

# China's Modernization of International Commercial Arbitration and Transnational Legal Order

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*China's interaction with international commercial arbitration (ICA) norms reveals a trajectory from initial resistance to gradual alignment and potential emergence as a rule contributor. This early resistance manifested in its unique dual-track arbitration mechanism and institutional arbitration monopoly. Reforms signal a shift towards global standards, driven by pro-arbitration judicial efforts and institutional competition in China's vibrant arbitration market. As China's global influence expands, it is innovating to shape the ICA landscape through initiatives like the China-Africa Joint Arbitration Centre, the China International Commercial Court's one-stop dispute resolution platform, and the International Commercial Dispute Prevention and Settlement Organization. The role of transnational legal elites in China further facilitates this evolution.*

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#### I. THE FORMATION OF ICA LEGAL ORDERS IN CHINA

Arbitration is today regarded as an indispensable tool designed to afford parties engaged in international trade and investment the requisite degree of certainty and confidence they rightly demand of dispute resolution in international transactions.<sup>1</sup> Development of international arbitration norms is largely fuelled by expectations of the global business community and has been under heavy influence of the modernization and harmonization waves shaped by the New York Convention,<sup>2</sup> The United Nations Commission on International Trade Law (UNCITRAL) on International Commercial Arbitration (“ML”),<sup>3</sup> and International Chamber of Commerce Court of Arbitration Rules (“ICC Rules”).<sup>4</sup>

The promulgation of the China Arbitration Law (“AL”) in 1994 (effective in 1995)<sup>5</sup> largely reforms and gives shape to the modern Chinese arbitration

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1. For detailed discussion, see Fabien Gelinas, *Arbitration and the Challenge of Globalization*, 17 J. INT'L ARB. 117 (2000).

2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 4739 [hereinafter New York Convention].

3. The United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration was adopted in June 1985 and was comprehensively amended in July 2006. See UNCITRAL MODEL LAW ON INT'L COM. ARB. (U.N. 2006), [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf).

4. The International Chamber of Commerce Court of Arbitration, being the earliest established arbitration institution in the world, is the forerunner of international arbitration rules. See generally W. LAURENCE CRAIG ET AL., INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION (3d ed. 2000).

5. Zhonghua Renmin Gonghe Guo Zhongcai Fa (中华人民共和国仲裁法) [Arbitration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 31, 1994, effective Sept. 1,

regulatory framework.<sup>6</sup> The AL was promulgated in light of the increasing popularity of commercial arbitration as a method of dispute resolution flowing from China's legal and economic reforms since the 1980s.<sup>7</sup>

With particular regard to the relationship between China and the aforementioned international benchmarks of the International Commercial Arbitration (ICA), it is noteworthy that while the ML was relied on for modernizing China's arbitration regime, the ML has never been adopted in China. The ML had only served as a guiding reference during the drafting-stage of the AL.<sup>8</sup> As for the New York Convention, China acceded to the New York Convention in December 1986; the Convention remains the primary source of international regulation for China in the enforcement of foreign and non-domestic arbitral awards.<sup>9</sup>

To provide an aggregated overview of Chinese arbitration landscape, Table 1 lists the total number of Chinese arbitration institutions, total number of cases, and disputed amount, in the most recent years, on the basis of the statistics collected from the BAC and CIETAC's annual reviews and reports.<sup>10</sup>

Chart 1 then shows the growing popularity of arbitration in China in resolving commercial disputes, reflected by China's rapidly developing caseload by years. Chart 2 conveys a sense of the vibrant role played by arbitration as a legal service sector in the commercial setting of China, shown by the significant increase of the disputed amount in arbitration over the years, which is also indicative of China's economic growth. The trend lines of both caseloads (Chart 1) and disputed amount (Chart 2) are upward sloping.

Take the most recent years as an example—in 2021 alone, 415,889 cases were handed by 270 Chinese arbitration institutions with the total disputed

1995) 1994 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (China).

6. Weixia Gu, *Piercing the Veil of Arbitration Reform in China: Promises, Pitfalls, Patterns, Prognoses, and Prospects*, 65 AM. J. COMP. LAW 799, 800 (2017).

7. See Katherine Lynch, *The New Arbitration Law*, 26 H.K.L.J. 104 (1996).

8. Shengchang Wang, *The Globalization of Economy and China's International Arbitration*, 5 ASIAN DISP. REV. 187 (2003) (paper delivered at the Seminar on Globalization and Arbitration in Beijing, sponsored by the International Chamber of Commerce (ICC) and the China International Economic and Trade Arbitration Commission (CIETAC)).

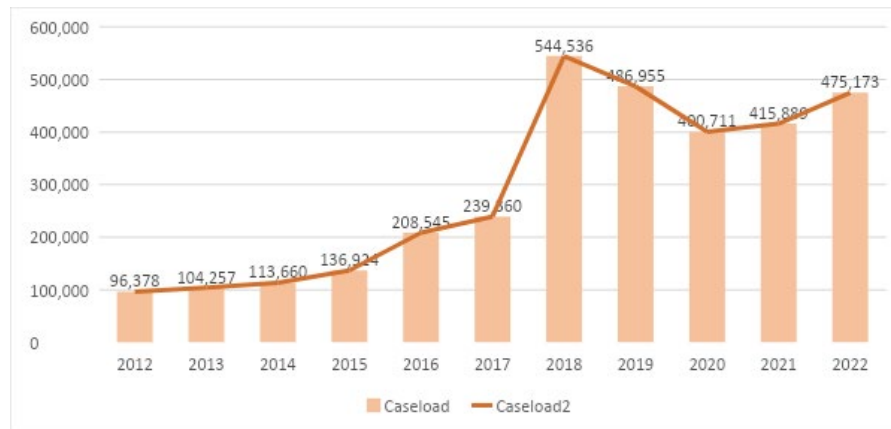
9. Zuigao Renmin Fayuan Guanyu Zhixing Woguo Jiaru de Chengren Ji Zhixing Waiguo Zhongcai Caijue Gongyue de Tongzhi, Fafa [1987] Wu Hao (最高人民法院关于执行我国加入的《承认及执行外国仲裁裁决公约》的通知, 法发【1987】5号) [Notice of the Supreme People's Court on the Implementation of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" Acceded to by China, Court Issuance No. 5 [1987]] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 2, 1986, effective Apr. 22, 1987) CLI.3.3255(EN) (Lawinfochina).

10. For Chinese nationwide arbitration statistics from 2012 to 2013, see Song Lianbin et al., *Annual Review on Commercial Arbitration*, in COMMERCIAL DISPUTE RESOLUTION IN CHINA: AN ANNUAL REVIEW AND PREVIEW (2013) 1, 2 n.1 (Beijing Arb. Comm'n Inst. of Advanced Legal Stud. eds., 2013). For Chinese nationwide arbitration statistics from 2014 to 2022, see CHINA ACAD. OF ARB. L., ZHONGGUO GUOJI SHANGSHI ZHONGCAI NIANDU BAOGAO (中国国际商事仲裁年度报告) [ANNUAL REPORT ON INTERNATIONAL COMMERCIAL ARBITRATION IN CHINA], CHINA INT'L ECON. & TRADE ARB. COMM'N (2014–2023), <http://demo.ccpititc.com/categories/89/articles>.

amount of 859.3 billion yuan,<sup>11</sup> and the figures rose in 2022 to 475,173 cases (a 14.3% increase in arbitration caseload) and 986 billion yuan (a 14.7% increase in disputed amount) processed by 277 Chinese arbitration institutions.<sup>12</sup>

Year	Total Number of Chinese Arbitration Institutions	Total Number of Cases	Disputed Amount in Total (RMB, Billion Yuan)
2012	219	96,378	¥ 131.5
2013	225	104,257	¥ 164.6
2014	235	113,660	¥ 265.6
2015	244	136,924	¥ 411.2
2016	251	208,545	¥ 469.5
2017	253	239,360	¥ 533.8
2018	255	544,536	¥ 695
2019	253	486,955	¥ 759.8
2020	259	400,711	¥ 718.7
2021	270	415,889	¥ 859.3
2022	277	475,173	¥ 986

Table 1. Arbitration Statistics (2012-2022)



11. See CHINA ACAD. OF ARB. L., ZHONGGUO GUOJI SHANGSHI ZHONGCAI NIANDU BAOGAO (中国国际商事仲裁年度报告) [ANNUAL REPORT ON INTERNATIONAL COMMERCIAL ARBITRATION IN CHINA], CHINA INT'L ECON. & TRADE ARB. COMM'N (2014–2023), <http://demo.ccpititc.com/categories/89/articles>.

12. *Id.*

Chart 1. Caseload of Chinese Arbitration (2012-2022)

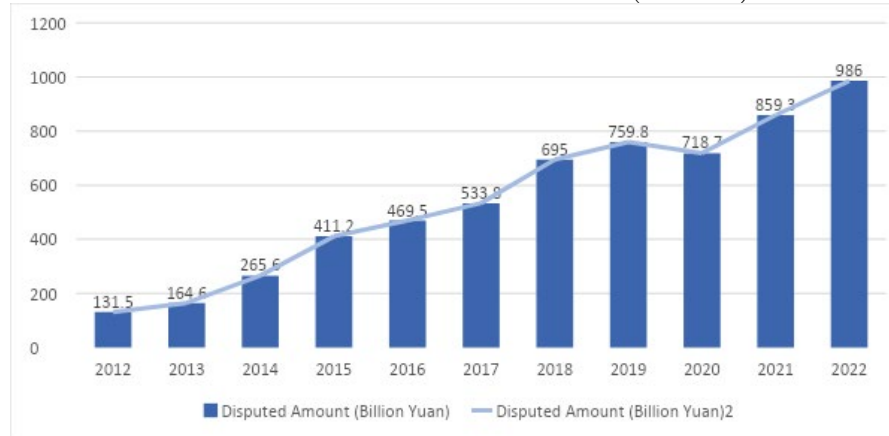


Chart 2. Disputed Amount of Chinese Arbitration (2012-2022)

Throughout the development of ICA in China, we identify two types of key stakeholders, i.e., (1) institutions; and (2) people. The institutional stakeholders mainly refer to the Ministry of Justice, people's courts, and Chinese arbitration commissions, and people consist of legal practitioners and legal scholars.

The first key institutional stakeholder in China's arbitration system is the Ministry of Justice ("MOJ"). One of the main responsibilities of the MOJ is to guide and supervise arbitration services.<sup>13</sup> Specifically, under the MOJ, the Bureau of Public Legal Services Administration is responsible for guiding and supervising arbitration.<sup>14</sup> But it is noteworthy that as the "relatively weak central government agency," the MOJ's "actual authority is limited," because the AL has de facto delegated the responsibility of arbitration regulation to the arbitration market through its over 270 arbitration institutions. And some "municipal governments (such as Beijing and Shanghai) enjoy a much higher status than the Ministry of Justice in the Chinese political power hierarchy."<sup>15</sup>

The role of the people's courts in the Chinese arbitration system could be summarized as threefold. First, Chinese people's courts, especially the Supreme People's Court ("SPC"), in its dual position as both the highest judiciary and a de facto rule-making institution in China, have sporadically supplemented the AL by issuing judicial interpretations (*sifa jieshi* 司法解释)<sup>16</sup> supervising the handling of

13. *What We Do*, MINISTRY OF JUST. (June 12, 2019), [http://en.moj.gov.cn/2019-06/20/c\\_383604.htm](http://en.moj.gov.cn/2019-06/20/c_383604.htm) (China) (last visited Oct. 10, 2023).

