

The Challenges Facing China's International Commercial Court System Under the "Belt and Road" Vision and China's Response

Jiaqi Li

Anhui University of Finance and Economics, Bengbu, China.

Abstract

In order to provide all-round judicial guarantee for the high-quality development of the "Belt and Road", China established the China International Commercial Court in 2018 and achieved remarkable results after six years of construction. In recent years, with the increasing number of commercial disputes related to the Belt and Road Initiative, such as international trade, international logistics and international project contracting, the construction of China's international commercial courts is faced with difficulties related to insufficient international vision, backward jurisdiction rules, lack of appeal relief channels, difficulties in cross-border recognition and enforcement of judgments, and inflexible convergence of multiple dispute resolution methods. In view of this, the China International Commercial Court should be based on an international perspective, expand its jurisdiction to improve the jurisdiction rules, implement "two final trials" to reconstruct the appeal relief system, transform "factual reciprocity" to "constructive reciprocity" to ensure the cross-border recognition and enforcement of judgments, and constantly optimize the interface mechanism of litigation, arbitration and mediation has become an important way to solve the problem. It will help build a new situation of international commercial court.

Keywords

The Belt and Road, International Commercial Court, Two cases of final appeal, Constructive reciprocity.

1. Introduction

In recent years, international commercial courts, as the key construction area of the global rule of law trial innovation, are of great importance to the construction of regional judicial service system and the improvement of national international judicial credibility. As traditional international commercial courts such as the UK and France take the lead, and new international commercial courts such as Singapore and Dubai take the lead in the innovation of global international commercial courts, China also needs to rise and build an international commercial court system with Chinese characteristics, in order to serve the construction of the "Belt and Road" and improve the international recognition of China's judiciary.

2. The origin and development of China International Commercial Court under the "Belt and Road" vision

2.1. The origin of China's international commercial court system

The International Commercial Court (also known as the International Commercial Court) is generally a new thing, which is a national or regional judicial body established in many countries in recent years to serve the specific needs of international commercial litigation[1]. Although different international commercial courts have different backgrounds and driving forces, their core purpose is to create dispute resolution institutions that are attractive to

international commercial subjects. Since the 21st century, along with the tide of globalization, international trade has been unprecedentedly prosperous, and the types and forms of international commercial disputes are also diverse. In response to the new development of international commercial disputes, most countries have adopted the international commercial court system to innovate on the basis of its original foreign-related litigation mode, such as Singapore and the United Arab Emirates. In the global layout of the international commercial court, China certainly does not want to lag behind others and sit on the sidelines. At present, the "Belt and Road" construction is in full swing around the world. Since the initiative was officially launched in 2013, by the end of 2023, 28 countries and regions along the "Belt and Road" have signed 21 free trade agreements with China, and the total import and export volume between the countries jointly building the "Belt and Road" strategic objectives has accumulated 19.1 trillion yuan. With an average annual growth rate of 6.4%; At the same time, on the level of two-way investment, China's investment with countries and regions along the "Belt and Road" exceeded 380 billion US dollars, and China's outward direct investment exceeded 240 billion US dollars[2], Ten years of remarkable results.

However, with the continuous display of the effectiveness of the initiative, commercial disputes such as international trade, international logistics and project contracting are also increasing. In order to efficiently solve various international commercial cases in the "Belt and Road" initiative, In January 2018, China reviewed and adopted the Opinions on the Establishment of an International Commercial Dispute Settlement Mechanism and Institution under the Belt and Road Initiative (hereinafter referred to as the Opinions), and in the same year, the Supreme People's Court established the First and Second International Commercial Tribunals for the implementation of the document. It also formulated the Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of an International Commercial Court (hereinafter referred to as the "Provisions") (in December 2023, the jurisdiction and the identification of foreign laws were amended). In addition, after the establishment of the International commercial Court in the Supreme People's Court of China, a number of local international commercial courts have been set up in intermediate people's courts in many places (including 12 cities such as Suzhou and Ningbo), and since then the framework of China's international commercial court system has been initially established. A country's international commercial court is closely connected with its political, economic, legal, cultural and other social environment. At present, China's international commercial court system is still in its infancy. In order to effectively provide international, diversified, efficient and convenient judicial services proposed by countries along the "Belt and Road" Initiative, China's international commercial court theory and practice research should be strengthened. It has become a research hotspot in the field of international law.

