sought inclusion with membership in already-existing international organizations, most prominently the WTO.⁶⁷ China is pursuing more integration into the post-Cold War world order and possibly even changing the status quo by cooperating with others. Thanks to its integration into the global economy, China has experienced remarkable prosperity growing its influence over liberal international organizations, particularly in the Asia-Pacific region.

The Great Recession of 2008 solidified China's newly found status in the world. It finally began leading the international community in face of the global financial crisis.⁶⁸ In addition, President Donald Trump's "America First" position pushed the US out of the only superpower. China became increasingly assertive on the global scene as a result of this confluence of circumstances. The preceding "peaceful rising" narrative was superseded in CCP discourses by calls for a "great rejuvenation of the Chinese nation," echoing a Qin-Han Sino-centric worldview.⁶⁹ China's objectives toward the global order are in a crucial phase of change. The three major historical

⁶⁴ Avery Goldstein, *A Rising China's Growing Presence: The Challenges of Global Engagement*, in CHINA'S GLOBAL ENGAGEMENT: COOPERATION, COMPETITION, AND INFLUENCE IN THE 21ST CENTURY 1-33 (Jacques Delisle & Avery Goldstein eds., 2017).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Hu, *supra* note 58.

⁶⁹ Maria Carrai, *Chinese Political Nostalgia and Xi Jinping's Dream of Great Rejuvenation*, 18(1) INT'L J. ASIAN STUD. 7-25 (2021).

events - the century of humiliation, the 2008 financial crisis, and the Qin-Han understanding of *tianxia* - will probably all continue to influence the development of the attitudes in question. Scholars in China and the West disagree on how such evolution might specifically manifest itself and how best to balance the many aspects mentioned above.⁷⁰

IV. CICC and China's Visions for World Order

The CICC is an institution that has to deal with international commercial disputes under the Chinese municipal law under the SPC. Only the judicial interpretation on CICC defines and determines the scope, structure, and function of CICC. It has been specifically established for resolving disputes that might rise in the BRI, but BRI participants were not considered in the process of its establishment. Likewise, China has taken a dominant position in the structural and functional characteristics of CICC. As mentioned above, for instance, submission of evidence has been confined only to be submitted in Chinese and English languages, but the proceedings of the concerned case will be conducted in Chinese.⁷¹ In this case, misunderstanding, misreading, misrepresentation, and misleading might affect the litigation process of the concerned case. Also, the restriction of foreign lawyers and permission to aboriginal lawyers foresee the argument of proficiency in the Chinese language.⁷²

Similarly, only native Chinese who have expertise in commercial laws and dealings can be appointed as judges to CICC. These factors could potentially disrupt internationally recognized judicial standards, branding it as a distinct Chinese judicial model. Although the judicial interpretation on CICC declares CICC as an international dispute resolution body, it seems to be a subsidiary body of the Chinese judicial system due to its lack of internationalization attributes. Further, the expert committee essentially functions as a high-end advisory council. Likewise, the limited openness for membership to the expert committee for foreigners is objectionable,

⁷⁰ ZHENG WANG, NEVER FORGET NATIONAL HUMILIATION: HISTORICAL MEMORY IN CHINESE POLITICS AND FOREIGN RELATIONS 640-42 (2012); Nadège Rolland, China's Vision for a New World Order: Implications for the United States, National Bureau of Asian Research (Oct. 2, 2020), <https://www.nbr.org/publication/chinas-vision-for-a-new-world-order-implications-for-the-united-states>; Nadège Rolland, *China's Vision for a New World Order* (National Bureau of Asian Research Special Report no. 83, 2020), https://www.nbr.org/wp-content/uploads/pdfs/publications/sr83_chinasvision_jan2020.pdf.

⁷¹ China International Commercial Court Provisions, art. 9.

⁷² *Id.*

which may negatively affect procedural matters.⁷³

The structural and functional characteristics of CICC, as glimpsed on the judicial interpretation, seem to be primarily oriented toward Chinese interests. China seems to attempt to protect its financial interest through the propagation of international commercial dispute resolution mechanisms,⁷⁴ because BRI participants have thoroughly been ignored in the establishment process of CICC. In addition, the judicial interpretation on CICC has given preference to Chinese conceptions and ideas with respect to dispute resolution. In the democratic political arena, ignoring BRI participants in the structural and functional procedure of CICC raises numerous questions over the judicial setup concerning international commercial disputes.⁷⁵

China's current stance regarding global orders is interpreted in numerous ways in the literature. Scholars describe China's aims in the most extreme terms, as those of a revolutionary state or a state attempting to create a new world order are at the extreme end of the spectrum. Zhao, Hu, and Maçes reported the basic incompatibilities between Chinese and Western perspectives of the global order.⁷⁶ Conversely, majority of academicians have taken more moderate stances, contending that although China is still not entirely content with the current system, they simply want some form of change to its place partly or entirely, without completely disrupting the status quo.⁷⁷ By rejecting the most extreme viewpoints within their respective frameworks, Wang and Tang, who advocated these ideas, do so for themselves.