14. *Bureau of Public Legal Services Administration*, MINISTRY OF JUST. (June 27, 2019), [http://en.moj.gov.cn/2019-06/27/c\\_384757.htm](http://en.moj.gov.cn/2019-06/27/c_384757.htm) (China) (last visited Oct 10, 2023).

15. Ji Li & Gregory Shaffer, *China and the International Legal Order* (Aug. 17, 2023) (unpublished manuscript) (on file with authors).

16. *Zhonghua Renmin Gonghe Guo Renmin Fayuan Zuzhi Fa* (中华人民共和国人民法院组织法) [Organic Law of the People's Courts] (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1979, effective Jan. 1, 1980), art. 33, CLI.1.44379(EN) (Lawinfochina). However, the

specific arbitration cases in lower-level Chinese courts. These judicial interpretations form an important source of arbitration regulations in China. Second, courts play a “supportive” role towards arbitration,<sup>17</sup> as they possess the sole power to grant and enforce interim measures of protection to assist arbitral proceedings in China, including property and evidence preservation orders on a party and arbitral tribunal’s request.<sup>18</sup> Last but not least, courts play a “supervisory” role in arbitration, exercising final checks over jurisdiction and enforcement through rulings on validity of arbitration clauses and arbitral awards.<sup>19</sup>

Another important institutional stakeholder is Chinese arbitration commissions. One distinctive feature of the AL is its unique stipulation that all arbitrations in China must be administered by Chinese arbitration commissions and conducted in accordance with the rules of the chosen Chinese arbitration commission.<sup>20</sup> This distinction is more often referred to as “institutional arbitration monopoly” in China.<sup>21</sup> Therefore, Chinese arbitration commissions play a significant role in the arbitration practice in China. And as a matter of the institutional arbitration system in China, while rules of the arbitration commissions governing arbitral procedures do not carry the force of law, they are de facto viewed as part of the regulatory framework of Chinese arbitration.<sup>22</sup>

Furthermore, the role of people in facilitating the development of China’s ICA should not be neglected, a topic which will be discussed at length in Section 4.4. below.

Delving into the development and evolution of China’s arbitration, one of the key questions is what drives these evolving stages or what explains the change from initial resistance to alignment and influence on global arbitration legal order. China’s Arbitration Law has not been substantially amended over the past 29 years. Despite the outdated legislation, what are the major driving forces behind China’s ICA development towards global standards? And what are China’s main strategies in developing ICA? The key answer may lie in (1) pro-arbitration judicial environment and (2) China’s vibrant arbitration market, which will be analyzed in

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scope of SPC’s interpretative power is not clearly defined as between *interpreting law* and *making law* although there may be the literal distinction that legislation is the act of making a law, while interpretation is the act of process of ascertaining the meaning of existing laws.

17. See, e.g., JINGZHOU TAO, *ARBITRATION LAW AND PRACTICE IN CHINA* 95-99 (3d ed. 2012).

18. Arbitration Law, *supra* note 5, art. 68. It should be noted that this sole power of the Chinese courts has been changed in the 2021 Draft Amendment to the AL, which grants the arbitral tribunals and emergency arbitrators the power to issue interim relief.

19. *Id.* arts. 20, 26.

20. *Id.* arts. 16, 18.

21. WEIXIA GU, *ARBITRATION IN CHINA: REGULATION OF ARBITRATION AGREEMENTS AND PRACTICAL ISSUES* 19–24 (2012).

22. WEIXIA GU, *Arbitration: A Synthesis of Unique Socio-Economic Dynamics*, in *DISPUTE RESOLUTION IN CHINA: LITIGATION, ARBITRATION, MEDIATION, AND THEIR INTERACTIONS* 88, 94 (2021).

Sections 3.2 and 3.3 in more detail respectively. It is argued that the “pro-arbitration judiciary” and “arbitration market with institutional reforms for competitiveness” together form the major driving force of China’s ICA development. First, the judicial efforts, such as the pre-reporting system led by the SPC, and the more liberal judgments on arbitration rendered by the Chinese courts (both at the central and local levels) all share the common themes of fostering a more pro-arbitration attitude in the Chinese judiciary as well as aligning Chinese arbitration norms and practices with international standards. Second, the ever-intensifying competitions among city-based local arbitration commissions contribute to the flourishing of China’s arbitration market. The fierce competitions (for arbitrators, cases, and best arbitration rules) foster institutional independence, integrity, professionalism, and competitiveness in the Chinese arbitration market players, namely the arbitration commissions.

## II. THE DILEMMA OF ICA IN CHINA: RESISTANCE

Arbitration in China is marked by a number of distinctive, and even “rigid,” features that often catch seasoned practitioners unfamiliar with the system by surprise. The system is often referred to as “arbitration with Chinese characteristics.”<sup>23</sup> Under the theoretical framework of transnational legal ordering, these special features of arbitration in China may be regarded as China’s early resistance to international arbitration norms and practice, which is manifested in the following two regards: (1) its unique dual-track arbitration mechanism (“domestic” and “foreign-related”) and (2) institutional arbitration distinction (or Chinese arbitration commissions).

### A. *Dual-track mechanism*

The Chinese arbitration system adopts a dual-track distinction, under which different procedures and standards of judicial review apply to the domestic and foreign-related arbitration regimes respectively.

Although the AL governs both domestic and foreign-related arbitrations, the latter is given advantageous treatment under the statute. Chapter VII (Articles 65–73) of the AL specifically regulates the foreign-related track and prescribes a series of privileges exclusively reserved to foreign-related arbitrations, including greater freedom enjoyed by foreign-related arbitration commissions when deciding upon their own organizational structure,<sup>24</sup> more flexible and user-friendly rules governing the application for interim measures of protection, and less stringent qualification requirements for foreigners applying to serve as arbitrators in China.

The greatest disparity between the two tracks lies in their respective

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23. GU, *supra* note 21, at vii, viii.

24. Pursuant to Arbitration Law, *supra* note 5, art. 66, there is no exact limit for the number of members on a foreign-related arbitration commission. In contrast, Arbitration Law, *supra* note 5, art. 12 limits the number of members on a local arbitration commission to be 16.

enforcement of arbitral awards. While the grounds to exercise judicial supervision for setting aside or denial of enforcement of foreign and foreign-related awards in China are limited to procedural grounds,<sup>25</sup> supervision for domestic awards are more rigid and even include substantive matters, such as the effects of the evidence on which the award was based.<sup>26</sup> Fortunately, recent amendments to China's Civil Procedure Law (CPL), effective from 1 January 2013, have mitigated the differential treatment accorded to domestic awards.

With respect to the dual tracks, since 1995, the SPC also operates a “pre-reporting system”<sup>27</sup> in its procedure of review, which aims to limit local protectionist influences over the enforcement of foreign or foreign-related arbitral awards.<sup>28</sup> Under the system, lower level courts may not refuse recognition or enforcement without the SPC's confirmation.<sup>29</sup> The scheme has, however, been criticized for overlooking domestic arbitration and even aggravating the dual-track inequality.<sup>30</sup> To address the inequality concern, further elaborated under Section 3 below, the SPC now extends the application of the “pre-reporting system” to domestic awards.<sup>31</sup>

25. Arbitration Law, *supra* note 5, arts. 70, 71.

26. *Id.* art. 58.

27. *See* Zuigao Renmin Fayuan Guanyu Renmin Fayuan Chuli Yu Shewai Zhongcai Ji Waiguo Zhongcai Shixiang Youguan Wenti de Tong Zhi, Fafa [1995] Shiba Hao (最高人民法院关于人民法院处理与涉外仲裁及外国仲裁事项有关问题的通知, 法发【1995】18号) [Notice on Some Issues Concerning Foreign Arbitration and Arbitration in Foreign Countries, Court Issuance No. 18 [1995]] (promulgated by the Sup. People's Ct., Aug. 28, 1995, effective Aug. 28, 1995) China Int'l Com. Ct., Aug. 28, 1995, <https://cicc.court.gov.cn/html/1/218/62/409/661.html> (China); *see also* Zuigao Renmin Fayuan Guanyu Chengren He Zhixing Waiguo Zhongcai Caijue Shoufei Ji Shencha Qixian Wenti de Guiding, Fashi [1998] Ershiba Hao (最高人民法院关于承认和执行外国仲裁裁决收费及审查期限问题的规定, 法释【1998】28号) [Notice on the Fee and Time Limit of Recognition and Enforcement of Foreign Arbitration Awards, Judicial Interpretation No. 28 [1998]] (promulgated by the Sup. People's Ct., Oct. 21, 1998, effective Nov. 21, 1998), Beida Fabao (北大法宝) [PKULAW], <https://law.pkulaw.com/chinalaw/21065.html>, CLI.3.21065 (China); *see also* Zuigao Renmin Fayuan Guanyu Renmin Fayuan Chexiao Shewai Zhongcai Caijue Youguan Shixiang de Tongzhi, Fa [1998] Sishi Hao (最高人民法院关于人民法院撤销涉外仲裁裁决有关事项的通知, 法【1998】40号) [Notice on Some Issues Concerning Setting Aside Arbitration Awards Related to Foreign Elements by the People's Court, Court Document No. 40 [1998]] (promulgated by the Sup. People's Ct., Apr. 23, 1998, effective Apr. 23, 1998) China Int'l Com. Ct., Apr. 23, 1998, <https://cicc.court.gov.cn/html/1/218/62/409/663.html> (China).

28. HAI XIA LIANG AN JING MAO ZHONG CAI YAN TAO HUI WEN JI (海峡两岸经贸仲裁研讨会文集) [SYMPOSIUM ESSAYS ON ECONOMIC AND TRADE ARBITRATION BETWEEN THE TAIWAN STRAITS] 39 (CIETAC ed., 2001).

29. *Id.*

30. Weixia Gu, *Arbitration in China*, in INTERNATIONAL COMMERCIAL ARBITRATION IN ASIA 77, 118 (Shahla F. Ali & Tom Ginsburg eds., 3rd ed. 2013).

31. Zuigao Renmin Fayuan Guanyu Zhongcai Sifa Shencha Anjian Baohe Wenti de Youguan Guiding, Fashi [2017] Ershiyi Hao (最高人民法院关于仲裁司法审查案件报核问题的有关规定, 法释【2017】21号) [Relevant Provisions of the Supreme People's Court on Issues concerning Applications for Verification of Arbitration Cases under Juridical Review, Judicial Interpretation No. 21 [2017]] (promulgated by the Judicial Comm. Sup. People's Ct., Nov. 20, 2017, effective Jan. 1, 2018), <https://www.chinacourt.org/law/detail/2017/12/id/149641.shtml>, CLI.3.307538(EN) (Lavinfochina).

Finally, two types of arbitration commissions, domestic- and foreign-related, cater to the domestic- and foreign-related arbitration tracks, respectively. Foreign-related arbitration cases were monopolized by China International Economic and Trade Arbitration Commission (“CIETAC”) and China Maritime Arbitration Centre (“CMAC”) until the dual-track jurisdiction was merged under the 1996 State Council Notice.<sup>32</sup> Realistically, with few exceptions such as the Beijing Arbitration Commission (“BAC”), Shenzhen Court of International Arbitration (“SCIA”) and Shanghai International Arbitration Centre (“SHIAC”), it remains difficult for Chinese local arbitration commissions to compete with CIETAC, which has accumulated experience and expertise in handling sophisticated international commercial arbitration matters.

### B. Chinese arbitration commissions

As aforementioned, a remarkable feature of the Chinese arbitration system is the institution-monopolized framework, where only institutional arbitration is allowed in China. Articles 16 and 18 of the AL require that an arbitration agreement contain a designated arbitration institution, otherwise it is invalid.<sup>33</sup> This “institutional arbitration monopoly” presents an obvious deviance from international practice where both institutional and ad hoc arbitration are allowed.