2.2. The latest development of the international commercial court system in China

The emergence of international commercial courts around the world provides more options for the settlement of international commercial disputes, but the establishment of international commercial courts in most countries is based on the model of the British commercial court, This kind of simple copying and benchmarking cannot form sufficient attraction for commercial entities, but make these international commercial courts appear the characteristics of convergence. The preparation time of China's international commercial court is relatively short, only six months in a hurry to set up, the supporting facilities are extremely limited, and it does not have a significant advantage in the international commercial dispute resolution market. However, it is worth noting that the establishment of China's international commercial court relies on the construction of the international commercial dispute settlement mechanism under the "Belt and Road" strategic development plan. In a sense, the development dilemma of China's

commercial court is embedded in the development dilemma of the "Belt and Road" dispute settlement mechanism, so the construction of China's commercial court cannot fully learn from the model of the British commercial court. It is necessary to clarify specific regional objectives, combine the local characteristics of the countries along the "Belt and Road", and explore an international commercial court with Chinese characteristics that meets the needs of specific commercial subjects.

In addition, the rich practical value will be of great significance to the perfection of China's international commercial court system. China's International Commercial Court has been established for more than five years. As of May 2023, according to the concluded cases published by the International Commercial Court of the Supreme People's Court and the data published by the Peking University Legal Information Network, a total of 20 cases have been collected and accepted by the International Commercial Court of the Supreme People's Court, of which 9 cases have been concluded. However, the reasons for jurisdiction are not the result of direct agreement between the parties, and most of them are ruled by the Supreme People's Court to be accepted by the International Commercial Court. Or there are doubts about the system of first instance and final trial or the recognition and acceptance of China International Commercial Court is not high, so appropriate improvement measures should be taken, It is of great theoretical and practical significance to alleviate the current and future development difficulties faced by China's international commercial courts, make them become international commercial dispute resolution institutions with Chinese characteristics, and improve the competitiveness of China's international commercial courts in the international legal market.

3. Challenges facing China's international commercial court system under the "Belt and Road" vision

China International Commercial Court is very important for China to build the "Belt and Road" supporting multiple dispute resolution mechanism, and it has the broad goal of serving the region and going to the world. Therefore, there will be shortcomings in the overall construction process, although it is satisfied with the region, it cannot connect with the international commercial court. Because the China International Commercial Court is younger than the traditional international commercial court, there are some key problems, such as lack of international vision, backward jurisdiction rules, lack of appeal relief channels, and difficulties in cross-border recognition and enforcement of judgments.

3.1. China's international commercial court system lacks an international perspective

The international vision is exactly the basic feature of the international commercial court to differentiate the traditional foreign-related commercial trial[3]. Unfortunately, our country's existing international commercial court system lacks this point. In the Provisions, there is no clear definition of "international", but directly cites the concept of "externality" in the existing provisions, and even simply divides the jurisdiction of the China International Commercial Court with the standard of 300 million objects. In fact, there is a fundamental difference between "internationality" and "externality". "Internationality" is placed in the perspective of globalization and includes the relations between foreign countries. There is no accurate classification and guidance. The "externality" refers to the domestic legal system and only involves the laws or other relations between the country and foreign countries. Generally speaking, the foreign-related rule of law still belongs to the category of national rule of law, although it contains international factors. The confusion of "internationality" and "externality" in China's international commercial court system leads to the lack of internationalization concept of the existing system, which directly leads to the limitation of the comprehensive competitiveness of China's international commercial court in the international community, and

the realization of the actual purpose and value-based pursuit of serving the international rule of law.

3.2. The jurisdiction rules of China's international commercial court system lag behind

Jurisdiction determines the way the court receives cases and the scope of the case, which is the core index to measure the degree of internationalization of international commercial courts. If a country lacks jurisdictional rules that are in line with the international community, other rules involved in international rules will be difficult to apply and take effect. Agreement jurisdiction, upgraded jurisdiction and enforcement jurisdiction constitute the main jurisdiction types of China International Commercial Court. Although there are some innovations in the specific rules, from a macro perspective, the specific jurisdiction rules are subject to the influence of jurisdiction, resulting in a narrow jurisdiction scope, and the free space of the parties to the dispute has been limited to a certain extent. On December 5, 2023, the Supreme People's Court issued the "Decision on Amending the Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of an International Commercial Court", amending Article 2, Paragraph 1 of the original Provisions, separating the provisions of the people's courts that "the choice of jurisdiction by agreement shall be the location of the actual connection with the dispute", in line with the international development trend of foreign-related jurisdiction rules.

