

NORMATIVE DUALISM AND PARALLEL INSTITUTION-BUILDING: THE CASE OF INTERNATIONAL COMMERCIAL DISPUTE PREVENTION AND SETTLEMENT ORGANIZATION (ICDPASO)*

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ABSTRACT

As China rises as a global power, it confronts an international legal order historically shaped by Western actors. In response, China has adopted a dual strategy: engaging with existing institutions while building “parallel institutions” to advance its influence. This paper examines the International Commercial Dispute Prevention and Settlement Organization (ICDPASO) as a case study of this strategy and analyzes how China seeks to reshape international dispute resolution.

Drawing on original empirical data—including 85 interviews with arbitrators, users, officials, and legal experts—this paper provides the first comprehensive analysis of ICDPASO’s strategic motivations, governance model, dispute resolution mechanisms, and user perceptions. We argue that ICDPASO is not merely a functional platform for resolving disputes, but a purposefully designed institution aimed at addressing legitimacy gaps, counterbalancing Western dominance, and asserting China’s normative leadership.

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Theoretically, the paper introduces normative dualism as a defining feature of China's approach to law and governance: the integration of formal legal structures with informal, relational governance. We show how this dualism, rooted in Chinese legal tradition, is now operationalized in transnational institution-building. By embedding these norms in ICDPASO's design, China promotes a distinctive governance logic that departs from liberal legalism while maintaining its legitimacy.

This paper contributes to scholarship on China and global governance by advancing a conceptual framework that: (1) bridges China's domestic and international legal practices, (2) reveals the normative content behind its dual-track institutional strategy, and (3) reframes parallel institutions as strategic vehicles for normative diffusion—not just functional or symbolic alternatives to Western-led frameworks.

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I. INTRODUCTION

As China ascends as a prominent global power and positions itself as a potential regional leader in Asia, it encounters an already institutionalized status quo established predominately by Western countries. China's engagement with the international order carries profound implications for global governance.¹

China's approach to the institutionalized status quo marks a notable departure from earlier rising powers, who often confronted the dominance of Western-led legal institutions through direct opposition or radical reformism. The Soviet Union, for instance, rejected joining Western-led economic institutions such as the International Monetary Fund ("IMF"), World Bank, and General Agreement on Tariffs and Trade ("GATT").² Instead, it established the Council for Mutual

¹ Matthew D. Stephen, *China's New Multilateral Institutions: A Framework and Research Agenda*, 23 INT'L STUD. REV. 807, 808 (2021).

² See Robert M. Cutler, *International Relations Theory and Soviet Conduct toward the*

Economic Assistance (“COMECON”) in 1949, to promote economic cooperation among socialist countries.³ However, this approach resulted in institutional isolation, limiting the Soviet Union’s ability to influence global economic governance.⁴ Post-colonial nations, on the other hand, pursued radical reformism through the New International Economic Order (“NIEO”) in the 1970s.⁵ The NIEO demanded fundamental changes in international trade, finance, and investment law to counteract the structural inequalities left by colonial rule and improve the relative position of developing states.⁶ However, Western resistance, particularly from the US and Europe, ultimately curtailed the NIEO’s impact.⁷

In contrast, rather than rejecting or displacing Western-dominated institutions, China engages with, modifies, and supplements existing frameworks while advancing alternative models that better reflect its strategic interests through building parallel institutions. This dual-track strategy, which combines participation in established institutions with the creation of alternative, China-led parallel institutions, has become a defining feature of its approach to international economic law (“IEL”).⁸

As China has gained great power and experience in existing institutions, China has shifted its approach from “selective adaptation”⁹—which focused on the “downloading” of external norms mediated by local characteristics and needs—towards “selective reshaping,” which focuses on the “‘uploading’ of

Multilateral Global-Economic Institutions: GATT, IMF and the World Bank, in THE USSR AND THE WORLD ECONOMY: CHALLENGES FOR THE GLOBAL INTEGRATION OF SOVIET MARKETS UNDER PERESTROIKA 105, 105-06, 111 (Deborah Anne Palmieri ed., 1992).

³ See *Comecon*, 8 EUR. STUD. 1 (1970), <https://aei.pitt.edu/73844/1/DODGE013.pdf> [<https://perma.cc/ZYR7-TXC5>] (on file with Archive of Eur. Integration); Cutler, *supra* note 2, at 106-07.

⁴ See Cutler, *supra* note 2, at 106.

⁵ See G.A. Res. 3201(VI), Declaration on the Establishment of a New International Economic Order (May 1, 1974).

⁶ See, e.g., *id.* at 4 (declaring the “[f]ull permanent sovereignty of every State over its natural resources” includes the right “to nationalization or transfer of ownership to its nationals . . .”).

⁷ See Nils Gilman, *The New International Economic Order: A Reintroduction*, 6 HUMAN.: INT’L J. HUM. RTS., HUMANITARIANISM, AND DEV. 1, 7-8 (2015); Adam Sneyd, *The New International Economic Order Stumbled Once Before. Will It Succeed a Second Time Around?*, THE CONVERSATION (Feb. 15, 2023), <https://theconversation.com/the-new-international-economic-order-stumbled-once-before-will-it-succeed-a-second-time-around-198969> [<https://perma.cc/9PZZ-GQPV>].

⁸ Stephen, *supra* note 1, at 808, 810; James F. Paradise, *The Role of “Parallel Institutions” in China’s Growing Participation in Global Economic Governance*, 21 J. CHINESE POL. SCI. 149, 149-151 (2016).

⁹ Pitman Potter, *Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices*, 2 WASH. U. GLOB. STUD. L. REV. 119, 119-21, 125-26 (2003); Pitman Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 L. & SOC. INQUIRY 465, 478-79 (2004); PITMAN POTTER, LAW, POLICY, AND PRACTICE ON CHINA’S PERIPHERY: SELECTIVE ADAPTATION AND INSTITUTIONAL CAPACITY 17, 56 (2010); PITMAN POTTER, THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL LEGAL CULTURE 2-3 (2001).

new China-led institutions and China-preferred rules at extra-regional level.”¹⁰ The launch of the Belt and Road Initiative (“BRI”) in 2013 marked a “major shift” in China’s engagement with IEL, from “the reactive, selective adaptation of external rules, towards a proactive, selective reshaping of IEL institutions and rules.”¹¹ In line with this shift, China’s efforts to enhance its influence in global governance are no longer limited to joining and reforming existing institutions, but also extend to developing “parallel institutions.”¹²

“Parallel institutions,” as used here, refer to “institutions whose tasks replicate or compete with those of an already existing (incumbent) institution[,]”¹³ or institutions designed for “enhancing legitimacy, effectiveness and control and that help to create and possibly diffuse new norms.”¹⁴ Parallel institution-building allows China to develop alternative governance structures that enable greater influence over rule-making and procedural design while maintaining engagement with existing institutions.¹⁵ It also signals that China is no longer satisfied to join the existing global order but is interested in cultivating an alternative of its own.¹⁶ This reflects an emerging pattern of layered multilateralism—where new rising powers engage with the Western-led order while simultaneously constructing alternative institutions to complement, reinforce, challenge, or even bypass established norms in multilateral governance.¹⁷ China’s approach is more deliberate and systematic in building institutional frameworks that reduce reliance on Western-dominated structures as a form of “institutional balance.”¹⁸ This reflects a strategic effort not just to supplement but, in some cases, to offer a parallel and alternative order to the existing one.¹⁹ Through parallel institution-building, China is able to shift its position from a rule taker to a norm maker and agenda setter.