Another distinctive characteristic is the proliferation of Chinese arbitration commissions and the associated quest for their independence. The promulgation of the AL has led to the rapid proliferation of locally based arbitration commissions across China since the mid-1990s.<sup>34</sup> In tandem with China’s urbanization, rising trends in the establishment of city-based local arbitration commissions continue. As shown in Table 1, over the past decade, the total number of arbitration commissions in China has increased from 219 in 2012 to 277 in 2022.

Despite the quickly expanding list of institutions, a dearth in caseload negatively impacts institutional independence and competitiveness, especially for those institutions established to meet administrative, rather than market needs.<sup>35</sup> In particular, commissions reliant on local governments and treasuries for caseload and other financial support are susceptible to administrative

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32. Guowuyuan Bangongting Guanyu Guanche Shishi Zhonghua Renmin Gonghe Guo Zhongcaifa Xuyao Mingque de Jige Wenti de Tongzhi, Guo Ban Fa [1996] Ershier Hao (国务院办公厅关于贯彻实施《中华人民共和国仲裁法》需要明确的几个问题的通知, 国办发【1996】22号) [Notice of the General Office of the State Council Regarding Some Problems Which Need to Be Clarified for the Implementation of the Arbitration Law, No. 22 [1996] of the Gen. Off. of the St. Council] (promulgated by the Gen. Office of the St. Council, June 8, 1996, effective June 8, 1996), CLI.2.15384(EN) (Lawinfochina).

33. Arbitration Law, *supra* note 5, arts. 16, 18.

34. *Id.* art. 10(1) (stipulating that arbitration commissions may be established in any Chinese city that may be divided into administrative districts).

35. GU, *supra* note 21, at 107.

interference.<sup>36</sup> Further, arbitral commissions that reap sufficient profits from service charges undergo administrative scrutiny, even if they are not financially reliant on local governments.

While the AL provides that arbitration should be conducted independently, free from external interference,<sup>37</sup> the legislative deficiency of specific implementation rules has given rise to ancillary rules which effectively frustrate the goal of institutional “independence.” A 1995 State Council Notice provides that the establishment and operation of local arbitration commissions ought to be supervised by the local government’s legislative affairs office, conferring disproportionate influence on matters of the staffing and development of the commissions.<sup>38</sup> Two BAC surveys, conducted in 2006 and 2007, showed, respectively, that 73.9% and 69.3% of the personnel composition of the surveyed local arbitration commissions (2006: 98; 2007: 73) were associated with an administrative organ or the local government.<sup>39</sup> Such a situation contravenes the AL’s stipulation that the legal and economic trade professions should make up no less than two-thirds of the members of an arbitration commission. The independence of individual institutions thus turns on the local administrative attitude toward arbitration.<sup>40</sup>

The validity and nature of awards rendered by foreign arbitration institutions seated in China is a long-debated and controversial issue in China. Arbitration commissions in China are statutorily subject to various organizational and constitutional requirements, as well as supervision by the China Arbitration Association. These remain conditions unlikely to be met by foreign institutions.<sup>41</sup> The legal status of such institutions has been judicially considered; in particular, whether awards resulting from arbitrations following the Rules of the International Chamber of Commerce (“ICC”) Court of Arbitration are enforceable.<sup>42</sup> Arbitration agreements designating ICC arbitrations have been

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36. *Id.* at 106–07.

37. Arbitration Law, *supra* note 5, arts. 8, 14.

38. Guowuyuan Bangongting Guanyu Jinyibu Zuohao Chongxin Zujian Zhongcai Jigou Gongzuo de Tongzhi, Guo Ban Fa [1995] Sanshiba Hao (国务院办公厅关于进一步做好重新组建仲裁机构工作的通知, 国办发【1995】38号) [Notice on Furthering the Work of Restructuring the Arbitration Institutions, No. 38 [1995] of the Gen. Off. of the St. Council] (promulgated by the Gen. Office of the St. Council, May 22, 1995, effective May 22, 1995), St. Council, [http://www.gov.cn/xxgk/pub/govpublic/mrlm/201011/t20101112\\_62488.html](http://www.gov.cn/xxgk/pub/govpublic/mrlm/201011/t20101112_62488.html) (China) (last visited Mar. 23, 2024).

39. Chen Fuyong (陈福勇), Woguo Zhongcai Jigou Xianzhuang Shizheng Yanjiu (我国仲裁机构现状实证研究) [Empirical Studies into Arbitration Commissions in China], Faxue Yanjiu (Di Er Qi) (《法学研究》(第二期)) [Legal Stud.], no. 2, 2009, 81, at 85–86.

40. GU, *supra* note 22, at 98.

41. Arbitration Law, *supra* note 5, art. 15. Arbitration Law Chapter VII further provides that foreign-related arbitration commissions must be established by the China Chamber of International Commerce.

42. See the discussions on ICC Arbitration in China in *Roundtable on Arbitration and Conciliation Concerning China*, in NEW HORIZONS IN INTERNATIONAL COMMERCIAL ARBITRATION AND BEYOND: ICCA CONGRESS SERIES NO. 12, 19 (Albert Jan van den Berg ed., 2005).

declared invalid by Chinese courts, notably in *Züblin International GmbH v Wuxi Woco-Tongyong Rubber Engineering Co.*<sup>43</sup>

Finally, ad hoc plays no role in the Chinese arbitration system, and arbitral awards rendered through ad hoc arbitration are unenforceable. The denial to ad hoc arbitration in the Chinese arbitration system stems from the AL's stipulation that "arbitration agreements must designate an arbitration institution to be valid."<sup>44</sup> Accordingly, the SPC has struck down agreements providing for ad hoc arbitration, for example, in *People's Insurance Company of China, Guangzhou v Guanghope Power*.<sup>45</sup>

As such, the Chinese arbitration system relies very much on the control from the top such as the institutional arbitration monopoly by the Chinese arbitration commissions, denying access to both ad hoc arbitration and foreign institutional arbitration seated in China. Nonetheless, the latest pro-arbitration move has shed new light on the issues of foreign arbitration institutions seated in China and ad hoc arbitration, which will be discussed in Section 3 below.

### III. THE REFORM OF ICA IN CHINA: ALIGNMENT

Recent reforms in China's ICA landscape signal a shift towards alignment with international standards, which could be illustrated from the following three aspects: (1) legislative reform, (2) judicial reform, and (3) institutional reform.

#### A. Legislative reform

In terms of legislative reform, the ML has never been adopted in China, although the 1985 ML served as a guiding reference during the drafting stage of the AL in 1994.

It has been widely criticized in the Chinese arbitration circle that the 1994 AL, that has been in force for 29 years without substantial amendments, is much outdated and has stalled the development of the Chinese arbitration system. On 30 July 2021, the Ministry of Justice of the PRC released proposed revisions to the PRC Arbitration Law for public consultation ("2021 Draft Amendment")<sup>46</sup> and

43. *Deguo Xupulin Guoji Youxian Zeren Gongsì Yu Wuxi Woke Tongyong Gongcheng Xiangjiao Youxian Gongsì Shenqing Queren Zhongcai Xieyi Xiaolian* (德国旭普林国际有限责任公司与无锡沃可通用工程橡胶有限公司申请确认仲裁协议效力案) [*Züblin International GmbH and Wuxi Woke General Engineering Rubber Co., Ltd. for Determining the Validity of the Arbitration Agreement*] (Wuxi Intern. People's Ct. July 19, 2006), in Nadia Darwazah & Friven Yeoh, *Recognition and Enforcement of Awards Under the New York Convention: China and Hong Kong Perspectives*, 6 J. INT'L ARB. 837, 841–42 (2008).

44. Arbitration Law, *supra* note 5, arts. 16, 18.

45. *Zhongguo Renmin Baoxian Gongsì Guangdongsheng Fengongsì Yu Guangdong Guanghe Dianli Youxian Gongsì Deng Baoxian Hetong Jiufen An* (中国人民保险公司广东省分公司与广东光合电力有限公司等保险合同纠纷案) [*People's Insurance Company of China, Guangdong Branch vs. Guangdong Photosynthetic Electric Co., Ltd. et al. Insurance Contract Dispute Case*] (Sup. People's Ct. Oct. 31, 2003) (China).

46. MINISTRY OF JUST., ZHONGHUA RENMIN GONGHEGUO ZHONGCAIFA (XIUDING) (ZHENGQIU YIJIAN GAO) (中华人民共和国《仲裁法》(修订)(征求意见稿)) [The

explanatory notes to the 2021 Draft Amendment.<sup>47</sup> Some key features of the proposed revisions include: granting market access for ad hoc arbitration and foreign arbitration institutions for foreign-related arbitrations, recognizing the seat of arbitration, endorsing the doctrine of competence-competence, providing more flexibility in the appointment of arbitrators, giving arbitrators the power to grant interim relief, supporting online arbitration, unifying the grounds for setting aside domestic and foreign-related awards, substantially limiting the scope of review by the enforcement court,<sup>48</sup> and expanding the scope of arbitration (leaving possibilities for investor-state and sports arbitration).<sup>49</sup>

The 2021 Draft Amendment proposes a number of ground-breaking changes to the existing arbitration regime in China, clearly showing its intention to bring Chinese arbitration more in line with transnational standards. It is argued that “the 2021 Draft Amendment reflects China’s adaptations towards transnational standards as a result of marketization of arbitration” and thus “may open a new era for arbitration in China.”<sup>50</sup>

Except for the proposed 2021 Draft Amendment, most of the arbitration reforms introduced so far are prompted by two threads: (1) the regulatory level that is largely led by the SPC’s judicial interpretations and (2) the institutional level that is largely shaped by the Chinese arbitration market,<sup>51</sup> which will be discussed in detail below.

### B. *Judicial reform*

Although the legislative amendment progress is not very encouraging over the past years, the SPC has however actively filled the regulatory gap on arbitration in many aspects by issuing numerous judicial interpretations in the field that are treated as quasi-laws in Chinese jurisprudence. Those systematic judicial interpretations mainly shape the regulatory advancement on Chinese arbitration when legislative development is lacking. Among them, the most notable one is the SPC’s issuance of the 2006 Interpretation Concerning the Implementation of the

Arbitration Law of the People’s Republic of China (Amendment) (Public Consultation)] (July 30, 2021), [https://www.moj.gov.cn/pub/sfbgw/lfyjzj/lflfyjzj/202107/t20210730\\_432967.html](https://www.moj.gov.cn/pub/sfbgw/lfyjzj/lflfyjzj/202107/t20210730_432967.html) (China).

47. MINISTRY OF JUST., GUANYU ZHONGHUA RENMIN GONGHEGUO ZHONGCAIFA (XIUDING)(ZHENGQIU YIJIAN GAO) DE SHUOMING (关于《中华人民共和国仲裁法（修订）（征求意见稿）》的说明) [Explanatory Notes of the Arbitration Law of the People’s Republic of China (Amendment) (Public Consultation)] (July 30, 2021), Zhongguo Falü Wang (中国法律网) [Pub. Legal Serv. of China], <http://zqyj.chinalaw.gov.cn/chinalaw/upload/contentFile/1/4518/9931.doc> (China).

48. See Kun Fan, *The 2021 Proposed Amendments to the Arbitration Law of China: A New Era of Arbitration?*, ICC DISP. RESOL. BULL. 21 (2021).

49. Falk Lichtenstein & Roxie Meng, *New Draft for Modernising China’s Arbitration Law - Signal for Internationalisation Instead of Decoupling?*, (Sep. 28, 2021), <https://cms-lawnow.com/en/ealerts/2021/09/new-draft-for-modernising-china-s-arbitration-law-signal-for-internationalisation-instead-of-decoupling>.

