

Research on the Jurisdiction of China's International Commercial Court

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Abstract

In the past decade or so, the international commercial courts have appeared around the world, but in the context of China's rapid rise as a world power, China's international commercial courts have attracted the attention of the world. The international legal community has paid a lot of attention to the system construction of China's international commercial court. The establishment of China's international commercial court is a great help to enhance China's judicial strength in the international commercial field. However, how to solve the disputes and loopholes of the court jurisdiction system and optimize them is still a problem that China's international commercial courts must face up to. In terms of general jurisdiction rules, the current court rules have vague definitions of the "international nature" of accepted cases, which are only defined by enumerated methods, which is very different from the connotation of "foreign affairs". Secondly, there is a lack of a definition of the "commercial nature" of the case. In terms of the agreement jurisdiction system, the court rules require the parties to have an actual connection with our country, excluding the possibility of offshore litigation into the court, and thus limiting the jurisdiction of the court. Secondly, the current law and other levels of provisions are not clear whether the jurisdiction agreement has exclusive effect when the parties agree on the unclear, easy to cause the situation of parallel litigation. In addition, in terms of discretionary jurisdiction rules, there are also unclear issues in the dual jurisdiction system of foreign cases and the case transfer rules between domestic courts. So through general jurisdiction rules, agreement jurisdiction mechanism and other jurisdiction mechanism, have the following reform perfect Suggestions for the court: one is clear the connotation of international commercial cases, make "international" definition from "foreign" framework, in addition to the positive and negative definition, should also be join out clause and add "commercial" definition. Second, improve the agreement jurisdiction system, dilute the requirements of "actual contact", accept the separation case litigation, and clarify the exclusive effectiveness to avoid parallel litigation. Third, we should take into account the reasonable expectations of the parties, refine the specific rules of case transfer, and pay attention to fully respect the agreement of the parties. Fourth, introduce the principle of inconvenient court, draw lessons from the "obviously inappropriate court model", and add the application requirements of the principle of inconvenient court to the relevant provisions.

Keywords

International Commercial Court; Jurisdiction; Agreement Jurisdiction; Offshore Litigation.

1. INTRODUCTION

With the promotion of the Belt and Road " initiative, international commercial disputes have also increased. In order to meet this situation, the construction of the "Belt and Road"

international commercial dispute settlement mechanism is under way. In addition to promoting the close connection of litigation, arbitration and mediation, the mechanism also provides new relief ways for the parties in dispute. However, the successful establishment of CICC is only the first step. Whether the desired effect can be achieved is the more critical and challenging part. The judge system and jurisdiction system of international commercial courts are directly related to the choice of parties in international commercial disputes, and the choice of parties has a vital impact on the international influence and judicial competitiveness of our courts. Especially the question of jurisdiction, which is a condition precedent to whether a court accepts a case. Therefore, it is necessary to carry out theoretical research on these problems constantly, summarize and analyze according to the practical problems in the operation process, and put forward the reform plan.

Our research on the international commercial court jurisdiction system is less, but to successfully build our international commercial court and make it a way to provide a new dispute dispute power China in the field of international commercial trial, is bound to draw lessons from foreign international commercial court rules and system design, innovation experience. However, due to the different national conditions of each country, it is the theoretical significance of this paper to choose and improve the rules and systems of many international commercial courts and make them used for China's international commercial courts. From the perspective of the innovation of CICC jurisdiction system, this paper analyzes the defects in the operation of CICC, puts forward its own suggestions, hoping to provide theoretical reference for the long-term development of China's international commercial court, and sublimate the innovation on the basis of the existing academic research.

2. LEGISLATIVE INVESTIGATION OF THE JURISDICTION OF OUR INTERNATIONAL COMMERCIAL COURT

2.1. General jurisdiction rules of our International Commercial Court

The international commercial court is different from the ordinary civil court, and its difference is first manifested in the "international" and "commercial" two aspects. Both of the definition is reflected in article 3 of the Provisions on the Establishment of the International Commercial Court.