Empirical research on China’s parallel institutions highlights significant variations in their degree of institutional formality, membership criteria, and geographical scope.²⁰ Yet a trend is emerging, one of “increasing formalization”

¹⁰ Heng Wang, *Selective Reshaping: China’s Paradigm Shift in International Economic Governance*, 23 J. INT’L ECON. L. 583, 586–87 (2020).

¹¹ *Id.* at 584.

¹² See Paradise, *supra* note 8, at 162, 166–67.

¹³ Matthew D. Stephen, *China’s New Multilateral Institutions: A Framework and Research Agenda*, 13–14 (WZB Berlin Soc. Sci. Ctr., Discussion Paper No. SP IV 2020-102, 2020), <https://www.econstor.eu/bitstream/10419/216211/1/1696140412.pdf>.

¹⁴ Paradise, *supra* note 8, at 150.

¹⁵ See, e.g., *id.* at 155–57, 160–62.

¹⁶ Stephen, *supra* note 1, at 807.

¹⁷ Paradise, *supra* note 8, at 163.

¹⁸ Kai He & Huiyun Feng, *The Positive Externalities of US–China Institutional Balancing in the Indo-Pacific*, 101 INT’L AFF. 35, 44–45 (2025); see Kai He, *Contested Regional Orders and Institutional Balancing in the Asia Pacific*, 52 INT’L POL. 208, 212–13 (2014).

¹⁹ See Naazneen Barma et al., *A World without the West? Empirical Patterns and Theoretical Implications*, 2 CHINESE J. INT’L POL. 525, 528 (2009).

²⁰ For an empirical study to identify cases of Chinese multilateral institution-building between 1990 and 2017 and a mapping of these institutions, see Stephen, *supra* note 1, at 809–824.

and “growing Chinese leadership[.]”²¹ While China continues to engage in informal forums, it has progressively turned to the creation of new formal multilateral institutions. Moreover, China’s role in the creation of new institutions has also involved being a “co-founder and participant[.]” increasingly taking on the role of “initiator and host.”²² This trend is evident across multiple domains, including trade, investment, credit rating, finance, and dispute resolution. For instance, the Asian Infrastructure Investment Bank (“AIIB”) has emerged as an alternative lending institution to the World Bank.²³ The Regional Comprehensive Economic Partnership serves as a regional trade framework that consolidates China’s economic leadership in East Asia while balancing against competing trade initiatives such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.²⁴

Within this broader strategy, the International Commercial Dispute Prevention and Settlement Organization (“ICDPASO”) exemplifies China’s efforts to build parallel institutions in dispute resolution, reflecting its efforts to develop alternative governance mechanisms parallel to—rather than within or as replacements for—Western-led institutions. Established in 2020 and headquartered in Beijing, ICDPASO positions itself as a neutral, multilateral institution offering a “one-stop” dispute settlement platform with a range of services, including dispute prevention, commercial mediation, commercial arbitration, and investment arbitration.²⁵ Unlike Western-led institutions such as the International Chamber of Commerce (“ICC”) and the International Centre for Settlement of Investment Disputes (“ICSID”), which emphasize formal, rule-based governance,²⁶ ICDPASO reflects China’s strategic blend of formalized institutional structures and flexible, informal, culturally adaptive practices.²⁷ Through ICDPASO, China leverages formal rules and structured procedures alongside informal, relational practices rooted in the Chinese tradition, such as

²¹ *Id.* at 815-16.

²² *Id.* at 815.

²³ *Id.* at 822-23.

²⁴ Yunling Zhang, *China and the Regional Comprehensive Economic Partnership: An Economic and Political Perspective* 4, 9 (Econ. Rsch. Inst. for ASEAN & E. Asia, Discussion Paper Series No. 434, 2022), <https://www.eria.org/uploads/media/discussion-papers/FY22/China-and-the-Regional-Comprehensive-Economic-Partnership-An-Economic-and-Political-Perspective.pdf> [<https://perma.cc/Z8Z5-32YD>].

²⁵ See, e.g., *ICDPASO Profile*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/content/450.html> [<https://perma.cc/4VEK-FQHW>] (last visited July 9, 2026).

²⁶ A. Claire Cutler, *International Commercial Arbitration, Transnational Governance, and the New Constitutionalism*, in *INTERNATIONAL ARBITRATION AND GLOBAL GOVERNANCE: CONTENDING THEORIES AND EVIDENCE* 140, 142, 154 (Walter Mattli & Thomas Dietz eds., 2014).

²⁷ Mark Feldman, *An Opportunity to Reimagine Investment Arbitration in Beijing* 2-3 (Colum. Ctr. on Sustainable Inv., Colum. FDI Persps. No. 353, Mar. 20, 2023), <https://www.econstor.eu/bitstream/10419/271178/1/1844920518.pdf>.

dispute prevention and mediation, which are also prevalent in many BRI countries.²⁸

Despite growing scholarly interest in ICDPASO, most analyses remain descriptive or speculative, based primarily on official narratives or earlier drafts of its procedural rule. ICDPASO is described as a “global laboratory for experimenting and innovating in dispute resolution with the potential to impact the landscape of international law,”²⁹ a “torchbearer and norm-supplier”³⁰ in global dispute resolution, and a complementary mechanism to existing China-led initiatives,³¹ with the potential to enhance China’s legal connectivity under the BRI, reducing the risk of states “detaching” from China in an increasingly fragmented global trade environment.³² ICDPASO’s procedural innovations with an emphasis on dispute prevention have been praised for aligning with China’s effort to promote non-adversarial dispute resolution models, particularly within the BRI,³³ and reflect “Asian culture and its traditions.”³⁴

While these studies provide valuable insight, many critical aspects remain underexplored. A systematic analysis of the motivations for the establishment of ICDPASO within China’s broader parallel institution-building strategy remains lacking. While procedural innovations have been lauded in abstract terms, there is limited understanding of how these mechanisms work in practice. How the institution is perceived by businesses, investors, and other international stakeholders also requires further empirical study.