50. Fan, *supra* note 48.

51. GU, *supra* note 22, at 89.

Arbitration Law (the “2006 SPC Interpretation”). This is the most comprehensive attempt by the SPC in codifying its opinions on the grey areas of practice of Chinese arbitration unaddressed in the AL since the AL was promulgated in 1994.<sup>52</sup>

In terms of ad hoc arbitration, China has recently relaxed the legislative constraint. In December 2016, the SPC issued its *Opinions on the Free Trade Zones* (“2016 FTZ Opinion”),<sup>53</sup> giving recognition and effect to the possibility and potential of ad hoc arbitration in China. By providing that “where both enterprises registered in the FTZ have agreed to settle relevant disputes by a specific arbitrator (or arbitrators) in accordance with the specific arbitration rules at a specific place in China (the “three specifics” criteria), the arbitration agreement may be deemed valid.”<sup>54</sup> Article 9(3) of the FTZ Opinion is deemed to have conditionally permitted the practice of ad hoc arbitration in China, thus indicating the supportive judicial attitude toward gradually defrosting the ad hoc arbitration practice in China.

However, the 2016 FTZ Opinion only governs decision-making by courts on the validity of ad hoc arbitration and its consequent awards. It does not provide specific details in procedures as to how an ad hoc arbitration is to be carried out in China. Without new legislation that treats ad hoc arbitration as a recognized category and provides specific implementation details governing the arbitral processes, ad hoc arbitration cannot be effectively practiced in China. Despite the absence of formal legislation, one of the local arbitration commissions, the Zhuhai Arbitration Commission in Guangdong Province, recently took initiative by promulgating the rules for prospective ad hoc arbitration practice arising out of the Hengqin (Zhuhai–Macao) FTZ in 2017.<sup>55</sup> As the very first set of ad hoc arbitration rules in China, it was a bold step attempted by Chinese arbitral institutions.

In light of the special status of the FTZs as both a trade and legal experiment of Chinese out-going economic reform, to first allow the practice of ad hoc arbitration in FTZs is particularly meaningful. The 2016 FTZ Opinion paves ways for the FTZs to conduct such legal experiments, and the successful experience will then shed light on the future reform of the entire arbitration market (and

52. For a detailed overview of the 2006 SPC Interpretation, see GU, *supra* note 21, at 74–83.

53. Zuigao Renmin Fayuan Guanyu Wei Ziyou Maoyi Shiyangu Jianshe Tigong Sifa Baozhang de Jianyi, Fafa [2016] Sanshisi Hao (最高人民法院关于为自由贸易试验区建设提供司法保障的意见, 法发【2016】34号) [Opinions of the Supreme People’s Court on Providing Judicial Guarantee for the Building of Pilot Free Trade Zones, Court Issuance No. 34 [2016]] (promulgated by the Sup. People’s Ct., Dec. 30, 2016, effective Dec. 30, 2016), Beida Fabao (北大法宝) [PKULAW], [http://en.pkulaw.cn/display.aspx?cgid=441e185f12e602a2bdfb&lib=law,CLI.3.288255\(EN\) \(Lawinfochina\).](http://en.pkulaw.cn/display.aspx?cgid=441e185f12e602a2bdfb&lib=law,CLI.3.288255(EN) (Lawinfochina).)

54. *Id.* ¶ 9.

55. See Hengqin Ziyou Maoyiqu Linshi Zhongcai Guize (横琴自由贸易试验区临时仲裁规则) [Hengqin Free Trade Zone Temporary Arbitration Rules] (promulgated by the Zhuhai Arb. Comm’n, Apr. 15, 2017, effective Apr. 15, 2017) Zhuhai Arb. Comm’n, 2017, <http://zcia.pro/info/693.html> (last visited Mar. 15, 2024).

arbitration service) in China.

The status of foreign institutional arbitration seated in China was not addressed in the 2006 SPC Interpretation, but it has been liberally re-interpreted by Chinese courts in the recent judicial practice.

In 2009, the Ningbo Intermediate People's Court (in Zhejiang Province) in *Duferco SA v Ningbo Art & Craft Import & Export Corp* (“*Duferco*”) confirmed and enforced an arbitral award following the Arbitration Rules of the International Chamber of Commerce (“ICC”) Court of Arbitration seated in Beijing. This is also the first reported case of a Chinese court allowing the enforcement of an ICC award made in China.<sup>56</sup> In the judgment, the Ningbo Intermediate Court stated with emphasis that the arbitral award in question should be categorized as a “non-domestic award” under the New York Convention and as such, should be recognized and enforced under the Convention.<sup>57</sup>

Later, in 2013, the similar issue arose in *Longlide Packaging Co., Ltd v. BP Agnati S.R.L.* (“*Longlide*”).<sup>58</sup> The case went before the Anhui Provincial Higher People's Court, which consulted the SPC for a reply. In the reply, the SPC upheld the validity of the arbitration agreement that allows the ICC to arbitrate a case seated in Shanghai. The SPC, however, did not address the issues of whether the current jurisprudence now extends to allow foreign arbitration institutions to administer arbitration in China and whether awards rendered by such institutions in China should be categorized as “non-domestic.”<sup>59</sup>

More recently, in 2021, Chinese courts have made two landmark decisions to recognize the validity of such arbitration agreements that designated foreign arbitration institutions to administer cases in China.<sup>60</sup> The first judgment was delivered by Shanghai No. 1 Intermediate People's Court in June 2020,<sup>61</sup> and the

56. Degao Gangtie Gongsì Yu Ningbo Shi Gongyipin Jinchukou Youxian Gongsì (德高钢铁公司与宁波市工艺品进出口有限公司) [*Dufercos. A. v. Ningbo Arts & Crafts Imp. & Exp. Co., Ltd.*] (Ningbo Interm. People's Ct. Apr. 22, 2009).

57. Such ruling has been described as a “helpful step in the right direction.” John Choong, *First Reported Case of a China ICC Award Being Enforced in China*, FRESHFIELDS BRUCKHAUS DERINGER (Oct. 2009), <https://www.lexology.com/library/document.aspx?g=b989a013-d798-4784-b1fe-3767336de095>.

58. AnHui Longlide Baozhuang Yinshua Youxian Gongsì Yu Bei Shenqing Ren BP Agnati S.R.L. (安徽龙利得包装印刷有限公司与被申请人 BP Agnati S.R.L.) [*Anhui Long Li De Packaging and Printing Co., Ltd. V. BP Agnati S. R. L.*] (Anhui Higher People's Ct. Jan. 30, 2013), <https://hk.lexiscn.com/law/law-chinese-1-2456325.html> (China).

59. Zuigao Renmin Fayuan Guanyu Shenqingren Anhui Sheng Longlide Baozhuang Yinshua Youxian Gongsì Yu Bei Shenqing Ren BP Agnati S.R.L. Shenqing Queren Zhongcai Xieyi Xiaoli An de Qingshi de Fuhan (最高人民法院关于申请人安徽省龙利得包装印刷有限公司与被申请人 BP Agnati S.R.L. 申请确认仲裁协议效力案的请示的复函) [Reply of the Supreme People's Court to the Request for Instructions on Application for Confirming the Validity of an Arbitration Agreement in the Case of Anhui Longlide Packaging and Printing, Co. v. BP Agnati S.R.L.] (Sup. People's Ct. Mar. 25, 2013) [http://www.lawinfochina.com/display.aspx?id=17948&lib=law&EncodingName=big5, CLI.3.233828\(EN\) \(Lawinfochina\)](http://www.lawinfochina.com/display.aspx?id=17948&lib=law&EncodingName=big5, CLI.3.233828(EN) (Lawinfochina)).

60. See Kai-Shen Huang, *Internationalization as a Leap of Faith: Arbitration Reforms in China and the Challenges of Implementation*, ASIAN J. LAW SOC'Y 1, 8–9 (2022).

61. BNB v. BNA (上海市第一中级人民法院 (2020) 沪 01 特 83 号民事裁定书)

second judgement was rendered by Guangzhou Intermediate People's Court in August 2020, further confirming that the arbitral award rendered by the ICC seated in China should be regarded as a "Chinese foreign-related arbitral award" and thus be enforced under the Civil Procedure Law of the PRC.<sup>62</sup> After decades of uncertainty, the Chinese courts have finally provided clarifications on the status of foreign institutional arbitration seated in China.

It is also noteworthy that the SPC has speeded up its regulatory pace on judicial review over arbitration in the past several years, publishing a series of systematic judicial interpretations in the field, particularly with respect to the pre-reporting mechanism.

In November 2017, the SPC amended the prior pre-reporting mechanism through its issuance of the *Provisions on Cases Relating to the Pre-Reporting System of Arbitration* ("2017 SPC Provisions on Pre-reporting").<sup>63</sup> Despite the high cost of judicial resources involved in the pre-reporting system, the SPC is now willing to expand the jurisdictional scope to cover even domestic arbitral awards.<sup>64</sup> Hence, the pre-reporting system is now equally applied to domestic arbitration cases without any foreign element.<sup>65</sup> Under the new rules of the pre-reporting system, the decision to invalidate an arbitration award, irrespective of its origin and type, may only be made after the SPC's centralized review. This new SPC regulatory scheme has made even domestic arbitral awards more difficult to be set aside by lower courts. By extending the "pre-reporting system" to judicial reviews over the domestic arbitration regime and abolishing the two-decade preferential treatment toward the foreign-related arbitration regime, the SPC has created an overall pro-enforcement and pro-arbitration judicial image.

Moreover, there are two sets of new rules on judicial review procedures published by the SPC in December 2017 and January 2018: *the Provisions on Several Issues Relating to the Judicial Review over Arbitration* ("2017 SPC Provisions on Arbitration Review")<sup>66</sup> and the *Provisions on Several Issues Relating to the Enforcement of Arbitration Awards* ("2018 SPC Provisions on Award Enforcement").<sup>67</sup> Both

[Shanghai 01 Civil Special 83] (Shanghai No.1 Interm. People's Ct. June 29, 2020) (China).

62. Guangzhou Shi Zhongji Renmin Fayuan (2015) Suizhong Famin Si Chuzi Di 62 Hao (广州市中级人民法院 (2015) 穗中法民四初字第 62 号) [Brentwood Industries v. Guangdong Fanlong Mechanical Equipment Manufacture Co. Ltd. (2015)] (Guangzhou Interm. People's Ct. Aug. 06, 2020) (China).

63. Sup. People's Ct., *supra* note 31.

64. *See id.* arts. 1–3.

65. *See id.* art. 2, ¶2.

66. Zuigao Renmin Fayuan Guanyu Shenli Zhongcai Sifa Shencha Anjian Ruogan Wenti de Guiding, Fa Shi [2017] Ershier Hao (最高人民法院关于审理仲裁司法审查案件若干问题的规定, 法释【2017】22 号) [Provisions of the Supreme People's Court on Several Issues concerning Trying Cases of Arbitration-Related Judicial Review, Judicial Interpretation No. 22 [2017]] (promulgated by the Judicial Comm. Sup. People's Ct., Dec. 4, 2017, effective Jan. 1, 2018), <http://www.lawinfochina.com/display.aspx?id=27178&lib=law>, CLI.3.307539(EN) (Lawinfochina).

67. Zuigao Renmin Fayuan Guanyu Renmin Fayuan Banli Zhongcai Caijue Zhixing Anjian Ruogan Wenti de Guiding, Fashi [2018] Wu Hao (最高人民法院关于人民法院办理仲裁裁决执行

Provisions aimed to clarify and streamline the procedure on judicial review over arbitration in China such that the case should be handled by the intermediate court level hierarchically and heard by the collegiate bench organizationally.<sup>68</sup> Moreover, the governing law of the arbitration agreement should be severed from that of the main contract,<sup>69</sup> and the timeline for review should generally be limited to two months.<sup>70</sup>

### C. Institutional reform – the Chinese arbitration market

In addition to the regulatory reform initiated by the SPC, the Chinese institutional arbitration landscape and its reform become more complicated, and the Chinese arbitration market has also been formed.