2.1.1 Definition of "international"

The definition of "international" in the Provisions can be said to directly copy the definition of relevant judicial interpretation directly. The two judicial interpretations are not the definition of "international affairs", but the definition of "foreign affairs". However, both the Provisions and these two judicial interpretations adopt the method of closed enumeration, which define "international" from whether one or both parties and the subject matter are "foreign" and whether the legal facts that play a decisive role in commercial relations are "foreign".

2.1.2 Definition of "commercial nature"

There is no content related to the word "commercial" in the regulations, and what the "commercial" case is "commercial" has not been clarified or enumerated. In view of this concept, other current laws in China have not made clear and accurate provisions. In addition, China's current Civil Procedure Law of the People's Republic of China does not specify the specific meaning of "business", but only about the concept of "contract or other property rights and interests disputes". Currently related to the definition of "commercial case" description only in the relevant person in charge of a reporter asked, its CICC main cases interpreted as "equal between commercial subject in trade, investment, do not accept the investment, trade disputes between countries and countries, international investment disputes between investors and host countries."

2.2. Agreement Jurisdiction System of China's International Commercial Court

In accordance with the relevant regulations, the parties may submit international commercial disputes to CICC by written agreement, provided that other requirements are met. Since the CICC is a component of the Supreme People's Court, now allowing parties to choose the court to hear the intervening international commercial disputes is a major development in Chinese legal and judicial practice. Prior to the establishment of the CICC, although the relevant laws allowed the litigants to choose the Chinese courts through the agreement, their choices were subject to various restrictions. First of all, the choice of both parties is subject to the relevant laws on level jurisdiction and exclusive jurisdiction. If the case is a commercial case of first instance, then the people's court should judge the level of the court accepting the case according to whether it has a "significant impact" and the degree of impact. Although according to the law, the Supreme People's Court can also hear it in some cases. In practice, however, since 1949, the Supreme People's Court has never tried first-instance civil cases, let alone international commercial cases. Therefore, before the CICC was established, the international parties had no opportunity to choose them as the accepting court. However, the CICC's judicial interpretation changed this practice. The court stipulated that after the filing, the two parties to the dispute can choose the Supreme People's Court according to the agreement without the level of jurisdiction rules, but the premise is that the amount of the dispute exceeds 300 million yuan. Second, the court rules also have an "actual connection" requirement. This limitation has somewhat narrowed the boundaries of the court's jurisdiction. That is to say, assuming that the two parties choose the commercial court of a certain country, but if the court has no actual connection with the dispute between the two parties, the dispute cannot be accepted by the court, which is a constraint on the wishes of the parties. And China's requirement for actual connection also exclude such cases.

2.3. Transfer Jurisdiction System of China's International Commercial Court

Transfer jurisdiction is the main source of the jurisdiction of China's international commercial courts, and it is an important supplementary mechanism in addition to the direct acceptance of cases. However, the transfer jurisdiction rule adopted by the commercial court should belong to the broad transfer jurisdiction, that is, the cause triggering the case transfer is not necessarily the court without jurisdiction, the transfer of the case is only a simple court change in the lawsuit. Under court rules, cases may be transferred to CICC, but such transfer is not unconditional. In addition to the court itself needs to have the right to accept the case, the case transfer also needs to be approved by the Supreme People's Court. This rule of certiorari involves a system of assigning jurisdiction internally between the two courts. Under the CICC court rules, the system of transfer jurisdiction has the following two characteristics. First, the will of the parties does not play a role at this time, whether the parties are willing to dispute the case transferred is not within the scope of the consideration of the court, the court can make a decision on whether to transfer the case according to its own authority. Second, compared with the jurisdiction of the agreement, the subject amount of the jurisdiction need not be more than 300 million yuan.

2.4. Arbitration Jurisdiction System of China's International Commercial Court

According to the Provisions, China's international commercial courts may accept cases applying for arbitration in accordance with Article 14 of the Provisions, or cases applying for cancellation or execution of international commercial arbitration awards. According to the relevant provisions of Article 14 of the Provisions, the premise that China's International Commercial Court accepts the application for cancellation and execution of the preservation of international commercial arbitration cases and the international commercial arbitration award is that the parties agree to choose the international commercial arbitration institutions as

stipulated in Article 11, paragraph 1 of the provisions. According to a notice issued by the General Office of the Supreme People's Court, the China International Economic and Trade Arbitration Commission, Shanghai International Economic and Trade Arbitration Commission, Shenzhen International Arbitration Court, Beijing Arbitration Commission and China Maritime Arbitration Commission are the above "international commercial arbitration institutions that meet relevant conditions". In addition, considering the large number of cases accepted by the above institutions, the arbitration jurisdiction of China's International Commercial Court also requires the target amount of cases to be more than 300 million yuan or other significant impact.