Although China's international commercial court jurisdiction system has made some progress, it is still relatively backward in general. First, in terms of the identification and definition of "commercial matter", China's international commercial court prefers the definition of "commercial matter" in the Notice of the Supreme People's Court on the Implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which China is a party, which has made an enumeration overview. However, such recognition and definition have different value standards in litigation and arbitration, so they cannot be simply equated. Arbitration emphasizes private interests and future gains over public policy; Litigation represents the country's judicial sovereignty and emphasizes the priority of public interest. Therefore, equating "commercial matters" in litigation with "commercial matters" in arbitration will limit the extension of the court's jurisdiction to areas with broad social influence such as intellectual property rights and anti-monopoly, and limit the scope of the court to shape the international economic and trade order. Second, as countries expand the jurisdiction of their own courts over international commercial cases, parallel litigation and other forms of jurisdictional conflicts will arise if one country's jurisdiction is exercised without excluding the effect of another country's jurisdiction. China's legislation in this field is still blank. The establishment of a presumptive exclusivity system or the adoption of implied presumption is not adopted to circumvent this kind of situation. Therefore, the jurisdiction rules of China's commercial courts still lag behind the needs of the development of trial practice.

3.3. The China International Commercial Court lacks the means of appeal relief

The system of first instance final adjudication is the trial level model adopted by the China International Commercial Court established by the Supreme People's Court. This kind of trial level mode can reduce the litigation cost of cases and improve the trial efficiency, but the harm brought by too high trial level system can not be underestimated, which means that the parties lose the right and opportunity to appeal. Although Article 16 of the Provisions makes it clear that the parties have the opportunity to apply for a retrial if they are not satisfied with the outcome of the dispute, that is, they can apply to the Supreme Court for a retrial of the judgments, rulings and conciliation documents that have taken effect in accordance with the civil Procedure Law, the reasons and procedures for starting a retrial and an appeal are completely different. The procedure for a retrial is far more complicated than an appeal, and

the threshold for initiation is higher. As for the retrial procedure for the effective judgment, it is itself a special relief procedure, which is generally launched based on solid evidence to prove that "there is a mistake", and the appeal procedure can be filed as long as the parties are not satisfied with the judgment result and do not accept the first instance judgment. Like other international commercial courts in the world, the second instance is usually final. Such as Singapore international commercial court, the UK commercial court, the dubai international financial centre ,Astana International Financial Center Court and so on all use first trial court and the court of appeal (two-tier appellate court) mode. In addition, in contrast to the diversified dispute resolution mechanisms, the arbitration system pursuing procedural facilitation often takes "one final award" as the inevitable way to efficiently resolve disputes, while the litigation system pursuing high fairness realizes the value of justice by means of "appeal" relief. Therefore, the adoption of the first instance final trial system by the China International Commercial Court directly leads to the lack of appeal relief channels, which is equivalent to erasing the key characteristics of the different value orientations of efficiency and justice between litigation and arbitration, greatly reducing the rule space for parties seeking relief, and reducing its original institutional advantages.

3.4. It is difficult to guarantee the cross-border recognition and enforcement of Chinese commercial judgments

The cross-border enforcement of judgments is the last link of international commercial litigation and the fruit of the final victory of the law. Whether the commercial judgments of the China International Court can be successfully executed outside the region is not only a trump card to enhance the attractiveness and competitiveness of the China International Commercial Court, but also a touchstone to test the success of the China International Commercial court system. It is also a key factor in the success or failure of China's participation in global governance in the judicial field. At present, the cross-border enforcement of commercial judgments in China is mainly based on bilateral civil and commercial judicial assistance treaties and reciprocal relations, but unfortunately, these two paths cannot meet the current enforcement needs of our country, and are hampered by both domestic and international levels. First of all, China adopts the strict identification standard of "factual reciprocity", which makes other countries more cautious in applying the reciprocity principle to China, and the two sides fall into a "prisoner's dilemma", fearing that even if they implement China's commercial judgments, China will not recognize the existence of reciprocal relations between the two sides in the future, forming a negative feedback effect, so that fewer countries will establish reciprocal relations with China. Second, in terms of the recognition and implementation of bilateral treaties on judicial assistance in civil and commercial matters, only 25 of the 151 countries along the "Belt and Road" have signed the treaty with China[4]. The number of signatures is very few, and the proportion of only one-sixth is far from meeting the actual implementation needs. Finally, at the international level, there has not yet been an international convention with widespread enforcement effect. Although the Convention on the Recognition and Enforcement of Foreign Civil and Commercial Judgments adopted in 2019 is committed to this, few countries have signed it and China has not adopted it so far, so the existing international conventions cannot help the cross-border enforcement of commercial judgments in China.