This paper addresses these gaps by offering the first empirical and theoretical study of ICDPASO based on semi-structured interviews with ICDPASO officials, arbitrators, and international legal experts, as well as an analysis of institutional documents. Specifically, this paper explores the following questions:

- **Strategic Motivations:** What strategic motivations underlie the establishment of ICDPASO?

²⁸ 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, 22-24 (2021).

²⁹ *Id.* at 22.

³⁰ Yating Lin, *China’s Disequilibrium in ISDS: An Interplay of China’s Trade-Offs and Domestic Institutions to Investment Treaty Policy*, 15 J. INT’L DISP. SETTLEMENT 573, 595 (2024).

³¹ Weixia Gu, *China’s Modernization of International Commercial Arbitration and Transnational Legal Order*, 9 U.C. IRVINE J. INT’L, TRANSNAT’L & COMP. L. 110, 135–36 (2024).

³² Mark Feldman, *Connectivity and Decoupling: Belt and Road Dispute Resolution in a Fractured Trade Environment*, 1 INDIAN REV. INT’L ARB. 53, 53, 68 (2021).

³³ Ignacio de la Rasilla, ‘Sharp Ears to Hear a Thunderclap’? *The Rise of Mediation in the International Dispute Prevention and Settlement System of the Belt and Road Initiative*, 29 ASIA PAC. L. REV. 167, 185–86 (2021).

³⁴ Magdalena Łagiewska, *International Dispute Resolution of BRI-Related Cases: Changes and Challenges*, 33 J. CONTEMP. CHINA 809, 819 (2022).

- **Governance and Operational Dynamics:** How does ICDPASO operate within the broader context of China's institutional experimentation in the BRI?
- **Effectiveness:** How effective is it in achieving its goals, and what challenges does it face in gaining legitimacy and international acceptance?
- **Implications for Global Governance:** What implications does ICDPASO have for China's evolving role in global governance?

Built on parallel institution theory, we argue that ICDPASO is not merely a service provider for dispute resolution, but a vehicle for China's broader strategy of parallel institution-building and norms diffusion. ICDPASO is driven by four overlapping motivations: functional gain-seeking, power redistribution, legitimacy building, and status-seeking. To achieve these motivations, ICDPASO exemplifies a governance model characterized by indirect and soft governance, which is distinct from the state-centric structure of the China International Commercial Court ("CICC") and the co-founded, partnership-based China-Africa Joint Arbitration Centre ("CAJAC"). This governance model enables ICDPASO to position itself as a neutral, multilateral organization, enhancing its status and legitimacy while avoiding the perception of being an instrument of Chinese legal policy. Yet our interviews reveal a disjunction between official aspirations and user perceptions. While ICDPASO aspires to be a global norm-setter, to achieve its intended objectives, it must address challenges to gaining greater international credibility and user trust.

The case of ICDPASO and China's broader effort at parallel institution-building raises fundamental theoretical questions about the shifting architecture of legal and economic governance: Is there a coherent "China Model" of governance? How is it distinct from or similar to the liberal, rule-based norms embedded in the Washington Consensus? Is China adapting to or reshaping the international legal order? To what extent does this strategy challenge the normative foundations of the neoliberal international order?

This paper argues that China's dual-track strategy in IEL reflects a deeper, historically rooted governance philosophy: "normative dualism." This refers to the strategic deployment of "two, rather than one, systems of norms to regulate social relationships and activities."³⁵ While normative dualism has long structured China's domestic governance historically and contemporarily—balancing codified laws (*fa*) with rituals (*li*), formally legalized norms with informal relation-based governance—we argue that it also informs China's international engagements and institutional designs. Normative dualism is a key feature of China's approach to law and governance, operationalized at multiple levels: domestic, transnational, international, institutional, and grassroots.

Through the example of ICDPASO, this paper contends that ICDPASO reflects China's strategic application of normative dualism to international institutional design. While this normative dualism may operate intuitively or

³⁵ Xingzhong Yu, *Chinese Legal Thought: The Confucian School*, in *ENCYCLOPEDIA OF THE PHILOSOPHY OF LAW AND SOCIAL PHILOSOPHY* 425, 426 (Mortimer Sellers & Stephan Kirste eds., 2020).

unconsciously, influenced by long-standing legal and governance traditions, it nonetheless reveals a strategic logic: to recalibrate global governance by embedding China's own normative DNA into parallel institutions.

Theoretically, this paper contributes to a growing body of scholarship on China's role in global governance and legal development. By foregrounding normative dualism, it offers a new conceptual framework that advances existing debates in three ways. First, it bridges China's domestic and international legal behavior under one conceptual framework, challenging portrayals of China's governance approach as fragmented, reactive, or incoherent. Second, it moves beyond structural accounts of China's dual-track institutional strategy to illuminate the normative content embedded in the design, operation, and discourse of emerging institutions. Third, it offers a fresh perspective on parallel institutions—not merely as functional or symbolic alternatives to existing institutions, but as strategic instruments for normative projection.

Further, this paper sheds light on discussions of parallel institution-building and the broader, systematic implications for global governance. First, ICDPASO exemplifies how rising powers assert influence without directly confronting incumbent institutions, contributing to a more multipolar governance landscape. Second, by embedding Chinese normative concepts into its institutional design, ICDPASO acts as a vehicle for China to “upload” its preferred normative visions. Through the lens of ICDPASO, this paper deepens our understanding of how China strategically uses parallel institutions to recalibrate global governance norms and redistribute institutional power. It bridges empirical analysis and broader theoretical debates, contributing to scholarship on China's parallel institution-building, global governance, and international dispute resolution.

The rest of this paper is structured as follows. Section II explains data and methods. Section III elaborates on the concept of normative dualism, its roots in Chinese traditional legal thought, and its manifestations in contemporary governance. Section IV analyzes the motivations behind China's building of ICDPASO. Section V explores ICDPASO's governance structure and dispute resolution mechanisms. Section VI reveals the perceptions of ICDPASO from end users. Section VII reflects upon the implications of ICDPASO for global governance. Section VIII concludes with predictions of its prospects.

II. DATA AND METHODS

This study employs both documentary analysis and qualitative interviews to answer our research questions. These two methods provide complementary perspectives: documentary analysis offers an official view of ICDPASO's official objectives, organizational structure, and dispute resolution framework, while interviews yield valuable insights from internal governance actors, end users, and foreign experts. Given the limited availability of publicly accessible documents, interviews serve as a crucial source of information on ICDPASO's operational realities and perceived legitimacy.