3. ANALYSIS OF THE JURISDICTION OF OUR INTERNATIONAL COMMERCIAL COURT

3.1. The Definition of International Commercial Cases Is Vague

If a case is to be accepted by the international commercial court, it first needs to be identified as the international commercial case mentioned in the regulations. Through the relevant legislative investigation, it can be seen that the concept of international commercial cases is vague and still needs to be further clarified.

3.1.1 Definition of "international nature" in international commercial disputes

As mentioned above, Article 3 of the Provisions clearly stipulates what is for an international commercial case, but its expression directly transplant the definition of "foreign affairs" in other judicial interpretations. However, "international sex" and "foreign affairs sex" cannot be regarded as exactly the same concepts. Although the two are often confused, but strictly speaking, "foreign sex" and "international sex" are two different concepts. Foreign affairs is to the center of the circle to find foreign factors. From the literal meaning, foreign affairs involve foreign countries, so the concept of foreign countries is relative to the country, so this concept is not standing in the middle of the third party. The international definition of "international" is usually defined from the perspective of substantive connection factors, controversial international factors or substantive connection factors and controversial international nature. Compared with "foreign sex", "international sex" does not reference the coordinate system, and the perspective is relatively broader, overlooking the global scope. It is worth noting that, in view of the existence of the status of the sovereign state, private law in the field of "international" and "foreign" extension should do broad understanding, generally refers to foreign sovereign state, also include sovereign countries with independent jurisdiction, for example, China's civil procedure law, involving Hong Kong, Macao and Taiwan litigation reference to the provisions of foreign civil litigation.

Secondly, article 3 of the regulation removes the bottom-line clause, which greatly limits the discretion of the judge. Although from the perspective of speed and convenience, this is conducive to the parties and judges to judge whether the case is an international commercial case, but this closed legislative model will cause an "uncertainty" impact on judicial practice. In practice, if an exception occurs, then the judge cannot apply his discretion to include the exception in the case. For example, the commercial disputes between wholly foreign-owned enterprises in the free trade zone are not under the jurisdiction of the CICC.

3.1.2 Definition of "commercial nature" in international commercial disputes

From the CICC has introduced court rules, the meaning of "commercial" is not defined. At a press conference held on June 28, 2018, Justice Liu Guixiang of the Supreme People's Court mentioned that the CICC case would include civil and commercial disputes between the same subjects. He continued to reporters that the CICC excluded two types of cases: 1. Disputes between countries over investment or trade; 2. Disputes between host countries and investors on investment issues, which should be resolved through existing international dispute

settlement mechanisms. From this view, the word "business" has a broad meaning and seems to be limited only by these issues. But such informal guidance is clearly not clear and detailed, and potential international parties to the CICC need such certainty.

When accession to the 1958 Convention on the Recognition and Implementation of Foreign Arbitration Awards, China defined and enumerated similar concepts, but it was inappropriate to apply this definition. First, the scope of this definition is wider than that of "commercial affairs". In addition to contract disputes, labor disputes and environmental pollution disputes are also included, which is not in line with the positioning of China's international commercial courts in professionally handling international commercial disputes. In addition, the commercial cases handled by commercial trials are mainly businessmen for adjustment objects, so the extension of the concept is too large, and it is not suitable to be applied. The essential characteristics of commercial subjects include profit-making purpose and business as the norm. Second, some countries along the "Belt and Road" still not signed bilateral investment agreement with China, if the host government and foreign investment disputes from the jurisdiction of our international commercial court but make foreign investors easily get "exhausted local relief" conclusion, so between the above and China not cited ICSID arbitration to resolve investment dispute countries will be a vacuum of dispute settlement. The definition and listing also include disputes over maritime passenger and cargo transportation and maritime accidents, which intersects with the jurisdiction of our maritime courts.