The landscape of the Chinese arbitration market is mainly formed by the following three forces. First, the AL's promulgation led to the rapid proliferation of city-based local arbitration commissions across China to compete for caseload, where a Chinese arbitration market started to be formed. To date, there are more than 270 of such kinds of local arbitration commissions. Second, despite the jurisdictional merging under the 1996 State Council Notice, CIETAC, as the most established arbitration institution in China, has continued to dominate the foreign-related arbitration market, until it was recently challenged by the dramatic CIETAC “split incident” in 2013. Third, local arbitration commissions are increasingly proactive in recent years. They regularly and continually update their arbitration rules and present innovative marketing initiatives, which contributed substantially to the Chinese arbitration market. The second and third forces make the Chinese arbitration market more complicated and diversified.<sup>71</sup>

#### 1. CIETAC's split incident

The key actors in the CIETAC's Split Incident were the CIETAC South-China sub-commission located in Shenzhen and the Shanghai sub-commission located in Shanghai.<sup>72</sup> The two sub-commissions were historically managed under

案件若干问题的规定，法释【2018】5号）[Provisions of the Supreme People's Court on Several Issues concerning the Handling of Cases regarding Enforcement of Arbitral Awards by the People's Courts, Judicial Interpretation No. 5 [2018]] (promulgated by the Judicial Comm. Sup. People's Ct., Jan. 5, 2018, effective Mar. 1, 2018), [\(http://www.lawinfochina.com/display.aspx?id=30284&lib=law, CLI.3.310258\(EN\)\)](http://www.lawinfochina.com/display.aspx?id=30284&lib=law,CLI.3.310258(EN)) (Lawinfochina).

68. See Sup. People's Ct., *supra* note 66, art. 11.

69. See *id.* arts. 13–14.

70. See Sup. People's Ct., *supra* note 67, art. 12.

71. See GU, *supra* note 22, at 103.

72. The CIETAC South China Sub-commission was set up in 1984 and the CIETAC Shanghai Sub-commission was set up in 1990. The CIETAC South China Sub-commission bore the name of the CIETAC Shenzhen office at its establishment in 1984. It was upgraded to the CIETAC Shenzhen Sub-commission in 1989 and had its name changed to the current one in 2004. For a history of their establishment, see Gao Fei (高菲), *Maozhongwei Shanghai, Huanan Liangfenhui Yu Maozhongwei Zhi Zheng de Falu Wenti Yanjiu* (San): Maozhongwei Shanghai, Huanan Liangfenhui Weifa Duli de Yuanyin Yu Jiejue (贸仲委上海, 华南两分会与贸仲委之争的法律问题研究(三):

their respective local governments, and their establishment as “CIETAC sub-commissions” were largely professional labels.<sup>73</sup> Nonetheless, CIETAC attempted to strengthen its influence by appointing secretary-generals and deputy secretary-generals to the sub-commissions, as well as compulsory application of her rules from 2002–2012.<sup>74</sup> In addition, CIETAC and the two sub-commissions were natural competitors in the arbitration market for arbitration fees.<sup>75</sup> This rivalry peaked in 2012, when CIETAC revised its arbitration rules excluding jurisdiction of the sub-commissions.

On 3 February 2012, CIETAC promulgated its revised Arbitration Rules (“2012 Rules”), with effect from 3 May 2012. The taking into effect of the 2012 Rules was followed by announcements from the Shenzhen and Shanghai sub-commissions claiming independence from CIETAC (“CIETAC Split Incident”).<sup>76</sup> The split was likely triggered by CIETAC’s 2012 Rules, in particular Article 2, concerning the jurisdictional power division between CIETAC’s headquarters in Beijing and its two sub-commissions.<sup>77</sup> Article 2 of the 2012 Rules stipulates that “CIETAC sub-commissions or arbitration centers are branches of CIETAC. They accept arbitration applications and administer arbitration cases with CIETAC’s authorization.”<sup>78</sup> Cases submitted to CIETAC’s empire yield three common types of jurisdiction clauses: (1) Parties elect to submit the dispute to CIETAC in Beijing (“Headquarters Clause”); (2) Parties elect to submit the dispute to a specified CIETAC sub-commission (“Sub-commission Clause”); and (3) Parties elect to submit the dispute to “CIETAC, at the place of a specified sub-commission, or where the agreement on the sub-commission is ambiguous” (“Mixed Clause”).<sup>79</sup> Under the 2005 and 2000 CIETAC Rules, where a Headquarters Clause or a Mixed Clause was used, parties could submit their cases to either the CIETAC headquarters in Beijing or the Shenzhen/Shanghai sub-commissions, with the jurisdiction determined upon the claimant’s first choice.<sup>80</sup>

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贸仲委上海, 华南两分会违法独立的原因与解决) [Research on the Legal Issues of the Disputes Between the CIETAC Shanghai and Huanan Two Sub-commissions and the CIETAC (3): Reasons and Solution of the Illegal Independence of CIETAC Shanghai and Huanan Sub-commissions], *Shidai Faxue* (时代法学) [Presentday L. Sci.], no. 11, 2013, at 3, 6-11.

73. *Id.* at 6–7.

74. *See Id.*

75. *See Id.*

76. *See, e.g.,* Meng Chen, *Is CIETAC Breaking Apart? An Analysis of the Split in the CIETAC System*, 6 CONTEMP. ASIA ARB. J. 107 (2013).

77. Article 2 is entitled “The Structure and Duties.” *See* China International Economic and Trade Arbitration Commission Arbitration Rules, art. 2 (rev’d Feb. 3, 2014, effective May 1, 2012) (on file with author) [hereinafter 2012 CIETAC Rules].

78. *Id.* art. 2(3).

79. *Id.* art. 2(6).

80. *See* Arbitration Rules of China International Economic and Trade Arbitration Commission (CIETAC), art. 12 (revised and adopted by the China Council for the Promotion of Int’l Trade and China Chamber of International Commerce, Sept. 5, 2000, effective Oct. 1, 2000) (on file with author) [hereinafter 2000 CIETAC Rules]; Arbitration Rules of China International Economic and Trade Arbitration Commission (CIETAC), art. 2(8) (revised and adopted by the China Council for

However, under the 2012 Rules, Headquarters Clause and Mixed Clause cases would both be taken by the CIETAC headquarters in Beijing; the sub-commissions could only handle cases with a clearly written Sub-commission Clause.<sup>81</sup>

Years of competition, catalyzed by changes to the jurisdictional power division and its impacts on the sub-commissions' income from case filing fees—coupled with CIETAC's declaration of effective control over the sub-commissions—led to the announcement of independence by the sub-commissions.<sup>82</sup> CIETAC subsequently announced on August 1, 2012, its termination of authorization to the Shenzhen and Shanghai sub-commissions for accepting and administering any CIETAC-related cases, including cases with Sub-commission Clauses.<sup>83</sup> The two sub-commissions responded by renaming themselves as, respectively, the Shenzhen Court of International Arbitration/South China International Economic and Trade Arbitration Commission (“SCIA/SCIETAC”) in October 2012 and the Shanghai International Arbitration Centre/Shanghai International Economic and Trade Arbitration Commission (“SHIAC/SIETAC”) in April 2013.<sup>84</sup> In May 2013, SCIA and SHIAC each announced a set of new arbitration rules, stating that they would no longer accept cases with the Headquarters Clause but would as usual accept cases with the Sub-commission Clause.<sup>85</sup>

The CIETAC split indicates that the unrivaled position and the historical

the Promotion of Int'l Trade and China Chamber of International Commerce, Jan. 11, 2005, effective May 1, 2005), CLI4.58539(EN) (Lawinfochina) [hereinafter 2005 CIETAC Rules].

81. See 2012 CIETAC Rules, *supra* note 77, art. 2(6).

82. China's leading economic news media, Yicai.com, reported on the CIETAC split episode. See Xiao Yao (萧遥), Lu Litao (卢丽涛) & Guo Liqin (郭丽琴), Shewai Zhongcai Nao “Fenzhi”: Zhengyi Beihou Shenfen Chengmi (涉外仲裁闹“分治”: 争议背后身份成谜) [*Foreign Arbitration “Divided”: Identities Behind the Controversy Remain a Mystery*], YICAI (May 4, 2012), <https://www.yicai.com/news/1691426.html>.

83. Zhongguo Guoji Jingji Maoyi Zhongcai Weiyuanhui Guanyu Yueding You Zhongguo Guoji Jingji Maoyi Zhongcai Weiyuanhui Shanghai Fenhui, Zhongguo Guoji Jingji Maoyi Zhongcai Weiyuanhui Huanan Fenhui Zhongcai de Anjian de Guanli Gonggao (中国国际经济贸易仲裁委员会关于约定由中国国际经济贸易仲裁委员会上海分会, 中国国际经济贸易仲裁委员会华南分会仲裁的案件的的管理公告) [*Administrative Announcement by the CIETAC Regarding Arbitral Cases Submitted to the CIETAC Shanghai and South-China Sub-commissions*], CHINA INT'L ECON. & TRADE ARB. COMM'N., Aug. 1, 2012, <https://www.globalchinalaw.com/zh/documents/884ea283-5469-bba1-2054-c369b023054e/bilingual> (China).

84. The SIETAC and SCIETAC also use the new names, the Shanghai International Arbitration Centre (SIAC) and the Shenzhen Court of International Arbitration (SCIA), respectively. For reports by China's leading economic news media, Yicai.com, on the aftermath of the CIETAC split, see Lu Litao (卢丽涛), Huanan Guozhong, Shanghai Maozhong: Duli Zhongcai Jigou Bu Cunzai Shouquan Zhi Shuo (华南国仲, 上海贸仲: 独立仲裁机构不存在授权之说) [*South China, Shanghai Sub-commission: Authorization Implications for Independent Arbitral Bodies?*], YICAI (Jan. 31, 2013), <http://www.yicai.com/news/2463616.html>; Lu Litao (卢丽涛), Shanghai Maozhong Gengming: Xiayue Qiyong Xin Guize Xin Mingce (上海贸仲更名: 下月启用新规则新名册) [*Shanghai CIETAC Changed Name: New Rules and Lists to Be Adopted Next Month*], YICAI (Apr. 12, 2013), <http://www.yicai.com/news/2621445.html> [hereinafter Lu, Shanghai CIETAC Changed Name].

85. See *id.*

near-monopoly of the foreign-related arbitration market held by CIETAC in the Chinese arbitration system are susceptible to challenge. The declarations of independence by SCIETAC and SIETAC have been bolstered by their respective promulgations of new arbitration rules seeking to match international standards. In addition, the utilization of unique geographic advantages by SCIETAC and SIETAC—located in the Shanghai and Guangdong Free Trade Zones, respectively—have created still fiercer competition for CIETAC. SCIETAC in particular has fully capitalized on its geographic proximity to Hong Kong and Macau; of the thirty-four foreign arbitration awards enforced by Hong Kong courts in 2014, five were awards rendered by SCIETAC, being the largest portion of foreign awards delivered by one individual institution outside Hong Kong.<sup>86</sup> The dynamics of arbitration commissions using their niches to thrive and compete has extended to local arbitration commissions, as discussed later.