3.5. The connection between litigation, arbitration and mediation in the China International Commercial Court is not smooth

In the process of "Belt and Road" economic exchanges, international commercial disputes are complicated, and dispute resolution methods of litigation, arbitration and mediation are usually adopted. Among these three mechanisms, each can resolve disputes independently when separated, and they can be combined and coordinated to defuse disputes when integrated[5],

This kind of comprehensive entangled solution mode is also the international commercial diversified dispute resolution mechanism. Since 2018, the Supreme People's Court has incorporated ten arbitration institutions, including the China International Economic and Trade Arbitration Commission and the Shanghai International Economic and Trade Arbitration Commission, and two mediation centers, the China Commission for the Promotion of International Trade and the Shanghai Economic and Trade Commercial Mediation Center, into the "one-stop" mechanism in two batches[6]. On December 22, 2023, the Supreme People's Court issued the "One-Stop" Work Guidelines for the Diversified Resolution of International Commercial Disputes (Trial), which is only a principle provision and lacks operational possibility compared with the Implementation Opinions of the Supreme People's Court on Deepening the Construction of the One-stop Diversified Resolution Mechanism of People's Courts to Promote the Resolution of the Source of Conflicts and Disputes. The specific guidelines have come a long way, but there is still some room for improvement. First of all, the restriction on the participants of the articulating mechanism is not reasonable. The original intention of the China International Commercial Court is to attract parties to settle disputes. However, due to the lack of clarity, a large number of parties are blocked out due to the failure to specify the criteria and procedures for selecting participants. Secondly, the integrity of the cohesion model is also insufficient, such as whether the parties can apply for the expert committee or mediation institution to conduct the mediation after the hearing, whether the court should postpone or suspend the hearing procedure, and the specific rules on the mediation of international commercial experts are still vacant. Finally, the supervision of the convergence mechanism still needs to be strengthened. For example, how to guarantee the impartiality and neutrality of the mediation of the expert committee, the current rules only require the self-supervision of the expert committee, and there is no supervision by the court. In addition, if the mediation agreement is reviewed by the court in writing or in court, in form or in substance, after the mediation agreement is reached, These issues still need to be further clarified in the future.

Figure 1 shows that the deficiencies of China's international commercial court system are mainly composed of five characteristic problems. First of all, the lack of international vision is a fundamental problem, and the standard of international recognition behind it directly determines the service positioning of commercial courts. Secondly, the operation mechanism of China International Commercial Court is deficient in the backward management rules, the lack of appeal relief channels and the poor connection mechanism of commercial litigation, arbitration and mediation. As far as the backwardness of management rules is concerned, it is mainly the problem of the fuzzy identification standard of "commercial affairs" and the conflict of jurisdiction. The lack of appeal relief channels is because the first instance and the final instance are not conducive to the handling of cases. Finally, the cross-border recognition and enforcement of commercial judgments is an important embodiment of the judicial enforcement power of China's international commercial courts. Too strict standard of reciprocity in fact, lack of double standard treaties and insufficient implementation of international conventions are the internal reasons why cross-border recognition and enforcement of judgments are difficult to guarantee.