3.2. There Are Disputes Over the Jurisdiction of the Agreement

The CICC holds a conservative attitude towards the jurisdiction of the agreement, generally continuing the basic provisions of the original Civil Procedure Law, without any breakthrough and innovation. According to the judgment documents published so far, China's international commercial court has not yet accepted the international commercial cases where the parties choose the jurisdiction of CICC through the jurisdiction agreement.

3.2.1 The "actual contact" requirement is disputed

Traditionally, the principle of actual connection occupies a place in international civil litigation. However, with the advent of globalization, especially the rise and popularity of e-commerce, the traditional requirement of practical connections to the territory was questioned. Most states recognize the effect of the exclusive jurisdiction provisions. Usually, in English common law, such a choice should be attached to England, even provided the choice of the tribunal is in good faith and not contrary to public policy. Therefore, it is generally allowed as long as the selection of a court agreement does not violate public policy or circumvent the mandatory rules of jurisdictions with the most substantial connection to the contract. The legislation over foreign agreement has experienced the transformation from double regulation system to merger system. Whether it is Article 34 of the Civil Procedure Law amended in 2012 or Article 242 of the Civil Procedure Law amended in 2007, our law should understand the jurisdiction of the court where the parties choose the actual related to the dispute as authorized rather than indicative norms. Whether it is a dual-track system or a combined system, the CICC accepted cases still need to comply with the actual principle of connection.

However, this principle directly limits the scope of the parties to choose a court of jurisdiction. Although this principle protects China's judicial sovereignty to some extent and balances the passivity of the vulnerable parties in the choice of courts, such a requirement excludes the possibility that the parties will give the jurisdiction of direct international judgment to a neutral court, which is unfavorable to the development of international economic exchanges. And this principle also limits the scope of the CICC's own acceptance of cases and weakens the competitiveness of the courts. For example, the international commercial cases related to "Belt and Road" may not have any actual connection with our country, but due to the

limitation of court rules, the parties cannot agree to choose the jurisdiction of our court. In addition, from the perspective of the positioning of the international commercial court, it should face international cases. If the proportion of the cases actually connected with China is too large, it is actually contrary to its original intention, and it will also affect the neutrality and authority of CICC. In addition, according to the judgment documents published by China's international commercial court, there is no case where the parties choose China's international commercial court by agreement in the past two years. Therefore, there is no need to continue to ask for an "actual connection".

3.2.2 The judgment standard of "actual connection" needs to be clarified

As for how to judge whether there is an actual connection, our law adopts a narrow objective standard, that is, listing five specific connection points for "the place with the actual connection with the dispute". However, in addition to not being detailed enough, there are also obvious loopholes that "cannot exhaust all the circumstances". Moreover, China's legislation does not stipulate the connotation of the actual connection, and the judgment standard of the court is also different in the judicial practice. In practice, in addition to objective standards, there are also judgments according to the agreement law chosen by the parties. In 1996, Jiangsu Lianyungang into the company and the Middle East starfish comprehensive trading company sales contract jurisdiction objection case, the contract agreed "the contract by Swiss effective law jurisdiction and interpretation", "dispute should be submitted to Swiss Zurich court", but contract, contract performance, the subject matter are not in Switzerland, Jiangsu province high people's court through the "actual connection", that the jurisdiction agreement is effective, but in another case the opinion of the Supreme People's Court is opposite. In addition, some scholars do not agree with the five sites under the current law, believing that it is not necessarily appropriate to be listed as actual links, and whether they should be expanded or replaced remains to be explored. The legislative purpose of the requirement is to limit the autonomy between the parties, maintain their jurisdiction, and protect the vulnerable parties, but the legislative provisions did not achieve such effect, especially did not reflect the function of maintaining national jurisdiction, the imbalance of legislative purpose and effect.