## 2. *Competition among local arbitration commissions*

The expansion, maturation, and increasingly competitive nature of the market for Chinese local arbitration commissions may be attributed to several factors. These include the proliferation of local arbitration commissions following the promulgation of the 1994 AL, the blurring of the dual-track jurisdiction following the 1996 State Council Notice, the desire of local arbitration commissions to attract foreign caseload in the “shadow” of CIETAC, as well as their continuing efforts to improve institutional independence, integrity, and competitiveness.

Regular updates by local arbitration commissions of their arbitration rules serve to enhance their market competitiveness, with features threefold. First, to attract foreign-related caseload, local commissions are incentivized to bring their rules in line with international standards, with greater respect accorded to procedural autonomy and flexibility. For instance, since 1956, CIETAC has amended its rules on nine occasions, with the most recent amendment made in 2023.<sup>87</sup> BAC, in recent years, has updated its arbitration rules in 2015, 2019, and 2022. SCIA updated its arbitration rules in December 2016<sup>88</sup> and February 2019<sup>89</sup>

86. *The Enforcement of SCIA Arbitration Awards Ranked as Highest in Hong Kong*, S. CHINA INT'L ECON. & TRADE ARB. COMM'N/SHENZHEN CT. INT'L ARB. (Jan. 30, 2015), <http://www.sccietac.org/web/news/detail/1518.html>.

87. *CIETAC Releases New Version of Arbitration Rules*, MINISTRY OF JUST. (November 17, 2023), [http://en.moj.gov.cn/2023-11/17/c\\_939909.htm#:~:text=The%20China%20International%20Economic%20and,in%20Beijing%20on%20Sept%205%202023](http://en.moj.gov.cn/2023-11/17/c_939909.htm#:~:text=The%20China%20International%20Economic%20and,in%20Beijing%20on%20Sept%205%202023) (China).

88. *Shenzhen Guoji Zhongyiyuan Zhongcai Guize (2016 Nian 12 Yue 1 Ri Qi Shixing) (深圳国际仲裁院仲裁规则 (2016年12月1日起施行))* [Shenzhen Court of International Arbitration Rules (effective Dec. 1, 2016)] (promulgated by the Shenzhen Ct. of Int'l Arb., Dec. 1, 2016, effective Dec. 1, 2016), Shenzhen Ct. of Int'l Arb., <https://www.scia.com.cn/index.php/Home/index/rule/id/798.html> (China).

89. *SHENZHEN CT. OF INT'L ARB., SCIA ARBITRATION RULES (2019) (effective February 21, 2019)*, [https://www.scia.com.cn/files/fckFile/file/SCIA Arbitration Rules \(effective from Feb\\_ 21,](https://www.scia.com.cn/files/fckFile/file/SCIA%20Arbitration%20Rules%20(effective%20from%20Feb%2021%202019).docx)

to enhance the procedural management in its international commercial arbitration. The most recently updated SCIA Rules in 2019, benchmarked against the world institutional arbitration giants such as the ICC Court of Arbitration in Paris, has introduced all major international arbitration procedural reforms such as joinder of parties in arbitration,<sup>90</sup> consolidation of arbitration in multiple contracts,<sup>91</sup> emergency arbitration,<sup>92</sup> etc.

Second, to enhance their competitive edges, local commissions seek to nurture a higher degree of professionalism. Privileged by its location in Beijing, BAC is renowned in its recruitment of talents in law, economics, technology, and trade, such that many of its arbitrators are renowned scholars and leading professionals in the fields both in China and globally.<sup>93</sup> Further, BAC has maintained a tradition of high elimination rates of its arbitrators who have not participated in any cases in the past few years.<sup>94</sup> In 2013, 267 out of the 391 BAC panel arbitrators were involved in handling arbitration cases; just one out of the fifty-seven newly appointed arbitrators in that year failed to handle any cases.<sup>95</sup> BAC is also the only institution in China that imposes strict ethical restrictions on its arbitrators acting as counsel in other cases submitted to BAC.<sup>96</sup> This prohibition seeks to ensure the ethics and integrity of BAC arbitrators to offset the negative influence of personal relations and networks (*guanxi* 关系) existing delicately within the operation of arbitral tribunals in China. Similar efforts have been seen at the SCIA in Shenzhen. The SCIA, located in the Shenzhen Special Economic Zone, and by taking advantage of its strategic role of connecting with Hong Kong, compiled a most common-law-featured roster of its international panel arbitrators, many of whom were drawn from legal professionals who were residents in Hong Kong. In 2019, SCIA's updated roster of panel arbitrators had as high as 41% of its arbitrators drawn from overseas (385 out of 933 panel arbitrators), making SCIA the most internationalized in terms of arbitrators'

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2019).pdf (China).

90. *See id.* arts. 20–21.

91. *See id.* arts. 17–19.

92. *See id.* art. 26

93. Zhang Wei (张维), *Jingwai Zhongcai Jigou Jinzhu Zhongguo Shichang Jiaju Jingzheng, Zhuanjia Yu Feixingzhenghua* (境外仲裁机构进驻中国市场加剧竞争, 专家吁非行政化) [*Foreign Arbitration Institutions Enter the Chinese Market Increasing Competition, Experts Calling for Removal of Administrative Interference*], *Fazhi Ribao* (法制日报) [CHINA NEWS.COM] (Sept. 29, 2015), <http://www.chinanews.com/m/cj/2015/09-29/7549384.shtml>.

94. Beizhong Shizhounian Gongzuo Zongjie (北仲十周年工作总结) [*Beijing Arbitration Commission Ten-Year Anniversary Work Summary*], Beijing Zhongcai Weiyuan Hui (北京仲裁委员会) [BEIJING ARB. COMM'N] (Sept. 30, 2005), <http://www.bjac.org.cn/page/gbhb/sznzj.html> (China).

95. Beizhong 2013 Nian Gongzuo Zongjie (北仲 2013 年工作总结) [*Beijing Arbitration Commission Work Summary 2013*], Beijing Zhongcai Weiyuanhui (北京仲裁委员会) [BEIJING ARB. COMM'N] (Jan. 24, 2014), <http://www.bjac.org.cn/page/gbhb/2013zj.html> (China).

96. Beizhong Zhongcaiyuan Shouze (北仲仲裁员守则) [*Beijing Arb. Comm'n Code for Arbitrators*] (promulgated by the Beijing Arb. Comm'n, Aug. 14, 2006, effective Sept. 1, 2006), <http://www.bjac.org.cn/page/zc/zcygf.html> (China).

backgrounds among Chinese arbitration institutions.<sup>97</sup>

Third, local arbitration commissions proactively capitalize on their best local features to attract caseload in the competitive arbitration market. In June 2015, the Guangzhou Arbitration Commission (“GAC”)—located in the capital city of the Guangdong province—started the process of amending its arbitration rules and published its Internet Arbitration Rules to promote online arbitration as its unique selling point.<sup>98</sup> In Hubei province, the Wuhan Arbitration Commission boasts a successful mediation (settlement) rate for arbitration cases as high as 97.13% from 2002 to 2012, with an arbitration caseload consistently ranked as the highest among all Chinese arbitration institutions in that decade.<sup>99</sup> Given plentiful local financial activity (and corresponding financial disputes), the Wenzhou Arbitration Commission (“WEAC”) in Zhejiang province has focused its efforts on promoting financial arbitration services.<sup>100</sup> The WEAC Financial Arbitration Rules, taking effect in May 2015, feature flexibility in application of financial laws, norms, customs, and rules in the financial profession, as well as principles of equity and fairness in the financial market, all as admissible governing regulations in arbitrating financial disputes at WEAC.<sup>101</sup> Thus, ever-intensified competition among local commissions in the Chinese arbitration market is pushing the system toward qualitative advancement.

#### IV. THE IMPACT OF CHINA ON GLOBAL ICA: INTERNATIONAL CONTRIBUTION

As China’s economic might and global influence expand, China is also pulling resources to exert impacts on the international arbitration system. China’s efforts are most acutely felt in light of its Belt and Road Initiative (BRI) ambition. More specifically, this part will discuss the potential impacts of China on global ICA from both institutional and individual aspects, namely the three newly emerging institutions: (1) the China-Africa Joint Arbitration Centre (“CAJAC”), (2) the creation of a “one-stop” dispute resolution platform by the China

97. SHENZHEN CT. OF INT’L ARB, INSTRUCTIONS FOR THE PANEL OF ARBITRATORS (July 4, 2020), <http://www.scia.com.cn/files/fckFile/file/%E6%B7%B1%E5%9C%B3%E5%9B%BD%E9%99%85%E4%BB%B2%E8%A3%81%E9%99%A22019%E4%BB%B2%E8%A3%81%E5%91%98%E5%90%8D%E5%86%8C.pdf>.

98. See Guangzhou Zhongcai Weiyuanhui Wanglu Zhongcai Guize (广州仲裁委员会网络仲裁规则) [Guangzhou Internet Arbitration Rules] (promulgated by the Guangzhou Arb. Comm’n, June 6, 2015, effective Oct. 1, 2015), <https://www.gzac.org/zcgz/528> (China).

99. See Wuhan Zhongcaiwei Shouan Shuliang lianxu Shinian Weiju Quanguo Di Yi (武汉仲裁委员会受案数连续十年位居全国第一) [*Wuhan Arbitration Commission’s Arbitration Caseload Highest Among All Chinese Arbitration Institutions in Ten Continuous Years*], Changjiang Ribao (长江日报) [YANGTZE RIVER DAILY] (Feb. 7, 2013), reprinted at Feng Huang Wang (凤凰网) [NEWS.IFENG.COM] (Feb. 7, 2013), [http://news.ifeng.com/gundong/detail\\_2013\\_02/07/22024260\\_0.shtml](http://news.ifeng.com/gundong/detail_2013_02/07/22024260_0.shtml).

100. See Wenzhou Zhongcai Weiyuanhui Jinrong Zhongcai Guize (温州仲裁委员会金融仲裁规则) [Wenzhou Financial Arbitration Rules] (promulgated by the Wenzhou Arb. Comm’n, May 8, 2015, effective May 8, 2015), Wenzhou Arb. Comm’n, 2015, [http://www.wzac.org/News\\_Detail.aspx?CateID=18&ID=397](http://www.wzac.org/News_Detail.aspx?CateID=18&ID=397) (China).

101. See *id.* art. 12.

International Commercial Court (“CICC”), (3) the International Commercial Dispute Prevention and Settlement Organization (“ICDPASO”), and (4) people.

*A. China-Africa Joint Arbitration Centre (CAJAC)*

It is argued that one of the signs of China’s rule-shaping in terms of global governance could be found in its role in building new institutions.<sup>102</sup> In the specific area of ICA, this article uses the China-Africa Joint Arbitration Centre (“CAJAC”) as an example, showing that China is making continuous efforts in shaping the ICA landscape.

According to CAJAC Rules, the CAJAC “has been established at the instance of the Forum of China Africa Cooperation (“FOCAC”) to administer the resolution of international disputes arising between Chinese and African entities having the principal residence, place of business, nationality located in China or a country in Africa.”<sup>103</sup> And it “operates through its accredited Centres in China and Africa to provide fully administered processes by way of mediation, conciliation and arbitration for the resolution of those disputes which are referred by the parties to CAJAC.”<sup>104</sup> Currently, there are six CAJAC Centres globally, namely CAJAC Johannesburg, CAJAC Shanghai, CAJAC Beijing, CAJAC Shenzhen, CAJAC Nairobi, and CAJAC OHADA. These six Centres are established and maintained by the Arbitration Foundation of Southern Africa, the Shanghai International Arbitration Centre, the Beijing International Arbitration Centre, the Shenzhen Court of International Arbitration, the Nairobi Centre for International Arbitration, and the Organization for the Harmonization of Business Law in Africa, respectively.<sup>105</sup>

Stakeholders from both China and Africa agreed that the initiation of CAJAC was pushed by the PRC government and Chinese arbitration commissions.<sup>106</sup> Drawing from Erie’s insights, CAJAC stands out as “the first legal institution, and specifically the first dispute resolution mechanism, that China has co-established outside of the territorial PRC.”<sup>107</sup> This institution embodies a transregional institutionalized network. Its form is characterized as an alliance between Chinese and African arbitration institutions,<sup>108</sup> which makes it unique in the ICA field and thus could be regarded as a Chinese-style innovation in the ICA field. While CAJAC seems to extend the reach of Chinese arbitration institutions in Africa by potentially replacing the jurisdiction of African courts

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102. Kun Fan, *Adaptations and Paradigm Shift: Recent Developments of Commercial Dispute Resolution Mechanism in China*, 7 MCGILL J. DISP. RESOL. 1, 19 (2020).