The documentary analysis mainly draws from materials available on ICDPASO's official website and WeChat public account. These include the

institution's Charter,³⁶ organizational structure,³⁷ ICDPASO Commercial Arbitration Rules,³⁸ ICDPASO Commercial Mediation Rules,³⁹ and ICDPASO Investment Arbitration Rules,⁴⁰ the Mediation Rules,⁴¹ Rules on International Commercial Arbitration,⁴² Investor-State Arbitration Rules and Appeal Procedures proposed by the Expert Group,⁴³ typical case summaries, promotional brochures, and official news releases. These sources are essential to understanding ICDPASO's formal governance, regulatory framework, and institutional narratives.

The official rhetoric is tested against empirical data drawn from interviews conducted for a larger research project on dispute resolution in the BRI. The broader project involved qualitative interviews conducted in Beijing, Shanghai, Hong Kong, Singapore, London, and Sydney in 2023 and 2024, with a total of 85 individuals interviewed. Interviewees included 32 lawyers and counsel, 6 in-

³⁶ International Commercial Dispute Prevention and Settlement Organization [ICDPASO] Charter [hereinafter ICDPASO Charter].

³⁷ *Structure*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/content/17.html> [<https://perma.cc/4VEK-FQHW>] (last visited July 9, 2026).

³⁸ INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., COMMERCIAL ARBITRATION RULES (May 2022) [hereinafter ICDPASO, Commercial Arbitration Rules], <https://oss.hlcode.cn/server/code/file/2023/03/27/10225885324976.pdf> [<https://perma.cc/YE34-TCWF>].

³⁹ INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., COMMERCIAL MEDIATION RULES (May 2022) [hereinafter ICDPASO, Commercial Mediation Rules], <https://oss.hlcode.cn/server/code/file/2023/03/27/10362337047049.pdf> [<https://perma.cc/J3GQ-SEJR>].

⁴⁰ INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., INVESTMENT ARBITRATION RULES [hereinafter ICDPASO, Investment Arbitration Rules], [<https://perma.cc/5B9N-RNGN>].

⁴¹ MEDIATION RULES, arts. 4.5, 9.1 [hereinafter SIMC, Mediation Rules], <https://simc.com.sg/sites/default/files/content-files/SIMC%20Mediation%20Rules%202024.pdf> [<https://perma.cc/46N4-39DG>] (last visited July 6, 2026); *Mediation Rules*, INT'L CHAMBER OF COM. arts. 5.3, 9, 10.3 [hereinafter ICC, Mediation Rules], <https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/mediation/mediation-rules/#anchor-article-9> [<https://perma.cc/F4T5-RNQH>] (last visited July 7, 2026).

⁴² See IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION, INT'L BAR ASS'N 7 (May 25, 2024) [hereinafter IBA, Guidelines], <https://www.ibanet.org/document?id=guidelines-on-conflicts-of-interest-in-international-arbitration-2024> [<https://perma.cc/3NFK-YHAY>]; INT'L CNTR. FOR SETTLEMENT OF INVESTMENT DISPS., ICSID ARBITRATION RULES 7, 34 [hereinafter ICSID, Arbitration Rules], https://icsid.worldbank.org/sites/default/files/Arbitration_Rules.pdf [<https://perma.cc/T8PT-DR9R>]; H.K. INT'L ARB. CTR., 2024 ADMINISTERED ARBITRATION RULES 60 (2024) [hereinafter HKIAC, Arbitration Rules], <https://hkiac.org/wp-content/uploads/2025/02/2024-HKIAC-ADMINISTERED-ARBITRATION-RULES-English.pdf> [<https://perma.cc/MMY6-9X6P>].

⁴³ During the rule-crafting process, ICDPASO appointed an Expert Group from ten countries and regions to draft dispute settlement rules for the institution, "to ensure that it fulfills its goal of being an *efficient, effective and practical* dispute resolution mechanism." The rules and appeal procedures proposed by the Expert Group were submitted to the China Council for the Promotion of International Trade (CCPIT) in July 2020. Wang & Sharma, *supra* note 28, at 23.

house counsels of state-owned enterprises, private-owned enterprises, banks, and third-party funders, 31 executives from arbitration and mediation institutions, 11 academics, 3 full-time arbitrators,⁴⁴ and 2 government officials. The larger project focused on participants' experiences in drafting dispute resolution clauses in contracts and resolving disputes in the BRI. Participants were also asked about their specific experiences and insights into ICDPASO. A subset of these interviews was targeted at participants with specific insights into ICDPASO, including its officials, arbitrators, and international experts involved in the discussions of the institution's establishment.

Most interviews were conducted in person, with seven conducted online (three of which were also followed up in person). The interviewees were first recruited by "purposeful" sampling, which deliberately selected participants who had experience and expertise.⁴⁵ Additionally, "snowball" sampling was used to identify further participants with relevant knowledge for the purpose of the study.⁴⁶ This approach was utilized to enhance the representativeness of the sample and mitigate potential bias.⁴⁷

The interviews were semi-structured, featuring open-ended questions tailored to each interviewee's professional background and experience. Each session lasted between 30 minutes and one hour. For end users, including lawyers and in-house counsel, questions focused on their awareness of ICDPASO, perceptions of its legitimacy, and, where applicable, their direct experiences with its dispute resolution mechanisms. For ICDPASO arbitrators, discussions explored their insights on the selection of arbitrators, their training, experiences with the institution's case-handling, and how it compared with existing institutions such as the ICC and ICSID. ICDPASO's officials provided first-hand insights into the institution's establishment, motivations, governance, funding, personnel management, outreach strategies, dispute prevention and resolution services, and visions for the future. For international experts, questions were targeted at ICDPASO's positioning within the global dispute resolution landscape and its perceived legitimacy relative to established institutions.

Several limitations of the data are acknowledged. First, the data was restrained by the relatively low levels of awareness of ICDPASO among the interviewees. The majority of the respondents had little to no knowledge of or direct experience with this new institution, which limited the depth of discussions. Only a handful of interviewees were directly engaged with ICDPASO first-hand. This reflects ICDPASO's nascence and evolving role in the international dispute resolution landscape, but also suggests that its visibility and usage remain limited among potential users.

⁴⁴ Five of the lawyer interviewees also acted as part-time arbitrators.

⁴⁵ See Jane Ezirigwe & Jan Glazewski, *Conducting Socio-Legal Research in a Conflict Area during a Pandemic: Reflections and Lessons for Future Researchers*, 68 J. AFR. L. 231, 237 (2024).

⁴⁶ Emilia Korkea-aho & Päivi Leino, *Interviewing Lawyers: A Critical Self-Reflection on Expert Interviews as a Method of EU Legal Research*, 11 EUR. J. LEGAL STUD. 17, 32 (2019).