3.2.3 The exclusivity effect of a jurisdictional agreement is yet to be determined

The exclusive effect of a jurisdictional agreement relates to the enforcement of the court judgment. If the parties to the dispute do not explicitly exclude the jurisdiction of other national courts in the agreement, it may lead to subsequent situations in which the parties object to the choice of the court and have parallel litigation. China's Civil Procedure Law does not explicitly stipulate on this issue, but a provision in the judicial interpretation can be said to recognize the effect of the jurisdiction of a non-exclusive agreement. However, when the parties do not agree on the issue, there is no unified standard for how to infer the exclusivity of the jurisdiction agreement. In practice, it mainly depends on the own judgment of the people's court. According to previous court decisions, if the parties to the dispute do not exclude the jurisdiction of other courts in the agreement, then different courts have different criteria for the exclusive effect of the agreement. The vague attitude about the exclusivity effect of jurisdiction agreements is detrimental to the exercise of its jurisdiction. Moreover, the positive jurisdiction conflict formed by parallel litigation is not only a kind of waste for the judicial resources of the country, but also easy to cause court confrontation in different countries, thus hindering the judicial cooperation between countries.

3.3. The Relevant Provisions on Discretionary Jurisdiction Need to Be Improved

3.3.1 The dual-track system of foreign-related cases governs judicial injustice

In 2002, the "Supreme People's Court on Foreign Civil and Commercial Cases" on the jurisdiction of foreign civil and commercial cases, foreign civil and commercial cases are mainly

by the intermediate people's courts designated by each region for centralized jurisdiction. However, under CICC's court rules, there are a number of cases where CICC also has jurisdiction. This has caused the dual-track system on the jurisdiction of the court. The trial mechanism of international commercial courts has made more modifications and innovations compared with the traditional foreign-related case trial procedures in China. There will be many differences in the trial procedures of foreign-related cases heard by international commercial courts and foreign-related cases tried by other courts, and there is the possibility of judicial injustice.

3.3.2 The rules of case transfer between domestic courts are unclear

In addition to accepting the case under the agreement between the two parties, the CICC can also try the international commercial cases of the first instance without considering the expression of intention of the parties. The first is when the dispute is tried by the higher People's Court but transferred by the Supreme People's Court to the CICC with the approval of the Supreme People's Court. The case involves international business affairs that have a significant impact on China. Such cases may be prosecuted directly to the CICC without a written jurisdictional agreement or to satisfy the amount requirement. If such cases are first brought to other Chinese courts, they will be transferred to the CICC after the Supreme People's Court has ruled that these cases have a significant national impact in China. But it is unclear what type and extent of impact will constitute this "significant national impact". Finally, any other international commercial case that the Supreme Court believes should be heard by the CICC, but there are no rules or standards to guide the Court to exercise this discretion. In the first few years of the CICC, its important source of case volume most likely came from its transfer jurisdiction, so the rules should be clear. At least without complete loss of flexibility, the Court should issue official guidelines to set standards or instructions for cases considered "nationally significant" in China and cases the Court may find appropriate for CICC.

4. THE JURISDICTION SYSTEM OF INTERNATIONAL COMMERCIAL COURTS FROM THE PERSPECTIVE OF COMPARATIVE LAW

4.1. Comparison of the General Jurisdictional Rules

As mentioned above, jurists in various countries try to define the connotation and extension of international commercial cases, and many countries also strictly distinguish domestic cases from international commercial cases through legislation or judicial practice. This distinction is not purely theoretical, but to accommodate the special considerations of international commercial litigation, that is, to reduce restrictions on controversial matters that can be delivered to the courts, and to give more relaxed conditions for international commercial litigation in terms of the recognition and execution of judgments. Therefore, it is of great significance to define the international commercial cases.

As for the "international nature" of the dispute, the International Commercial Court of Singapore has listed the contents of the jurisdiction, that is, as long as the place of business of the parties to the dispute, the actual performance of the major obligations and the subject matter of litigation, or as long as the parties agree that the dispute involves more than one country, the case is international. In addition to the International Commercial Court in Singapore, the Dutch Commercial Court also listed the "international" nature of the disputes. Both are relaxed, but the difference is that the SICC accepts cases from the same non-Singapore country, and the Netherlands excludes such cases. Secondly, the Netherlands makes the "international" situation more detailed than the SICC.