Many believe that the PRC will inevitably challenge the Westphalian system due to China's historical experiences and customs. The conviction that a *tianxia* system can be "a viable and superior alternative to the Westphalian world order and a better way of life" was noted by Wang, as well as the rise of interest in traditional Chinese conceptions of *tianxia* among Chinese elites.⁷⁸ According to Zhao, *tianxiaism* encourages "oneness, all-inclusiveness, unity, centrality, and totality."⁷⁹ Moreover, *tianxiaism* advocates for the creation of "a singular sociopolitical system, thought-system, as well as a set of values and standards," through which its adherents "may

⁷³ Huo & Yip, *supra* note 4.

⁷⁴ Ang, *supra* note 6.

⁷⁵ Mark Feldman, "One-Stop" Commercial Dispute Resolution Services: Implications for International Investment Law, in HANDBOOK OF INTERNATIONAL INVESTMENT LAW AND POLICY 1-15 (Julien Chaisse eds., 2020).

⁷⁶ While Hu does not believe in the most extreme of the options, he describes the Chinese model as an alternative to the Washington Consensus.

⁷⁷ Wang, *supra* note 51.

⁷⁸ *Id.*

⁷⁹ ZHAO TINGYANG, ALL UNDER HEAVEN: THE TIANXIA SYSTEM FOR A POSSIBLE WORLD ORDER (2021).

maintain order, harmony, and maximize world interest and world rights.”⁸⁰ A few populists have started openly calling for unrestrained and limitless sovereign power for the CCP-PRC state, in the name of revitalizing “Chinese civilization” on the basis of this presumption.⁸¹ The *tianxia* system is fundamentally antithetical to the Westphalian system; those who share a *tianxia* worldview regard to be “conflict-filled and frightening” based on the idea of total unity of authority, governance, and moral principles.⁸² As a result, those who regard the *tianxia* worldview as relevant and wielding massive influence over contemporary Chinese foreign policy would expect China to challenge and seek to replace the Westphalian system.⁸³

Some believe that China is willing to export a Chinese model, which they believe may conflict with the current international economic system when it comes to relations between China and the liberal order. According to Hu, the Chinese model is primarily a Listian economic model⁸⁴ and is thus fundamentally opposed to a liberal economic order.⁸⁵ However, Maçes described the Chinese vision of an economic world order as one in which countries are linked by more than their mutual commercial interests. It is also one where “strict hierarchies of access and information” and “clear plans and an arcane practice where deals are agreed upon, frequently without written evidence” are used to conduct international trade.⁸⁶ He asserted that the BRI reflects these attributes and makes them known to the rest of the world, and he predicts that the influence of Chinese worldviews will probably have a substantial influence on the future global economic system.⁸⁷ If Maçes’ interpretation of Chinese ideas is correct, China should then be seen as a threat not only to the US’s place within the global order but to the global order itself.

According to Tang, China’s choice to identify as a “revolutionary state” is outmoded and only really had widespread support under the presidency of Mao Zedong.⁸⁸ Instead, Tang labeled China as a “staunch supporter of the Westphalian order” who places utmost importance on national sovereignty. He also highlighted

⁸⁰ Wang, *supra* note 51.

⁸¹ Hu, *supra* note 58.

⁸² Wang, *supra* note 51.

⁸³ *Id.*

⁸⁴ According to Hu, a Listian economic model is distinguished from a liberal one in six ways: (1) automatic growth versus deliberate development, (2) consumers versus producers, (3) process versus result, (4) individuals versus the nation, (5) businesses as peace versus business as war, and (6) morality versus power.

⁸⁵ Hu, *supra* note 58.

⁸⁶ Bruno Maçes, *A Preview of Your Chinese Future*, FOREIGN POL’Y (Dec. 7, 2018), <https://foreignpolicy.com/2018/12/07/a-preview-of-your-chinese-future>.

⁸⁷ *Id.*

⁸⁸ Tang, *supra* note 49, at 34.

the realistic challenges China faces in altering the international order, noting that given its limited non-economic strength, any Chinese attempt to change the system will necessitate collaboration with other members of the system and the formation of allies in their endeavor.⁸⁹ He surmised that China “sees no need for major reform, but just piecemeal modification of the present order” based on these facts.⁹⁰ Wang added that China “does not support a systematic overhaul of the world order” and that “calculated expediency rather than grand plan arguably describes Beijing’s foreign policy the best.”⁹¹ Accordingly, although China’s contentious relationship with Western institutions may inform its desire to shape the system further, it has yet to demonstrate an intention to change the system itself.⁹²