⁴⁷ *Id.*

Second, interviews with the officials or individuals affiliated with the institution may have been subject to self-censorship or strategic positioning, as respondents could have personal or institutional incentives to portray ICDPASO in a favorable light, align their statements with official narratives, or refrain from sharing critical perspectives. To account for these potential biases, we approached such interview data cautiously, recognizing potential inconsistencies, omissions, or strategic messaging. Where possible, we cross-verified official accounts with perceptions and experiences from other stakeholders, including end users and foreign experts, to provide a more balanced and reliable interpretation.

Third, as with any qualitative research relying on purposeful and snowball sampling, the composition of the interview pool—though diverse and carefully curated—may not be fully representative and comprehensively capture all perspectives. Additionally, as the study primarily draws from participants engaged in BRI dispute resolution, the findings may not represent perspectives from other regional and international actors who could potentially engage with ICDPASO.

Despite these potential limitations, this study makes a significant contribution by providing an empirical perspective on ICDPASO, which is currently unavailable in public discourse. Given the scarcity of publicly available information, this research offers unique first-hand insights from individuals with direct exposure to the institution's establishment, governance, and operation. While existing literature on the topic relies solely on official documentation and external speculation, the qualitative data presented here captures a richer and more nuanced understanding of ICDPASO's positioning, operational challenges, and user perceptions. By incorporating perspectives from arbitrators, institutional officials, users, and foreign experts, this study sheds light on the gap between ICDPASO's official narratives and its practical realities. These insider accounts provide a rare and critical empirical foundation for evaluating China's parallel institution-building efforts in the field of dispute resolution, offering a more informed and evidence-based discussion on its role and potential trajectory.

Before turning to the empirical findings, it is important to introduce the conceptual framework that guides this analysis. The governance logic underpinning ICDPASO cannot be fully understood through conventional accounts of institutional isomorphism.⁴⁸ Instead, this paper adopts the lens of normative dualism to capture China's distinctive approach to institutional design—one that blends formal legal norms with informal, relational governance. By situating ICDPASO within this dualist paradigm, we can better understand not only its structural features and procedural innovations, but also the deeper normative logic that animates its role in China's broader strategy of parallel institution-building.

⁴⁸ Paul J. Dimaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 149 (1983).

III. NORMATIVE DUALISM

As China deepens its engagement with global governance and constructs new parallel institutions, key questions arise: Is there a distinctive Chinese model of governance, and if so, how is it distinct from the liberal, rule-based norms? How is China reacting to the status quo of the existing international order?

Existing scholarship has approached these questions from different angles. The first strand focuses on China's domestic governance model, often framed around the notion of the "Beijing Consensus" as an alternative to the neoliberal Washington Consensus.⁴⁹ The second strand centers on China's role in the global legal order, exploring how it navigates, reforms, or builds alternatives to Western-centric norms and institutions.⁵⁰ Although these literatures focus on different scales, they intersect in a crucial way: China's international governance strategies, to some extent, reflect its domestic governance philosophy.⁵¹

While these literatures offer valuable insights, they often treat China's domestic and international behaviors as analytically distinct or emphasize institutional form over underlying normative logic. This paper proposes a coherent conceptual framework—normative dualism—that captures both the continuity in China's governance philosophy and its strategic application across levels and domains. Normative dualism can be used to interpret the coexistence and strategic deployment of formal and informal, legal and non-legal, global and locally grounded institutional norms in China's governance approach, domestically and internationally. We argue that normative dualism can be characterized as a defining feature of China's governance philosophy—a concept deeply embedded in Chinese legal thought. While rooted in Chinese legal tradition, normative dualism extends to China's engagement with the transnational legal order and the design of parallel institutions such as ICDPASO. To be sure, this paper does not suggest that such philosophical tradition alone drives institutional design. Rather, it posits that beyond pragmatic political and economic considerations, there is a deeper culturally embedded logic that informs strategic decisions about institutional design, governance, and practices.

This section proceeds in five parts. Part A outlines the conceptual foundations of normative dualism in Chinese legal thought. Part B explores its manifestations in China's domestic governance model. Part C discusses how normative dualism informs China's transnational and international institutional practices. Part D analyzes how it is operationalized in ICDPASO. Part E turns to how normative dualism operates at the grassroots level in cross-border commercial practice. Together, these layers illustrate how normative dualism not only structures

⁴⁹ Tasawar Baig, Shiwei Jiang Tristan & Saadia Beg, *Beijing Consensus and China's Rise as an Economic Power: Seeking a Viable Alternate Economic Development Model for Developing Countries*, 12 PARADIGMS 206, 206-09 (2018).

⁵⁰ Mykyta Simonov, *The Belt and Road Initiative and Partnership for Global Infrastructure and Investment: Comparison and Current Status*, 5 ASIA & GLOB. ECON. 1, 1-2 (2025).

⁵¹ See Baig, Tristan & Beg, *supra* note 49, at 207.

China's domestic legal system but also offers a lens for analyzing its emerging role in global legal ordering.

A. Normative Dualism in Chinese Traditional Legal Thought

Xingzhong Yu describes a fundamental feature of Chinese legal tradition as the reliance on two normative systems: “[u]sing one system of norms to positively maintain order but another system of norms to negatively punish disorder.”⁵² This dualist approach contrasts with Western legal traditions, which typically rely on one singular, coercive system—be it religious in the Middle Ages or legal in modern times—to deal with both order and disorder.⁵³ In China, law (法, *fa*) has historically been designed as a “negative force to punish disorder.”⁵⁴ The task of maintaining order was entrusted to virtue (德, *de*) and rules of propriety (礼, *li*). Legal historians in China generally maintain that this theory of governance is characterized by “the combination of the rules of propriety and law” (礼法结合, *li fa jie he*) or “morality supplemented by punishment” (德主刑辅, *de zhu xing fu*).⁵⁵

A foundational underpinning of China's normative dualism lies in the traditional Chinese philosophical concept of *Yin/Yang*. This doctrine posits the existence of two complementary forces that together shape the universe: Yang, associated with positivity and masculinity, and Yin, linked to passivity, receptivity, and femininity.⁵⁶ Crucially, unlike duality prevalent in Western religions, where one force overcomes the other, *Yin/Yang* is neither good nor bad. The ideal is a balance of both.⁵⁷

This dialectical philosophy has profoundly influenced Chinese governance and legal thought, fostering an approach that accommodates and synthesizes apparent opposite norms. In contrast to the more linear, formalistic reasoning characteristic of Western legal traditions, Chinese governance draws from the tradition of context-dependent and flexible reasoning.⁵⁸

B. Manifestations of Normative Dualism in Contemporary Governance Philosophy

1. China's Domestic Governance Model

China's domestic governance model continues to reflect this dualist logic. The “China Model,” sometimes described as the “Beijing Consensus,” features a

⁵² Yu, *supra* note 35, at 426.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 429.