As for the connotation of "commercial nature", the Singapore Court Rule Order 110 makes a brief positive definition of this. Germany has not made separate provisions on the "commercial

nature" of the cases accepted by the International Commercial Court, but it defines the circumstances of the commercial litigation claim in the Organic Law of the Court. The German definition of this content in Germany can be said to be very detailed and complete, and in judicial practice, the definition also includes as far as possible the commercial cases that should be regarded as "commercial". In addition to Singapore and Germany, the relevant laws of Britain and India also define the "commercial nature".

4.2. Comparison of Agreement Jurisdiction

As for the actual principle of contact, the court rules of the Singapore International Commercial Tribunal do not require the actual connection, but only the agreement of the two parties to the dispute. Nor is the formal requirement for a jurisdictional agreement not limited to a written agreement, which may also be regarded as a written agreement if the agreement is made by oral, behavioral or electronic communication. The court cannot otherwise deny jurisdiction in proceedings only on the grounds that a dispute between the parties is between jurisdictions other than Singapore. The UK does not specify the actual connection between international cases and the UK, but fully respects the agreement of both parties. If the agreement expressly designated the English commercial court, then it had jurisdiction over the case. The same is true of the Dubai International Financial Centre Court and the Abu Dhabi Global Markets Court, which also accept offshore lawsuits.

For the exclusive effect of a jurisdictional agreement, Singapore has referred to the relevant provisions of the Convention on the Selection of the Court Agreement, Section 18 F of the Supreme Court Judicial Act provides for the validity of a jurisdictional agreement: 18 F (1) is subject to paragraph (2), The Parties to the Agreement shall be deemed to have agreed to subject — (a) to the exclusive jurisdiction of the International Commercial Tribunal of Singapore; To immediately enforce any judgment or order of the International Commercial Tribunal of Singapore; And (c), where such a claim can be effectively waived, Waiving any judgment or order of the International Commercial Court of Singapore and any claim for enforcement of that judgment or order, Waive of recourse in any court or court other than Singapore. In view of the purpose and limitations of this article, the presumption of exclusivity of the jurisdiction agreement under paragraph (a). To provide a presumption is a way of overcoming some uncertainty that may arise from the mode of contract to a jurisdictional agreement. Indeed, the presumption of exclusivity under section 18F may be very useful where the parties do not describe their jurisdictional agreement as "exclusive" or "non-exclusive" or explicitly state the exact content of their transactions. In other words, the Singapore International Commercial Tribunal adopts the presumption of exclusive effectiveness. Similarly, the Dutch Commercial Court has guided the parties to exclude the jurisdiction of other courts in its published model jurisdiction agreement in order to achieve exclusive jurisdiction over the case. At the same time, it said if the parties have other arrangements, to the jurisdiction agreement for non-exclusive jurisdiction agreement, can also delete "exclude any other national jurisdiction" this expression, but the expression must be in the form to give the jurisdiction agreement non-exclusive effect, if only referring to general terms, conditions form will not give jurisdiction agreement non-exclusive effect, jurisdiction agreement will still be exclusive.

4.3. Comparison of Other Jurisdictional Rules

For some reasons, some cases need to be transferred to other courts for trial. The SICC and the High Court may transfer cases to each other. Under section 110 (3) of Order 110, SICC may determine in certain cases that it has no jurisdiction or refuses jurisdiction: (a) the Court must transfer the proceedings to the High Court (i) the Court considers to have and will assume jurisdiction of the case; and (ii) all parties agree to hear the proceedings in the High Court; or (b) if the proceedings are not transferred to the High Court under subsection (a), the Court may

dismiss or suspend the proceedings or make any other order as it sees fit. It is worth noting that section 10 (3) (b) of Order 110 states that if SICC "sees fit", it may transfer the proceedings from the High Court without the consent of the parties. The transfer of the High Court to the SICC may be made with the consent of the parties or voluntarily by the High Court, but the following requirements must be met if the High Court considers (i) the action has an international and commercial nature, (ii) The parties seek no relief in the form of any privileged order or in relation to the privileged order, (iii) the SICC will assume jurisdiction of the case; and (iv) the case by the SICC. In addition to the court and the court according to the authority to transfer, the parties can also apply to the court and the court for transfer. If the jurisdiction agreement specifies the jurisdiction of the International Commercial Court and the High Court agree to the court to transfer the case, the International Commercial Court and the High Court may also transfer the case to each other.