Others also disagree with China’s desire and capacity to undermine the international system. According to Christensen’s analysis, China lacks the capacity and the motivation to challenge the liberal world order.⁹³ In Wang’s words, “there arguably has been no larger beneficiary of the present international order than China,” he described China as a “conservative force for safeguarding the twentieth-century rules of the international order.”⁹⁴ With this foundation, Wang noted that Chinese additions to international institutions, such as the BRI, may not necessarily pose a threat to pre-existing Western institutions, but instead serve to complement them.⁹⁵ He also noted that China lacks an internal consensus on an international system, and that the US is relatively stronger than China in terms of its economy and military.⁹⁶

Hu contended that China wants to “remake but not break” the current international system notwithstanding the disparities between the Chinese conception of a perfect trading system and the current system.⁹⁷ He drew this conclusion from China’s desire to join in international organizations, such as the WTO and the G20, as well as its growing discontent with what it sees as American economic hegemony.⁹⁸ In his opinion, China may “hollow out” current international organizations from the inside, altering them to better serve the interests and requirements of poor countries.⁹⁹

⁸⁹ *Id.* at 37.

⁹⁰ *Id.* at 40.

⁹¹ Wang, *supra* note 51, at 62.

⁹² *Id.*

⁹³ THOMAS CHRISTENSEN, *THE CHINA CHALLENGE: SHAPING THE CHOICES OF A RISING POWER* 59 (2015).

⁹⁴ *Id.* at 56.

⁹⁵ Wang, *supra* note 51. *See also* CHRISTENSEN, *supra* note 93.

⁹⁶ Wang, *supra* note 51.

⁹⁷ Hu, *supra* note 58, at 235.

⁹⁸ *Id.* at 235-6.

⁹⁹ *Id.*

His position may be characterized as a challenge to American-led world order and a modification by leading.

V. Conclusion

International commercial conflicts will rise rapidly with the growth of transnational economic activities and commerce. CICC have been developed by countries worldwide as a platform to strengthen their influence in the sphere of international dispute resolution.¹⁰⁰ Consequently, China seems to be reluctant to empower and make CICC an independent dispute resolution institution. China wants to control all the strings of CICC at every aspect that might affect the impartiality and judicious attributes of the institution. If China is willing to dispense the justice in its defined parameters, then a separate institution, namely, CICC, must be established. Instead, the SPC should have been directly empowered to deal with international commercial cases. Likewise, China has not yet ratified The Hague Convention on Choice of Court Agreements mainly because it lacks the binding and enforcement force of the judgment and decisions of CICC.

Nonetheless, CICC is still at its initial stages. With the passage of time and diverse experience, the Court will enhance its capacity and profile to deal with more chronic and diverse disputing issues. CICC has a wide room for development and improvement, but impartial and rational steps are to be taken by the concerned authorities. Its jurisdiction and procedural mechanism must be determined and used to dispense justice on equal footings to all BRI participants. CICC has to take certain nominal steps with respect to equalizing the status of CICC in its structure and functions with international dispute resolving institutions. However, it has to define the limitations regarding the fixation of minimum and maximum amount to be dealt by CICC in commercial dealings. The transparency, autonomy, and independence of CICC are essential factors to be realized by all BRI participants in litigation. All BRI participants in general, and China in particular, should render their respective attention toward the reformation of CICC.

In sum, a significant amount of doubt over Chinese competence or ambition to reshuffle the global order is expressed in the literature. A lack of internal ideological agreement, China's economic success as a result of economic reform, and its influence

¹⁰⁰ Sun, *supra* note 47.

on developing world all would contribute to this. However, China seems to be displeased with the status quo. China's aspirations inside and in relation to the global order will be influenced by its tough history with the West, its distinctive ideological background, and even a realist appraisal of China's economic power.

According to Christensen, institutions can reveal important information about China's position in relation to the global order.¹⁰¹ They can show effort to either strengthen or weaken it. A good illustration of one of these organizations is CICC, which might give a fresh perspective on China's shifting goals. CICC, which was introduced as a component of BRI, would unmistakably convey a goal to increase China's regional sway and provide it the ability to influence international trade policy in the world. Presently, formal on CICC is limited. Existing opinions and knowledge about CICC primarily draw from legal blogs and public statements from various Chinese governmental entities. The only formal academic work on the issue is a piece by Mollengarden, which was published in the *Pacific Basin Law Journal*.¹⁰² Mollengarden evaluates the Court in the context of their effects on the future of Chinese commercial dispute resolution. It identified a political-economic school which implies that these policies indicate a trajectory moving from the international arena into China. Conversely, a sociological school thinks that they reflect a trajectory moving from China outward to the global arena. According to Mollengarden, CICC is a "middle path" that results from combining the two trajectories.¹⁰³

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¹⁰¹ CHRISTENSEN, *supra* note 93, at 56-7.

¹⁰² Mollengarden, *supra* note 48, at 47.

¹⁰³ *Id.*