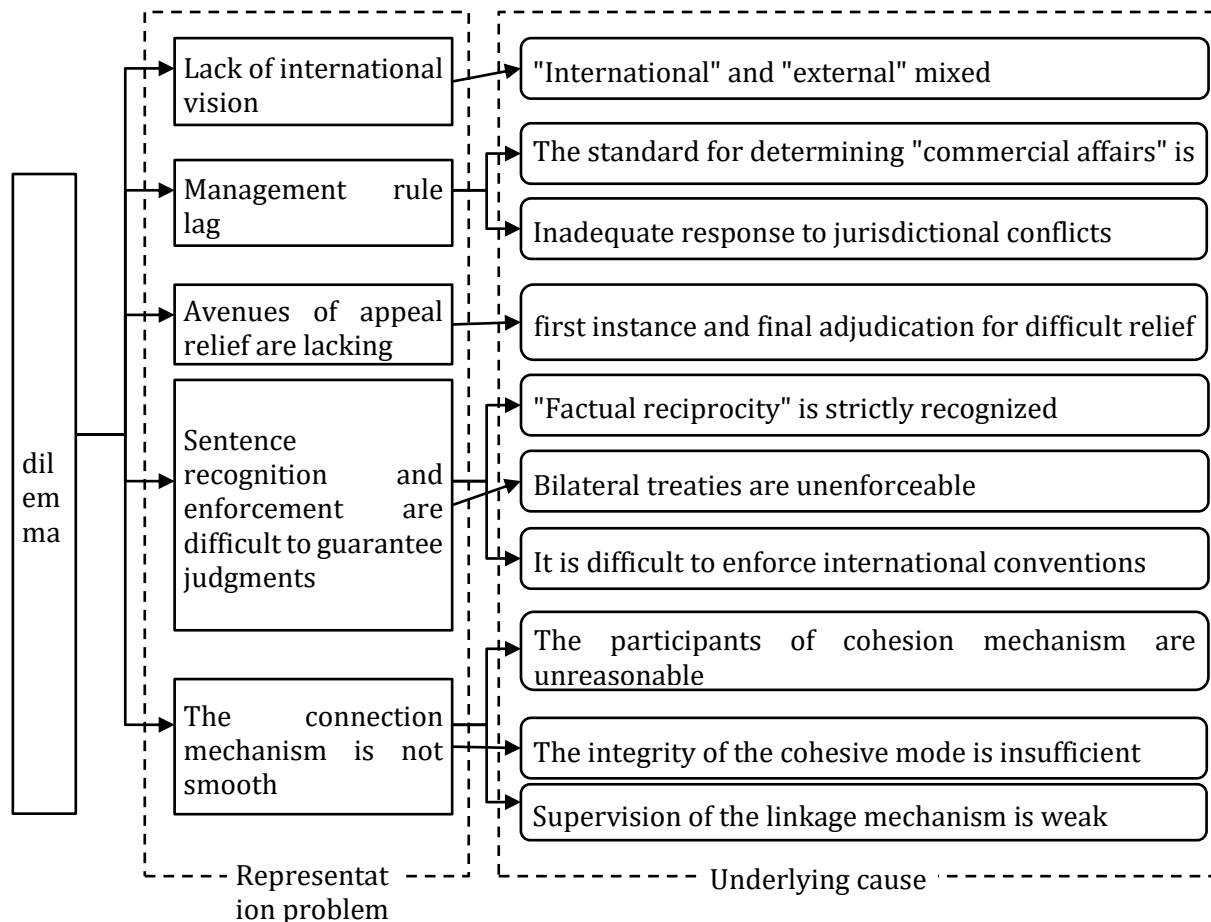


Figure 1 the international commercial court system faces difficulties

4. The response of China's international commercial court system from the perspective of the Belt and Road Initiative

In order to solve the difficulties in the development of China's international commercial courts at five levels, we should constantly analyze the logical relationship between the characteristics of difficulties and the underlying causes, and build a new development situation of China's international commercial courts from five aspects: internationalization, jurisdiction, final appeal of two trials, the principle of reciprocity and the optimization of dispute convergence mechanism.

4.1. Based on an international perspective

China International Commercial Court should clearly position itself, base its service goal on an international perspective, and make a fundamental distinction between "foreign affairs". There is an essential difference between "internationality" and "externality", and the limited vision will prevent China International Commercial Court from competing with other international commercial courts in the world. Therefore, the China International Commercial Court should break through the scope of national rule of law that defines "international" civil and commercial disputes as "foreign" civil and commercial disputes, and should define the civil and commercial legal relations between one country and other countries, other countries and other countries and countries as "international" civil and commercial disputes. Only in this way can the shackles of limited vision be broken. In general, there are three categories of international commercial courts around the world[7]. The first category is the traditional commercial court, such as the British Commercial Court established in 1985, the French Commercial Court founded in the Middle Ages, and the Southern District Court of New York. The second category is new

commercial courts, such as the Singapore International Commercial Court established in 2015, International Commercial Court for the Middle East, Court of Astana International Financial Centre, Kazakhstan. The third category is policy-driven international commercial courts, such as the newly established Paris International Commercial Court in continental Europe after Brexit and the China International Commercial Court led by the Belt and Road Initiative. The international commercial court itself is a competition for international influence. Therefore, in order to take a share of the international commercial dispute resolution stage, the China International Commercial Court should position itself as a "game-breaker", challenge the long-term dominant position of international civil and commercial arbitration by reshaping the appeal mechanism, bridging the mutually exclusive litigation and arbitration system and other innovative reform measures, and ultimately fundamentally break the existing international judicial trial pattern. Lead the China International Commercial Court to go international and participate in the competition and cooperation of global international commercial courts.