103. CHINA-AFR. JOINT ARB. CTR., CHINA-AFR. JOINT ARB. CTR. RULES, Article 1 (2020), [https://cajacjhb.com/wp-content/uploads/2020/10/CAJAC\\_Rules\\_2020.pdf](https://cajacjhb.com/wp-content/uploads/2020/10/CAJAC_Rules_2020.pdf).

104. *Id.* at Art. 2.

105. *See id.* at 22.

106. Matthew S. Erie, *The Soft Power of Chinese Law*, 61 COLUM. J. TRANSNAT’L L. 1, 46 (2023).

107. *Id.* at 8.

108. *See id.* at 49.

with that of Chinese arbitration institutions, its market reception has been tepid, casting shadows on its effectiveness.<sup>109</sup> Even though CAJAC's current operation may be more symbolic, indicating a cooperative stance rather than practical or concrete dispute resolution, it demonstrates that China is making continuous innovations and efforts in the ICA arena.

*B. The Creation of "One-Stop" Dispute Resolution Platform by the CICC*

The recently established China International Commercial Court ("CICC") has set up a One-Stop Multi-tier Dispute Resolution Platform (the "One-Stop" Platform), with the promotion of arb-med as one of its top priorities.<sup>110</sup> It includes experimental and innovative procedural rules that seek to incorporate alternative dispute resolution ("ADR") mechanisms into the conventional litigation process conducted before the CICC.<sup>111</sup>

Apart from China's creation of a "one-stop shop" platform, it is noted that in recent years, hybrid or multi-tiered dispute resolution mechanisms have become increasingly popular globally. The latest 2021 International Arbitration Survey found that there has been a significant increase in the overall popularity of arbitration combined with ADR: 59% of respondents expressed their preference for this combination<sup>112</sup> as opposed to only 34% in 2015.<sup>113</sup> This increasing popularity of hybrid mechanisms seems to become a worldwide trend. In light of this, to what extent is the "one-stop shop" platform for diversified dispute resolution unique to China? In other words, how does China's "one-stop shop" platform differentiate from the other hybrid systems? Why could it be considered a Chinese innovation?

To answer this question, this article highlights the following three distinct features of the CICC.

First, given that the introduction of foreign judges has been prohibited by Chinese law,<sup>114</sup> the CICC has innovatively introduced international expertise through its niche product, the International Commercial Expert Committee ("ICEC"), which is composed of international law experts of both Chinese and

109. *See id.* at 32.

110. 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, 120 (2019).

111. Weixia Gu, *China's Law and Development: A Case Study of the China International Commercial Court*, 62 HARV. INT'L L.J. 67 (2021).

112. Queen Mary University of London & White & Case LLP, *2021 International Arbitration Survey: Adapting Arbitration to a Changing World*, QUEEN MARY UNIV. OF LONDON SCH. OF INT'L. ARB. (2021), <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/>.

113. Queen Mary University of London & White and Case LLP, *2015 International Arbitration Survey: Improvements and Innovations in International Arbitration*, QUEEN MARY UNIV. OF LONDON SCH. OF INT'L. ARB. (2015), <https://arbitration.qmul.ac.uk/research/2015/>.

114. *See* Judges Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 1995, amended by the Standing Comm. Nat'l People's Cong., Apr. 23, 2019, effective Oct. 1, 2019), art. 12(1), Nat'l People's Cong., Apr. 23, 2019, [http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-04/23/content\\_2086082.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-04/23/content_2086082.htm) (China).

foreign nationalities.<sup>115</sup> This represents a clear step toward legal innovation and experimentation.<sup>116</sup>

To illustrate, the ICEC Working Rules set out the composition as well as the major powers and duties enjoyed by the members of the ICEC.<sup>117</sup> As of September 2023, of all the sixty-one members appointed to the ICEC by the SPC, twenty-eight are Chinese domestic experts and thirty-three are experts from outside Mainland China.<sup>118</sup> In terms of the ICEC's function, apart from providing advisory opinions on specialized legal issues concerning international treaties, international commercial rules, and the finding and application of foreign laws involved in the CICC cases,<sup>119</sup> the ICEC members are empowered to preside over mediations of the international commercial cases of the CICC and, hence, to issue mediation settlement agreements.<sup>120</sup> This mediation power is a ground-breaking feature of the ICEC in the sense that if a mediation settlement agreement presided over by an ICEC member is reached between the disputing parties, the CICC may issue a judgment based on such ICEC mediation settlement agreement.<sup>121</sup> Through the mediation mechanism, the foreign members and international legal expertise of the ICEC are indirectly allowed to get involved in "CICC judgment writing", which is equivalent to "semi-adjudication."<sup>122</sup> Given that most of the ICEC members come from an adjudicative and advocative background, the ICEC can be regarded as the most liberal feature of the CICC and a major breakthrough in the internationalization of the Chinese legal framework and judicial expertise.<sup>123</sup>

Second, to incubate the one-stop dispute resolution platform, the CICC has established strong linkages with China's top mediation and arbitration institutions that allow parties to choose various ADR options before or during the litigation process.<sup>124</sup>

To illustrate, the SPC issued the *Notice of the SPC on Inclusion of the First Group*

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115. Zuigao Renmin Fayuan Bangongting Guanyu Yinfa Zuigao Renmin Fayuan Guoji Shangshi Zhuanjia Weiyuanhui Gongzuo Guize (Shixing) de Tongzhi (最高人民法院办公厅关于印发《最高人民法院国际商事专家委员会工作规则（试行）》的通知) [Working Rules of the International Commercial Expert Committee of the Supreme People's Court (For Trial Implementation)] (promulgated by the Gen. Off. of the Sup. People's Ct., Nov. 21, 2018, effective Dec. 5, 2018), art. 2, China Int'l Com. Ct., Dec. 5, 2018, <http://cicc.court.gov.cn/html/1/219/208/210/1146.html> (China) [hereinafter ICEC Working Rules].

116. See Gu, *supra* note 111.

117. See ICEC Working Rules, *supra* note 115.

118. See *Experts Directory*, CHINA INT'L COM. CT., <http://cicc.court.gov.cn/html/1/219/235/237/index.html> (Oct. 5, 2023).

119. See ICEC Working Rules, *supra* note 115, art. 3(2).

120. See *id.* art. 3(1), 9–13.

121. See *id.* art. 13.

122. Wei Cai & Andrew Godwin, *Challenges and Opportunities for the China International Commercial Court*, 68 INT'L & COMP. L. Q. 869, 880 (2019). See generally Sheng Zhang, *China's International Commercial Court: Background, Obstacles and the Road Ahead*, 11 J. INT'L DISP. SETTLEMENT 150, 155 (2020).

123. See Gu, *supra* note 111.

124. *Id.*

of *International Commercial Arbitration and Mediation Institutions in the “One-stop” Diversified International Commercial Dispute Resolution Mechanism* (“One-stop Shop Notice”).<sup>125</sup> This Notice endorsed two of the most experienced international commercial mediation institutional providers in China to work with its one-stop dispute resolution platform. They are the Mediation Centre of the China Council for the Promotion of International Trade (“CCPIT”) and the Shanghai Commercial Mediation Centre (“SCMC”). If disputing parties have reached a mediation settlement agreement under CCPIT or SCMC, the CICC may either (i) issue a “conciliation statement” or (ii) make a “judgment based on the mediation agreement” if it is requested by the parties.<sup>126</sup> This conversion of the institutional mediation settlement agreement into the CICC judgment is unprecedented and is one of the most innovative features in the CICC.<sup>127</sup>

Moreover, the One-Stop Shop Notice endorsed and accredited several leading Chinese arbitration institutions, which specialize in international commercial dispute resolution so that parties who choose to arbitrate under the auspices of an endorsed arbitration institution may directly apply to the CICC for judicial assistance in arbitration.<sup>128</sup> These institutions include the top-tier arbitration institutions in the Chinese institutional arbitration market such as the CIETAC, SCIA, BAC, SHIAC, and CMAC.<sup>129</sup> Additionally, these leading Chinese international arbitration institutions designated by the CICC’s “One-Stop” Platform are increasingly seen as norm-setters to address the procedural difficulties of Chinese arb-med in the cross-border BRI dispute resolution setting that has been left out of China’s Arbitration Law.<sup>130</sup>

Third, there may exist a cross-impact between Singapore’s arb-med-arb system and China’s “one-stop shop” platform. In Singapore, the trio of the Singapore International Commercial Court (SICC), the SIAC, and the SIMC could arguably unleash the power of legal agglomeration by taking advantage of the synergy and coordination between various state-based legal institutions with differentiated functions.<sup>131</sup> Similar top-down attempts have been seen in the

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125. Zuigao Renmin Fayuan Bangongting Guanyu Queding Shoupi Naru “Yi Zhan Shi” Guoji Shangshi Jiufen Duoyuanhua Jiejue Jizhi de Guoji Shangshi Zhongcai Ji Tiaojie Jigou de Tongzhi (最高人民法院办公厅关于确定首批纳入“一站式”国际商事纠纷多元化解决机制的国际商事仲裁及调解机构的通知) [Notice of the Supreme People’s Court on Inclusion of the First Group of International Commercial Arbitration and Mediation Institutions in the “One-stop” Diversified International Commercial Dispute Resolution Mechanism] (promulgated by the Sup. People’s Ct., Nov. 13, 2018, effective Dec. 5, 2018), <http://cicc.court.gov.cn/html/1/219/208/210/1144.html> (China) [hereinafter One-stop Shop Notice].

126. *Id.* ¶ 3.

127. *See* Gu, *supra* note 111.

128. One-stop Shop Notice, *supra* note 125, ¶ 4.

129. *See* Gu, *supra* note 111.

130. *See* Gu, *supra* note 110, at 120.

131. *See* Michael Hwang, *Commercial Courts and International Arbitration—Competitors or Partners?* 31 *ARB. INT’L* 193, 197 (2015).

structuring of the CICC but “on a larger scale.”<sup>132</sup> It remains to be seen how this synergy generated from the “Trinity of Agglomeration” would potentially provide additional support for China’s reputation as a dispute resolution hub and whether the converging pursuit of a platform of litigation, arbitration, and mediation law-positive agglomeration trinity<sup>133</sup> shared between China and Singapore may become an innovative Asian brand in a broader sense.