⁵⁶ Guoli Liu & Ran An, *Applying a Yin–Yang Perspective to the Theory of Paradox: A Review of Chinese Management*, 14 PSYCH. RSCH. & BEHAV. MGMT. 1591, 1592-93 (2021); Yu, *supra* note 35, at 432.

⁵⁷ See Yu, *supra* note 35, at 432.

⁵⁸ See 2 JOSEPH NEEDHAM, SCIENCE AND CIVILISATION IN CHINA: HISTORY OF SCIENTIFIC THOUGHT 280-291 (1956); A.C. GRAHAM, YIN-YANG AND THE NATURE OF CORRELATIVE THINKING 59-64 (1986).

pragmatic, experimental, flexible, and state-led approach.⁵⁹ Rather than transplanting foreign legal frameworks wholesale, China integrates global ideas selectively through rigorous localization and adaptation processes.⁶⁰ This sharply contrasts with the rigid, prescriptive neoliberal market liberalization and privatization promoted by the Washington Consensus.⁶¹ Gregory Shaffer and Henry Gao argue, as Table 1 reproduced from their article illustrates, that the Beijing Consensus departs sharply from the Western paradigm in its approach to the political system, economic development model, trade and investment policies, foreign policy, and doctrinal rigidity.⁶²

Table 1: Comparison between the Washington Consensus and Beijing Consensus⁶³

	Washington Consensus	Beijing Consensus
Political System	Liberal democracy	Authoritarian governance
Economic Development Model	Laissez-faire market economy with little government intervention, such as industrial policy	State intervention; state-owned firms for critical sectors
Trade and Investment Policies	Open economy with little restriction on foreign trade and investment	Limited opening with many express or de facto restrictions on foreign trade and investment
Foreign Policy	Promotion of liberal, democratic, market ideals	Non-interference, sovereignty, and self-determination
Doctrinal Rigidity	Rigid regarding legal prescriptions	Non-prescriptive ideologically, experimenting through trial and error

Other scholars question the coherence and novelty of the so-called “China Model,” arguing that it is better understood as a variant of the East Asian developmental approach and context-driven experiment.⁶⁴ Even within this

⁵⁹ See JOSHUA COOPER RAMO, *THE BEIJING CONSENSUS* 4 (2004); Reza Hasmath, *White Cat, Black Cat, or Good Cat: The Beijing Consensus as an Alternative Philosophy for Policy Deliberation? The Case of China* 6-16 (Dep’t of Soc. Pol’y & Intervention, Univ. of Oxford, Working Paper No. 14-02, 2014), https://www.spi.ox.ac.uk/sites/default/files/Barnett_Paper_14-02.pdf [<https://perma.cc/8YAZ-53LW>].

⁶⁰ RAMO, *supra* note 59, at 31–35.

⁶¹ *Id.* at 4.

⁶² Gregory Shaffer & Henry Gao, *A New Chinese Economic Order?*, 23 J. INT’L ECON. L. 607, 610–11 (2020).

⁶³ *Id.* at 611. Reprinted with permission from Gregory Shaffer & Henry Gao.

⁶⁴ Suisheng Zhao, *The China Model: Can It Replace the Western Model of Modernization*,

critique, Suisheng Zhao nonetheless underscores China's pragmatic, growth-oriented approach, combining market liberalization with selective authoritarianism to ensure political stability.⁶⁵ Weitseng Chen extends this argument, emphasizing China's incremental, experimental, pragmatic, and state-led approach, which creates a flexible framework adaptable to diverse contexts.⁶⁶

Matthew Erie's "Chinese Law and Development" ("CLD") framework extends this insight by highlighting China's simultaneous use of legal, extra-legal, and non-legal mechanisms in domestic and transnational governance.⁶⁷ In contrast to the traditional Western-led "Law and Development" approach, China does not seek to transplant its legal system directly into host countries but instead utilizes transnational legal frameworks alongside extra-legal and non-legal mechanisms.⁶⁸ CLD is commonly understood as combining gradual, experimentation-driven reform with an export-oriented growth strategy following an "infrastructure development first, institution next" approach,⁶⁹ while remaining embedded in a political economy marked by state capitalism⁷⁰ and authoritarianism.⁷¹ The CLD approach is exemplified in Weixia Gu's analysis of CICC, which she frames as a "dual-track model."⁷² Gu argues that CICC marks a "paradigm shift" in China's development strategy, moving from predominantly soft-law approaches toward a dual-track that integrates robust institutional "hard-law" infrastructures alongside traditional norm-based "soft-law" mechanisms.⁷³

At its core, these different perspectives reflect normative dualism in China's governance model—it is a defining feature and deliberate strategy influenced by deeply embedded Chinese legal thought. China relies on two norms simultaneously: it strategically synthesizes legal structures with relational-based governance, hard-law infrastructures with soft-law instruments, and formal institutions with informal networks. This approach stands in marked contrast to the prescriptive legalism and rigid institutionalism of the Washington

19 J. CONTEMP. CHINA 419, 423 (2010).

⁶⁵ *Id.*

⁶⁶ Weitseng Chen, *Debating the Consensuses: The Beijing Consensus vs. The Washington Consensus*, in *THE BEIJING CONSENSUS? HOW CHINA HAS CHANGED WESTERN IDEAS OF LAW AND ECONOMIC DEVELOPMENT* 4, 7, 9 (Weitseng Chen ed., 2017).

⁶⁷ Matthew S. Erie, *Chinese Law and Development*, 62 HARV. INT'L L.J. 51, 54-55 (2021) [hereinafter Erie, *Chinese Law*].

⁶⁸ *Id.*

⁶⁹ Jingyuan Zhou, *A New Multilateralism? A Case Study of the Belt and Road Initiative*, 8 CHINESE J. COMP. L. 384, 384, 400-05 (2020); see Erie, *Chinese Law*, *supra* note 67, at 54-56.

⁷⁰ Mark Wu, *The "China, Inc." Challenge to Global Trade Governance*, 57 HARV. INT'L L. J. 262, 284 (2016).

⁷¹ Wenwei Guan, *Beijing Consensus and Development Legitimacy: The Evolution of China's Foreign Direct Investment (FDI) Regime from a Law and Development Perspective*, 12 ASIAN J. COMPAR. L. 115, 127-28 (2017); Weixia Gu, *China's Law and Development: A Case Study of the China International Commercial Court*, 62 HARV. INT'L L. J. 67, 96 (2021).

⁷² Gu, *supra* note 71, at 71.

⁷³ *Id.* at 70-71.

Consensus. Normative dualism provides a flexible framework that adapts across contexts, allowing the state to modernize, regulate, and stabilize society while leaving room for incremental experimentation through trial and error—a pattern that increasingly extends beyond China’s borders through its approach to global governance.