4.2. Expanding the jurisdiction of commercial courts

First of all, the specific connotation and extension of "commercial matter" in China International Commercial Court should be clarified to clarify the nature of jurisdiction cases, achieve differentiated jurisdiction of litigation and arbitration, and finally steadily advance to the public domain such as anti-monopoly and intellectual property rights. The Notice of the Supreme People's Court on the Implementation of China's accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards makes a tentative reservation statement on "commercial matters" and does not specifically explain the meaning of "commercial matters". The International Commercial Court of Singapore has made detailed provisions on commercial transactions in Order 110 of the Supreme Court Act by way of enumeration[8]. Nonetheless, it delimits the scope of "business" by means of an incomplete enumeration of norms, thus reserving space for dealing with new business relations that may arise in the future. Therefore, it is an effective method to expand the jurisdiction of cases from the nature of the concept of "commercial matter". Through a clear definition of the concept of "commercial matter", cases that do not belong to the jurisdiction of commercial matters such as consumer rights disputes and environmental pollution disputes can be excluded. The China International Commercial Court should highlight the outstanding advantages of the "commercial transaction relationship" under its jurisdiction and the "commercial dispute relationship" handled by the arbitration, extend the scope of disputes covered by the jurisdiction, put the protection of public interests in an important position, and gradually expand to the areas of great public interest such as intellectual property rights and anti-monopoly, so as to highlight the distinct differences of the China International Commercial Court.

Secondly, for the agreement jurisdiction of the parties, the system of presumptive exclusive jurisdiction or the method of implied presumption can be adopted to avoid the problem of parallel litigation caused by the conflict of jurisdiction. The international community generally adopts the system of presumptive exclusive jurisdiction to solve the problem of parallel proceedings. Generally speaking, the vast majority of national courts recognize and respect the intention of the parties to reach an agreement to govern. However, when the parties have not explicitly agreed on the exclusive jurisdiction of the agreement or the agreement is not clear, they can confirm the jurisdiction of the agreement by means of implied presumption. Article 25 of the 2012 Brussels Regulation I of the European Union and Article 3(2) of the 2005 Hague Convention on the Choice of Court Agreement indicate that the parties' common expression of will to exercise jurisdiction by agreement shall be respected by national courts. The original purpose of the China International Commercial Court is to attract more parties to choose Chinese courts for litigation. Therefore, the system of exclusive jurisdiction by agreement is

helpful to realize the sole jurisdiction court, which is conducive to high-quality settlement of disputes concerning the jurisdictional effect of agreement between parties, thereby reducing parallel litigation and facilitating the cross-border recognition and enforcement of judgments. Both the Singapore International Commercial Court and the Dubai International Financial Centre Court are granted jurisdiction by presumption of exclusivity. Of course, the imposition of a system governed by an exclusive presumption agreement may also cause potential damage to the weak. Therefore, the China International Commercial Court should refer to the Brussels Regulation I to exclude insurance, consumption, employment or certain form contracts from the jurisdiction of the agreement to ensure the fairness of the exclusive presumption jurisdiction.

4.3. Reconstructing the appellate relief mechanism of the International Commercial Court

Although the trial form of the first instance final trial system improves judicial efficiency, the construction of the trial level pursuing efficiency will dilute the boundary between litigation and arbitration, and the lack of relief system will weaken the essential advantages of commercial litigation. Other international commercial courts are basically the same, and all retain the essential characteristics of litigation to provide relief measures, so as to highlight the significant difference between litigation and arbitration. Therefore, under the background of "The Belt and Road", China International Commercial Court should adopt a two-instance final trial system, get rid of the overall court structure of "embedded" appeal procedure, and rebuild the distinctive appeal procedure to compete internationally with other countries' commercial courts, so as to boost the international credibility of China's judicial system. In order to optimize the efficiency of the Supreme People's Court in handling appeal cases, the International Commercial Court can be regarded as a court of first instance, and parties who are dissatisfied with the results of the first instance can appeal to the Fourth Civil Trial Division of the International Commercial Court, which is coordinated and guided by the Supreme People's Court[9]. The establishment of such procedures can not only improve judicial efficiency, but also ensure the efficient and fair settlement of disputes. The Supreme People's Court holds the appellate jurisdiction of cases, and the Supreme People's Court conducts appellate hearings on major and difficult cases to strengthen the judicial credibility and judicial authority of the China International Commercial Court.

In addition, in order to maintain the credibility of the effective judgment, the retrial procedure should be strictly limited. The value orientation of retrial and appeal is completely different. Although the retrial focusing on substantive justice can greatly correct the wrong trial, the state of "final trial not final" will bring instability to the commercial communication. Therefore, the start of the retrial procedure should be limited, justice is not the only element in the structure of institutional value, and other value components such as encouraging and promoting commercial transactions should be comprehensively measured.