5. SUGGESTIONS FOR THE IMPROVEMENT OF THE JURISDICTION OF OUR INTERNATIONAL COMMERCIAL COURT

5.1. Clarify the Connotation of International Commercial Cases

5.1.1 Clarifying the connotation of "international nature"

International is the standard to distinguish between domestic commercial litigation and international commercial litigation, but what is "international" commercial litigation adopts different standards. But from an international perspective, there are two main criteria used separately or jointly to define the term "international" in international commercial litigation. One standard is to make a judgment on the nature of the controversy. Another criterion is to examine the substantive linking factors such as the nationality, domicile, habitual residence or business place, which are considered international if the location is located in a different country. Although our regulations adopt a mixed standard, the enumerated circumstances consider both the substantive link factors and the nature of the controversy. However, in terms of wording, China takes its own country as the reference frame and transplanted other provisions on the definition of "foreign sex".

Therefore, the author believes that the definition of "international affairs" needs to be separated from the framework of "foreign affairs". First of all, the connotation of "international" should be explained, defined positively, and supplemented by enumerating specific cases. Secondly, the reverse definition can also be made to define the scope of "international nature" by excluding "domestic nature". Because if the culvert is taken in accordance with the current provisions of the court, the domestic cases of foreign countries also comply with the provisions of article 3. Although it is only in line with the provisions of Article 3, it is actually impossible to be accepted by China's international commercial court, but it still reflects the lax provisions. Finally, this paper holds that the bottom-line clause should also be included in the provisions to give the judge a certain discretion.

If "international" is defined according to the above content, the neutrality and fairness of China's international commercial courts can be further improved, which enhance the appeal of the courts to the parties involved in foreign international commercial cases.

5.1.2 Clarifying the connotation of "commercial nature"

First of all, this content should be added to stipulate the connotation and extension of the "commercial nature" of the cases accepted by the CICC. The definition method can be similar to the definition of "international", that is, first defining "commercial" and then supplementing it through incomplete enumerated methods, which can leave room for the expansion of the jurisdiction of the international commercial court. At the same time, labor disputes and environmental pollution disputes that are contractual legal disputes should also be

excluded. Second, investment disputes between investors and host countries should be included in the definition of "business". And with the increasing number of multilateral and bilateral international treaties, the content of international treaties, relax the definition of commercial cases not only to expand the scope of international commercial court, to use the professional advantage of international commercial court to attract more international commercial cases, also conducive to attract international commercial arbitration institutions including investors and host country international investment disputes, arbitration cases.

5.2. Improve the Jurisdiction System of the Agreement

5.2.1 Designate the "actual contact" and accept the litigation

According to the above investigation of international commercial courts outside the region, each country or region basically has no "actual connection" to the case. Therefore, China's international commercial court can draw lessons from the offshore case system, and define the cases that are not applicable to Chinese laws and the subject matter is not adjusted by China's laws, or the only connection between the case and China is that the parties choose the cases under the jurisdiction of the international commercial court as offshore cases. Moreover, from the overall perspective of international judicial trial, China is not the dispute settlement place generally favored by international parties, and the internationalization degree of China's judicial trial is far from enough. Compared with Anglo and American common law countries and European countries, China lacks attraction to civil subjects. Even if the requirement of "actual contact" is cancelled, the doubts of the international parties will not disappear immediately. Therefore, the probability of abuse of judicial resources in China will be relatively low. In short, allowing the parties to choose the court independently would be a better option. For issues that may arise from the removal of this requirement (such as circumvention of mandatory law or using inappropriate means to disadvantage the weaker court), the CICC may prescribe certain principles such as good faith and the principle that compulsory law should not be avoided. In addition, China can also conduct pilot cases in CICC that have no contact with China. In this way, it can not only avoid the abuse of judicial resources in China, but also provide judicial experience. Therefore, the CICC can achieve innovation by downplaying the "actual connection" requirements.