2. China’s Governance Approach at the Transnational and International Levels

China’s domestic governance model increasingly extends into the transnational and international legal spheres. This outward-facing model is also featured by its continued reliance on normative dualism: the blending of formal, rule-based legal structures with informal, relational, and often opaque governance mechanisms. Just as China’s domestic governance reflects a synthesis of law and relational norms, its transnational and international engagements demonstrate a similar fusion—offering a flexible, adaptive, and pragmatic alternative to the liberal international legal order.

This dualism is most clearly embodied in China’s flagship global initiative—the BRI. Instead of adopting a single, coherent governance model, China’s BRI governance blends both formal, law-based structures with informal, partnership-driven governance.⁷⁴ While the BRI is an informal, non-treaty, partnership-based approach,⁷⁵ as reflected in the heavy reliance on memoranda of understanding in its primary agreements,⁷⁶ it also relies on formal laws to construct a transnational economic order with China at the hub.⁷⁷ In dispute resolution, China pragmatically leverages existing international frameworks while constructing specialized mechanisms tailored to BRI contexts.⁷⁸

China’s engagement with IEL similarly reflects normative dualism. As Shaffer and Gao argue, China does not simply resist or reject liberal legal norms—China’s approach represents a strategic blend of adapting to existing international legal norms and incrementally embedding Chinese standards through soft law and parallel institutions.⁷⁹ It features a pragmatic and strategic process of “mimicking and repurposing” Western norms and institutions.⁸⁰ China aims to create “a decentralized Sino-centric order that complements,

⁷⁴ See Wang Jiangyu, *China’s Governance Approach to the Belt and Road Initiative (BRI): Partnership, Relations, and Law* 4, 7 (Nat’l Univ. Sing. L., Working Paper, Paper No. 005, 2019).

⁷⁵ See Heng Wang, *China’s Approach to the Belt and Road Initiative: Scope, Character and Sustainability*, 22 J. INT’L ECON. L. 29, 31, 36 (2019).

⁷⁶ See Heng Wang, *The Belt and Road Initiative Agreements: Characteristics, Rationale, and Challenges*, 20 WORLD TRADE REV. 282, 282-83 (2021).

⁷⁷ Shaffer & Gao, *supra* note 62, at 613.

⁷⁸ See Wang, *supra* note 10, at 584-85, 604; James Crawford, *China and the Development of an International Dispute Resolution Mechanism for the Belt and Road Construction*, in CHINA AND INTERNATIONAL DISPUTE RESOLUTION IN THE CONTEXT OF THE ‘BELT AND ROAD INITIATIVE’ 11, 14–15 (Wenhua Shan, Sheng Zhang & Jinyuan Su eds., 2021).

⁷⁹ See Shaffer & Gao, *supra* note 62, at 607, 610-12.

⁸⁰ *Id.* at 633.

competes with, and reorients the existing international economic law order.”⁸¹ Heng Wang notes that China pragmatically participates in global institutions while concurrently establishing parallel institutions.⁸² Jingyuan Zhou conceptualises this approach as “new multilateralism,” characterized by pragmatic flexibility and selective engagement, arguing that China strategically operates between adapting to and reshaping global norms, thus challenging the liberal international order incrementally rather than confrontationally.⁸³

Other scholars argue that the normative impacts of China’s global impact are accidental and a result of domestic policy fragmentation rather than coherent intention. For instance, Lee Jones argues that China’s transnational governance practices may unintentionally undermine established global economic norms not by design but as a byproduct of domestic fragmentation and implementation challenges.⁸⁴ Kevin Keller’s notion of “policy irritants” also captures how China’s legal and regulatory practices, even when not explicitly designed for legal transplantation, generate normative friction and accidental influence on host countries—especially where local regimes adjust to accommodate or resist Chinese practices.⁸⁵

While China’s approach is not a “neatly coherent, centralized order” but “fragmentary[,]”⁸⁶ its flexible approach that combines formal and informal tools pragmatically and strategically reflects a consistent logic of normative dualism. Intentionally or unconsciously, this dualist tradition continues to influence China’s governance philosophy today: in the BRI context, this dualist approach allows China to maintain flexibility across diverse political and legal environments, offering partner countries an alternative model to the strictly rule-based systems characteristic of Western models. In its approach to IEL, China actively participates in existing institutions with the aim of playing a more influential role while simultaneously building parallel Chinese-led institutions that interact with existing ones.⁸⁷ This dual strategy preserves China’s role within existing multilateral institutions while simultaneously shaping alternative regimes aligned with its normative preferences.

Taken together, China’s governance philosophy—at domestic, transnational, and international levels—consistently involves flexible, pragmatic, experimental approaches led by the state and informal, relational approaches combined with rule-based norms. Normative dualism offers a comprehensive analytical framework to understand this pattern. It reveals how China’s state-led, flexible, and non-prescriptive approach to governance is not only applied at home but also exported through its international legal and institutional

⁸¹ *Id.* at 613.

⁸² See Wang, *supra* note 10, at 585, 588-89.

⁸³ Zhou, *supra* note 69, at 400.

⁸⁴ Lee Jones, *Does China’s Belt and Road Initiative Challenge the Liberal, Rule-Based Order?*, 13 FUDAN J. HUMANS. & SOC. SCIS. 113, 114 (2020).

⁸⁵ Kevin Bryne Keller, *From Legal Transplants to Policy Irritants: Chinese Economic Expansion and Global Legal Change*, 73 AM. J. COMP. L. 430, 430, 434-36 (2025).

⁸⁶ Shaffer & Gao, *supra* note 62, at 613.

⁸⁷ *Id.* at 612.

engagements. Rather than being incoherent or contradictory, this approach reflects a coherent logic of strategic duality: leveraging the strengths of both legal formalism and normative informality to navigate and reshape the evolving global legal order.

3. Institutional Manifestation: ICDPASO

Normative dualism also leaves a clear imprint on the design and operational logic of specific China-led institutions, such as ICDPASO. As we illustrate in later sections, ICDPASO exemplifies normative dualism in both structure and practice.⁸⁸ On the one hand, it has adopted a formal Charter, a three-tiered governance structure, and formalized institutional rules to guide its practice, modeled on international best practices.⁸⁹ This reflects formal legalism and institutionalized features. On the other hand, it embeds a relational governance logic that prioritizes dispute prevention and mediation, flexibility, informality, network-based engagement, and trust building.⁹⁰

ICDPASO's governance model embodies normative dualism, which is both a strategic extension of China's approach to international order and a reflection of China's deeply embedded legal philosophy. It reflects a conscious effort to construct a parallel institution consistent with China's dual-track strategy in international law, which synthesizes rule-based norms with relational and context-sensitive flexibility. That said, its institutional design and operation may also be shaped—perhaps inadvertently—by the normative dualist philosophy that is deeply embedded in Chinese legal thought.