4.4. Strengthen judicial assistance to promote extraterritorial recognition and enforcement of judgments

In recent years, according to the released official documents, China has gradually relaxed the standard of reciprocity, from "factual reciprocity" to "constructive reciprocity" transformation trend is obvious. This lenient and open standard for determining a "reciprocal relationship" only needs to meet the condition that a foreign country has not refused to recognize and enforce its own judgment on the grounds of lack of reciprocity to constitute "constructive reciprocity". This identification standard can also be called "reverse reciprocity", which can solve the "prisoner's dilemma" in the recognition and execution of judgments between China and other countries and achieve a win-win situation[10]. Specifically, the criteria for "constructive reciprocity" can be divided into the willingness of other countries to recognize and enforce our

monetary judgments; There is the possibility of later recognition and enforcement of pecuniary judgments in our country; There is no precedent in other countries for refusing to recognize and enforce Chinese monetary judgments. There is no precedent for actually recognizing and enforcing Chinese commercial judgments. In addition, the process of "constructive reciprocity" would be facilitated by the "memorandum" model, signed between the courts, specifying guidelines on the conditions and procedures for the mutual recognition and enforcement of monetary judgments [11]. To some extent, the memorandum of recognition and enforcement of monetary judgments signed between courts can be regarded as the positive willingness of other countries to recognize and enforce monetary judgments in our country. Even if it cannot completely guarantee the enforcement of other countries, it also brings the possibility that other countries are willing to recognize and enforce monetary judgments. Finally, according to the criterion of "constructive reciprocity", it can be determined that there is a possibility of mutual recognition and enforcement of monetary judgments with other countries in the future and it is presumed to be a "reciprocal relationship".

Secondly, the signing of the bilateral treaty on judicial assistance in civil and commercial matters will be the key to the recognition and implementation of extraterritorial jurisdiction. Although "constructive reciprocity" based on international comity can greatly promote the extraterritorial recognition and enforcement of the judgment, it has great uncertainty because it has not formed binding clauses. Therefore, the China International Commercial Court should strengthen judicial cooperation with foreign countries, actively sign international judicial assistance treaties in civil and commercial matters, and specify in detail the rights and obligations that the contracting parties should enjoy. Finally realize the process and institutionalization of extraterritorial recognition and enforcement. In addition, it is also a good choice to deepen cooperation and judicial trust between Chinese and foreign courts through memorandums. In order to lay the foundation for the future signing of bilateral treaties on judicial assistance in civil and commercial matters, the courts of both sides can first stipulate the conditions and procedures for the recognition and enforcement of judgments by signing memorandums[12].

Finally, joining the international convention on judicial assistance is the essential way for the China International Commercial Court to expand its influence and credibility. From a forward-looking perspective, the Convention on the Choice of Court Agreement, the Hague Judgment Convention and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters are the most important conventions currently addressing the cross-border recognition and enforcement of judgments. These conventions provide a systematic mechanism to address the cross-border recognition and enforcement of judgments in multilateral Settings and are a key solution to overcoming the "prisoner's dilemma" in enforcement. Therefore, China should sign and ratify these conventions as soon as possible, and reserve the provisions that are not conducive to our international commercial court, so as to achieve cooperation and win-win situation with other countries in judicial execution.

4.5. Improve the convergence mechanism of litigation, arbitration and mediation in the China International Commercial Court

4.5.1. Narrow the scope of participants

Established in 2018, the China International Commercial Court hopes to screen and review the quality of cases by limiting the number of participants[13]. Although this method can improve the quality of case acceptance to a certain extent, it will also shut out the parties in need to a certain extent. Therefore, it is necessary to adjust the strategy and gradually expand the scope of participants in the convergence mechanism of litigation, arbitration and mediation. In order to build a "one-stop" diversified settlement mechanism for international commercial disputes, the Guiding Opinions on Further Opening Up the Service Guarantee of People's Courts clearly

indicate that non-regional commercial arbitration and mediation institutions can be introduced as appropriate. According to this, the main scope of the linkage mechanism can be extended to foreign commercial arbitration and mediation institutions, and can carry out business cooperation in the field of arbitration with foreign arbitration institutions in accordance with the provisions of the Arbitration Law (draft for comment) to determine the name of the arbitration award by the "place of arbitration".

4.5.2. Optimize the integrity and fluency of the connection mode

Although there are changes in the procedures of litigation and mediation, most of them exist before litigation, and the subject of mediation and litigation will be isolated. Therefore, the idea of the whole process of mediation should be carried out to improve the cohesion mechanism. For example, in the mediation mode of litigation, the parties should be allowed to request mediation from the court hearing to the judgment of the case, and choose the appropriate mediation mode according to their own will, so as to realize the transformation of different types of mediation procedures and litigation. The proceedings shall be suspended if the parties apply for conciliation, which may be conducted before a judge. In this mode, the presiding judge has made a preliminary understanding of the case, and directly realizes the transformation of litigation and mediation procedures, so as to achieve judicial efficiency. If the parties choose other modes, the parties need to apply for the corresponding extra-litigation mediation procedures and then apply to the China International Commercial Court for judicial confirmation after reaching an agreement, and finally achieve judicial effect.