In sum, the creation of “one-stop” dispute resolution platform by the CICC, could be regarded as one representative example of Chinese innovation in the field of ICA, by introducing “Chinese-style soft and flexible components into the dispute resolution proceedings.”<sup>134</sup> This may “lead to a reconceptualization of the function of arbitration as a method of administrative justice.”<sup>135</sup>

### C. *International Commercial Dispute Prevention and Settlement Organization (ICDPASO)*

Another noteworthy innovation made by China is the International Commercial Dispute Prevention and Settlement Organization (“ICDPASO”), which was established in 2020.<sup>136</sup> Supported and initiated by China Council for the Promotion of International Trade, ICDPASO, as a non-governmental international organization, was set up by China Chamber of International Commerce, together with commercial associations, legal service agencies, universities, and think tanks across the world.<sup>137</sup> Currently, ICDPASO consists of 51 members globally, covering over 100 countries and regions in Asia, Europe, Africa, North America, and South America.<sup>138</sup>

ICDPASO is aimed at providing diversified legal services, including commercial arbitration, commercial mediation, investment arbitration and dispute prevention, catering for, albeit not only confined to, the needs of BRI.<sup>139</sup> Furthermore, “unlike other multilateral dispute resolution forums,” ICDPASO is “intended to provide an Asian-centric multilateral dispute resolution forum” and may serve as “a global laboratory for experimenting and innovating in dispute

132. Fan, *supra* note 102.

133. The terminology of “Law-Positive Agglomeration Trinity” was inspired by Man Yip’s observation in the Singapore context, where the author commented that the SICC, SIAC and SIMC (in tandem with the SIMI) are “the hallmarks of the nation’s three-pronged strategy to become a premium dispute resolution hub through a comprehensive offering of dispute resolution services.” Singapore’s game plan was to “augment the menu of dispute resolution options for potential users.” Man Yip, *The Singapore International Commercial Court: The Future of Litigation*, 12 ERASMUS L. REV. 82, 83 (2019).

134. Fan, *supra* note 102, at 32.

135. *Id.*

136. See *About Us*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG., <http://en.icdpaso.org/category/75> (last visited Oct. 8, 2023).

137. See *id.*

138. See *id.*

139. See Jian Zhang, *International Commercial Dispute Prevention and Settlement Organization: A Quick Overview*, CHINA JUSTICE OBSERVER (2020), <https://www.chinajusticeobserver.com/a/thing-about-international-commercial-dispute-prevention-and-settlement-organization> (last visited Oct 8, 2023).

resolution with the potential to impact the landscape of international law.”<sup>140</sup>

In particular, this article highlights two unique and innovative features of the ICDPASO: (1) placing particular emphasis on mediation, and (2) attaching great importance to dispute prevention.

First, “with full consideration of Chinese traditional culture ‘end the dispute and resolve the divergence’ (定纷止争) and ‘harmony comes first’ (以和为贵),” the designers of the ICDPASO give “full play to mediation to promote the efficient settlement of disputes.”<sup>141</sup> Specifically, the Expert Group, when preparing the proposed dispute settlement rules of the ICDPASO, has made “mediation as the first—albeit not compulsory—step in resolving commercial and state-to-state disputes before the ICDPASO.”<sup>142</sup> It is therefore apparent that the ICDPASO, by emphasizing the experience of Asian countries in mediation, hopes to “contribute to the increasing openness towards the use of mediation for amicable resolution of disputes.”<sup>143</sup>

Second, the ICDPASO is quite innovative in that it attaches great significance to preventing disputes through the good offices/grievance system.<sup>144</sup> The good offices/grievance system is primarily “directed to foreign investors’ disputes with the host state.” Pursuant to the ICDPASO Proposed Rules, the Secretary-General discharges the duty of good offices of the ICDPASO.<sup>145</sup> To be more specific, the step-by-step good offices/grievance system will function as follows: initially, the Secretary-General convenes a preliminary meeting with the investor to understand the grounds for the complaint.<sup>146</sup> Following this, an appointment is arranged with the concerned host government entity to ascertain its stance and proposed resolution.<sup>147</sup> The investor is then informed of the host government’s proposal.<sup>148</sup> If agreed upon, the case concludes; otherwise, the investor can opt for alternative dispute resolution methods such as mediation or arbitration.<sup>149</sup> Additionally, the Secretary-General may consult with both parties to evaluate any interest in reconsidering the proposal. If the parties agree to another consultation, the Secretary-General will repeat the process.<sup>150</sup>

Overall, as “a new and different type of forum with modern rules drafted by international experts and with support from multiple nations,” the ICDPASO

140. Guiguo Wang & Rajesh Sharma, *The International Commercial Dispute Prevention and Settlement Organization: A Global Laboratory of Dispute Resolution with an Asian Flavor*, 115 AM. J. INT’L. L. UNBOUND 22, 22 (2021).

141. Zhang, *supra* note 139.

142. Wang & Sharma, *supra* note 140 at 23–24.

143. *Id.* at 25.

144. *See id.*

145. *See id.*

146. *See id.*

147. *See id.*

148. *See id.*

149. *See id.*

150. *See id.*

could to some extent be regarded as “a game changer”<sup>151</sup> and may also reflect the global impact of China in the specific area of dispute prevention.

#### D. People

Furthermore, in China's evolution from initial resistance to alignment and greater influence on global arbitration legal order, the individuals or people involved have also played instrumental roles. Over the years, there has been a vigorous growth in arbitration talents, scholars, and professionals in China, culminating in the formation of a strong arbitration community.

According to some academic commentators, the individuals, “such as judges, officials, case managers, arbitrators and counsel, who are actively engaged in international arbitration and familiar with transnational norms” are categorized as “transnational legal elites.”<sup>152</sup> These transnational legal elites are “highly receptive to dominant international rules and norms governing commercial arbitration,” and “their interests are also aligned with upholding the existing international order, as their skills and knowledge generate more value if the domestic institutions model after international best practices.”<sup>153</sup>

To name a few particular individuals as examples, Dr. Fuyong Chen, the Deputy Secretary-General of the BAC and the Vice-President of Asia Pacific Regional Arbitration Group (“APRAG”), is a qualified PRC lawyer with a LLB from China University of Political Science and Law, a LLM from Peking University, and a PhD from Tsinghua University. He was a visiting researcher (2007-08) at the Law School of UC-Berkeley and has published multiple articles in English journals on international commercial arbitration.<sup>154</sup> Further, Dr. Chen himself is a firm believer of international arbitration and has helped push for various initiatives making BAC practice in greater alliance with international standards and exerting greater impacts globally.

Dr. Xiaochun Liu, the current President of the Shenzhen Court of International Arbitration (SCIA), obtained his Bachelor Degree of Laws and Master Degree of Economics from Peking University, MBA from Roosevelt University (Chicago), and Ph.D. from Peking University Law School. Before joining China's leading international arbitration institution at Shenzhen, he worked in provincial legislature in mainland China, a public company listed in Hong Kong, and a WTO affairs organization for many years. Dr. Liu has long been committed to the internationalization and diversification of China's commercial dispute resolution mechanism.

In 2012, he pushed China's arbitration institution to establish international

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151. *Id.* at 26–27.

152. Fan, *supra* note 102 at 16.

153. Li and Shaffer, *supra* note 15, at 20.

154. *Biography of Fuyong Chen*, INT'L COMPAR. LEGAL GUIDES, <https://iclg.com/firms/beijing-arbitration-commission/fuyong-chen> (last visited Oct. 8, 2023).

corporate governance structure by way of statutory legislation. In 2013, he launched Greater Bay Area Arbitration and Mediation Alliance, and the China's first capital market disputes resolution centre. In 2017, he established China's first overseas arbitration hearing centre in North America. In 2018, he initiated the first merger of arbitration institutions in China."<sup>155</sup>

Under his leadership, the SCIA has also become one of the leading and most internationalized arbitration institutions in China. Another example is Ms. Teresa Cheng, who is a prominent international arbitrator, and currently an adjunct professor at Tsinghua University and course director of international arbitration and dispute settlement program. She is also a member of the World Bank's International Centre for Settlement of Investment Disputes ("ICSID") Panel of Arbitrators. She was the first Asian woman elected as President of the Chartered Institute of Arbitrators ("CI Arb") in 2008, was one of the founders of the Asian Academy of International Law, and currently a co-chairman of Asian Academy of International Law ("AAIL").<sup>156</sup> Given her rich experience and expertise, she has brought leading lawyers from the west to teach international arbitration at Tsinghua University. And graduates of the program, who are well trained about international arbitration rules and practices, further go on to practice in this area in arbitration institutions, law firms, and government agencies, thus forming rich sources of arbitration talents in China.

In addition, Ms. Helen Shi is an experienced lawyer and a partner at Fangda Partners, one of the most leading law firms in China. Ms. Shi has been involved in over 100 cases. She is recognized by Chambers Partners as "an icon of arbitration," and "is widely considered as one of the leading practitioners in the arbitration arena." Ms. Shi's personal experience could be a best example illustrating the process of a Chinese arbitration talent socializing with the broader international arbitration community. Ms. Shi obtained her LLB from Renmin University of China Law School and LLM from University of Pennsylvania Law School. Before joining Fangda Partners in 2005, Ms. Shi had practical experience in both international law firm and Chinese arbitration institution, and she is qualified to practice law in both China and the State of New York. She also serves as vice-president of the ICC Court of Arbitration and co-chair of the IBA Asia Pacific Arbitration Group.<sup>157</sup> It is worth mentioning that in the ICC Court's almost 100-year history, Ms. Helen Shi is the first-ever Chinese lawyer to take up this position of vice-president. "The appointment demonstrates the high regard in which Helen is held by this leading international arbitral institution, as well as Chinese lawyers' increasing influence in the global legal industry," said Michael

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155. *Biography of Dr. Xiaochun Liu*, S. CHINA INT'L ARB. CTR. H.K., <https://www.scia.org.hk/en/about/directors/200.html> (last visited Oct. 8, 2023).

156. *Biography of Teresa Cheng GBM (GBS SC JP)*, CHINA INT'L COM. CT., <https://cicc.court.gov.cn/html/1/219/235/237/2351.html> (last visited Oct. 8, 2023).

157. *Biography of Helen Shi*, FANDA PARTNERS, <https://www.fangdalaw.com/people/helen-shi/> (last visited Oct. 10, 2023).

Han, chairman of Fangda's management committee.<sup>158</sup>

Therefore, it is argued that these individuals are fully socialized with the broader international arbitration community and have incentives and interests to push China's arbitration practice to further embrace global standards. These transnational legal elites undoubtedly exert a significant impact on the internationalization of the arbitration practice in China<sup>159</sup> and play a significant role in facilitating the development of China's ICA.

## V. CONCLUSION

To conclude, China's interaction with international arbitration norms reveals a trajectory from initial resistance to gradual alignment and finally emergence as a potential rule contributor in the global ICA context.

China's initial resistance is manifested in its unique dual-track arbitration mechanism ("domestic" and "foreign-related") and institutional arbitration distinction. Subsequent reforms in China's ICA landscape signal a shift towards alignment with global standards, marked by the regulatory reform led by the SPC and the institutional reform shaped by the arbitration market.

It is argued that the regulation of Chinese arbitration is largely decentralized. The 1994 AL has de facto delegated the responsibility of arbitration regulation to Chinese arbitration market through its over 270 arbitration institutions. The 1994 AL merely provides the minimum requirement, but the market-driven Chinese arbitration institutions impose extra requirements and keep updating their arbitration rules, bringing Chinese arbitration practice more in line with international standards. In essence, the decentralized Chinese arbitration regulation is "key to the market-driven competition for arbitration services and the field's convergence to international arbitration practices."<sup>160</sup>

Finally, as China's economic might and global influence expands, it is also pulling resources to exert impacts on the international arbitration legal order. China's efforts in this regard should be treated as an on-going project, which may be illustrated by the recent establishment of CAJAC and the creation of "one-stop" platform by the CICC.

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158. *ICC Court Appoints First Chinese VP*, CHINA BUS. L.J. (Aug. 3, 2021), <https://law.asia/icc-court-appoints-first-chinese-vp/>.

159. Fan, *supra* note 102, at 32–33.

160. Li and Shaffer, *supra* note 15, at 19.