5.2.2 Clear and exclusive effect, and avoid parallel litigation

As mentioned above, the judicial interpretation of our civil procedure law is vague about the exclusivity effect of the jurisdiction agreement. If the agreement is unclear, there is no uniform standard to apply. However, most other international commercial courts, such as DIFC and SICC, choose to infer the validity of the agreement. In addition, the Hague Convention which has signed but not yet ratified also tends to regard the jurisdiction agreement of the parties as exclusive. The purpose of the establishment of CICC in China is to let more potential international parties choose to sue in our court. Therefore, it is very good for the immobilization of the court in international litigation. At the same time, such rules are also conducive to saving the time and energy of the parties and China's judicial resources.

5.3. Refine the Specific Rules of Case Transfer

Considering the reasonable expectations of the parties to the lawsuit, the specific provisions of the transfer jurisdiction of our international commercial court should be clarified. First of all, attention should be paid to clarify the specific connotation of "having a significant impact in the whole country", which can be explained through the Taiwan judicial interpretation. Secondly, the promotion of jurisdiction should take into account the wishes of the parties, and fully respect the agreement of both parties. Although there is no civil procedure law in China for relevant provisions, it is still necessary to make provisions because international cases involve the recognition and enforcement of foreign courts. Finally, the period of the case transfer

procedure and other details should be clarified, which can be clarified in the form of listing. Since the traditional trial procedure of foreign-related cases is carried out according to the relevant provisions of the Civil Procedure Law, if the revision to refer to the Provisions may involve the revision of legal level documents, so appropriate breakthroughs can be made in the form of special law.

5.4. Introduction of the Forum Non Conveniens Doctrine

The principle of forum non conveniens is generally adopted in British and American legal countries. China has imposed relatively strict restrictions on the application of the principle of inconvenient court, and has a conservative attitude. The judicial interpretation of civil Procedure Law in China stipulates this principle, but the court can apply this principle only when six cases are met at the same time. The third item of this article requires that there is no jurisdiction agreement in the case, which directly causes our international commercial court to apply this article in the jurisdiction of the agreement. Therefore, the author believes that in view of the particularity of international commercial trial and the original intention of China's international commercial court, the international commercial trial and foreign civil trial should be distinguished in the application of the principle of inconvenient court.

Specifically, first of all, other countries in the world have a relatively mature legislation on this principle, and also have some achievements in the field of judicial practice. China can use its existing theoretical and practical experience resources, combined with China's national conditions to establish a model suitable for CICC. The existing Australian model is in line with the current laws of China's international civil and commercial legislative jurisdiction, and can legally extend China's jurisdiction when the principle of forum non conveniens is applied. Secondly, the author believes that the principle can also clarify how to be applied in the relevant judicial interpretation. However, when referring to or transplanting the relevant provisions of the judicial interpretation of the Civil Procedure Law, attention should be paid to the adjustment of items second, fourth and fifth to avoid conflicts with other contents of the Provisions.

6. CONCLUSION

In order to enhance the judicial competitiveness in the international commercial field and serve the settlement of international commercial disputes under the "Belt and Road" strategy, China's international commercial court came into being. However, there are still some parts that need to be reformed. This paper analyzes the problems of the court jurisdiction system, and gives a preliminary improvement strategy. First, when defining the "international" of the "international", and when defining the "commercial", it adopts the combination of forward and reverse definition. The second is to dilute the requirement of "actual contact", accept offshore litigation, and clarify the exclusive effect of jurisdiction agreements to avoid parallel litigation. Third, refine the specific rules of case transfer. Fourth, introduce the principle of forum non conveniens and add the application requirements of the principle of forum non conveniens to the provisions. When reforming the jurisdiction of China's international commercial courts, we can also learn from the trial experience of international commercial courts outside the region, analyze the rules and systems of courts such as the UK, the Netherlands and Singapore, and make reasonable transplantation and innovation according to China's national conditions. In a word, the issue of jurisdiction is an important issue and pain point to be solved for China's international commercial courts. If it is expected to provide high-quality judicial services and judicial guarantee for the development of "One Belt And One Road", the issue of jurisdiction is an unavoidable obstacle. Although "big projects" such as the revision of existing laws may be encountered in the process of solving problems, they should still be actively faced. In the initial stage, due to the limited number of cases accepted and the lack of trial

experience, some temporary flexible measures can be taken, but in the future, the rules related to the international commercial courts should be actively promoted to mature and internationalization.

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