Limited by the principle of arbitration or trial, the convergence mode between arbitration and litigation cannot be transformed but can only achieve procedural superposition[14]. Therefore, the China International Commercial Court may expressly provide in the Provisions and Rules for the choice of procedure for litigation and arbitration. The China International Commercial Court may make clear to the parties before or during the proceedings whether the dispute can be settled by arbitration, and if the parties agree to arbitration, it may urge the parties to apply for arbitration to the selected arbitration institution and request the parties to withdraw the case for arbitration. If the parties are not satisfied with the arbitration, it can be referred to the court for trial. This kind of "superimposed" procedure will affect the efficiency of dispute settlement to some extent. Therefore, China's international commercial court should innovate the "transformation" procedure, such as the cooperation between the China International Commercial Court and the arbitration institution, the arbitration institution in the China International Commercial Court to set up a "convergence" mode of office, to save the time of case review.

5. Conclusion

Countries participating in the "Belt and Road" initiative have different levels of economic development and different rule of law cultures, so it is necessary to build a diversified dispute resolution mechanism to ensure economic exchanges among countries. Based on internationalization and changing the existing pattern of international commercial courts can continuously improve the influence of China's international commercial courts and the credibility of China's judicial system, promote the continuous improvement and progress of the international commercial legal system, and build the international commercial courts into a solid defense line for safeguarding fairness and justice and a beautiful business card showing China's judicial civilization.

References

- [1] B.Y. Fan: China's International Commercial Court System: Difficulties and Solutions (Ph.D., Jilin University, China 2023), p.28.

- [2] Q. W. Meng, The Belt and Road Initiative has achieved fruitful results in the past decade and entered a new stage of high-quality development, *China Business Journal*, Vol. 3 (2023) No.3, p.2-4.
- [3] F. C. Lin, Mechanism Innovation of International Commercial Court, *People's Court Daily*, Vol. 49 (2022) No.1, p.47-54.
- [4] Q. J. Kong, C. Q. Wang, A new probe into the judicial cooperation System of cross-border enforcement of commercial judgments in China, *Jiangxi Social Sciences*, Vol. 43 (2023) No.2, p.183-192.
- [5] H. Y. Tang, Research on the convergence mechanism of litigation, arbitration and mediation in China International Commercial Court, *Journal of Shaoguan University*, Vol. 43 (2022) No.4, p.39-45.
- [6] H. P. Qin, The Belt and Road Initiative and China International Commercial Court, *Journal of China University of Political Science and Law*, Vol. 1 (2019) No.1, p.43-57.
- [7] W. X. Gu, The Rise and Ecology of International Commercial Courts in the world, *Ntu Law School*, Vol. 1 (2022) No.6, p.92-116.
- [8] L. B, The operation of China's International Commercial Court under the background of "One Belt and One Road", *Qiushi Journal*, Vol. 1 (2018) No.5, p.91-99.
- [9] M. Y, Challenges faced by China International Commercial Court under the "Belt and Road" practice and countermeasures, *International Business Studies*, Vol. 43 (2022) No.4, p.51-62.
- [10] W. D. Zhu, On the construction of Reciprocal System of Recognition and Execution of Foreign Judgments in our country, *Hebei Law Journal*, Vol. 1 (2017) No.4, p.19-25.
- [11] Michael Hwang. Commercial courts and international arbitration-competitors or partners? *arbitration international*, Vol. 31 (2015) No.2, p.18-25.
- [12] Y. J. Liu, W. S. Chen, Application of reciprocity Principle in recognition and enforcement of foreign judgments in China under the Belt and Road Initiative, *Journal of Xinjiang University (Philosophy, Humanities and Social Sciences Edition)*, Vol. 48 (2019) No.4, p.32-41.
- [13] W. Shen, Trends, Logic and Functions of International Commercial courts: Taking Arbitration, finance and justice as research dimensions, *International Law Studies*, Vol. 1 (2018) No.5, p102-128.
- [14] S. Gao, K. K. Li, The realization path of International Commercial Court Judgment into arbitration award, *Journal of Henan University of Economics and Law*, Vol. 36 (2021) No.1, p68-76.