ICDPASO illustrates how China's distinctive governance philosophy—anchored in normative dualism—materializes at the institutional level. By blending formal legal codification with relational governance logic, ICDPASO serves as a microcosm of China's broader model: a model that seeks to reshape global legal governance not through overt contestation, but through incremental synthesis and the gradual uploading of China's preferred normative visions.

4. The Dispute Resolution Approach at the Grassroots Level

Normative dualism also manifests at the grassroots level, influencing individuals' decision-making processes. Empirical research reveals that Chinese enterprises investing in the BRI strategically combine formal legal mechanisms (such as arbitration and litigation) with informal, trust-based approaches (such as negotiation and mediation) when managing disputes.⁹¹ While Chinese enterprises do heavily rely on informal, amicable methods to resolve their disputes, leveraging *guanxi* to preserve harmonious relationships, they also

⁸⁸ See *infra* Section V.A.3.

⁸⁹ See ICDPASO Charter, *supra* note 36, art. 6 ¶¶ 1-2; *Structure*, *supra* note 37.

⁹⁰ See *ICDPASO Profile*, *supra* note 25.

⁹¹ See Rob Harkavy, *China's 'Legal Belt and Road': Exporting Legal Norms Through Project Finance*, GLOB. LEGAL INSIGHTS (Sept. 17, 2025), <https://www.globallegalinsights.com/news/chinas-legal-belt-and-road-exporting-legal-norms-through-project-finance/> [https://perma.cc/C9CL-4TUJ].

strategically adopt formal, legal-based norms to protect their interests.⁹² This dual-track behavior is both strategic and intuitive. It enables Chinese actors to navigate the complexities of BRI disputes, maintaining flexibility and long-term relationships while retaining access to formal adjudicatory mechanisms when needed.

Table 2: Manifestations of Normative Dualism at Different Levels⁹³

Level	Formal Legal Structures	Relational Governance Mechanisms
1. Domestic	Hard law approach Specialized courts Legal professionalization	Soft law instruments Incremental, experimental, pragmatic, and flexible approach
2. Transnational/ International	Participation in existing institutions (the World Trade Organization (WTO), ICSID) Building parallel formal institutions (AIIB, ICDPASO) Formal treaties and contracts-based norms	Soft law norms Memoranda of Understanding (MOUs) in BRI primary agreements
3. Institutional (ICDPASO)	Charter and codified procedures Three-tiered governance structure Arbitration/mediation rules	Dispute prevention and mediation services Informal coordination (e.g., CCPIT influence) Network-based participation
4. Grassroots (Disputing Parties)	Inclusion of arbitration clauses Engagement with international legal norms	<i>Guanxi</i> , trust-based negotiation Long-term relationship orientation Amicable, informal resolution efforts

⁹² Full empirical findings on dispute resolution in the BRI are presented in Kun Fan & Zhenyu Xiao, *From Structure to Actors: Unveiling Belt and Road Dispute Resolution Through the Eyes of Participants* (July 31, 2026) (on file with Boston University International Law Journal); *see also* Kun Fan et. al., *Navigating BRI Disputes: Understanding, Key Actors and Practical Strategies*, in *THE BELT & ROAD INITIATIVE 2025* 57, 58-61 (Stephen Jagusch KC, Dr. Colin Ong KC, & Walter (Fayun) Chen eds., 2025); Zaixiao Zhang & Mingli Zhang, *Guanxi, Communication, Power, and Conflict in Industrial Buyer-Seller Relationships: Mitigations Against the Cultural Background of Harmony in China*, 20 J. BUS.-TO-BUS. MKTG. 99, 106 (2013).

⁹³ *See discussion supra* Sections III.B.1-B.4.

In sum, as illustrated in Table 2, across governance levels—domestic, transnational, international, institutional, and grassroots—normative dualism functions as a consistent logic across multiple layers of China’s governance. This dualist approach allows China and Chinese actors to blend formal legal mechanisms with informal, relationship-based governance, offering a flexible and adaptive governance model that departs from liberal rules of law orthodoxy while engaging with international norms on its own terms.

Normative dualism does not remain abstract or theoretical: it is operationalized through concrete institutional design and practice that reflect China’s broader effort to recalibrate global governance. Understanding this dualist logic thus provides an essential analytical tool for understanding China’s parallel institution-building strategy. It is within this broader framework that we now turn to the discussion of a specific example of China’s parallel institution-building effort. ICDPASO offers a valuable case study for exploring how normative dualism informs both the motivations behind an institution’s establishment as well as the governance model and operational practice it embodies. The following sections will examine ICDPASO’s motivations (IV), governance model and operational dynamics (V), and user perceptions (VI).

IV. MOTIVATIONS FOR ICDPASO’S ESTABLISHMENT

Our inquiries begin with a central question: Why does China build parallel institutions, like ICDPASO, as part of its strategy to reshape global governance?

While general theoretical accounts explaining China’s engagement in parallel institution-building are still emerging, several themes have been identified from recent literature on China’s new institutions.⁹⁴ By situating ICDPASO within this emerging analytical framework and drawing on official statements, interview insights, and observed institutional features, we aim to provide a more balanced and analytically grounded understanding of its strategic motivations. While we acknowledge the speculative nature of inferring motivations and the potential biases inherent in official narratives, our analysis is theory-informed, guided by our interpretations based on broader patterns identified in the literature on China’s parallel institution-building.

In this section, we will illustrate that the establishment of ICDPASO is driven by multiple overlapping motivations that reflect China’s broader institutional strategy: functional gain-seeking, power redistribution, legitimacy-building, and status-seeking. These motivations are not mutually exclusive; rather, they reinforce and complement each other, collectively shaping China’s approach to parallel institution-building in international dispute resolution.

⁹⁴ Stephen, *supra* note 1, at 808-09.

Table 3: Motivations for ICDPASO's Establishment⁹⁵

Motivation	Key Issue in Existing Institutions	ICDPASO's Response
Functional Gain-Seeking	Lack of efficiency in international commercial arbitration (ICA) and investor-state dispute settlement (ISDS)	To offer an accessible, cost-effective dispute resolution option
Power Redistribution	Arbitration in procedure and composition of the arbitration community is criticized as Western-centric	To provide an alternative option that is more aligned with the discourse and culture of developing countries
Legitimacy Building	ICC and ICSID have established their credibility over time, but also face legitimacy concerns	1.To learn from existing institutions to foster credibility (internationalization, adopt best practices) 2.To innovate to address the legitimacy crises of existing institutions (inclusiveness, consideration of societal impact)
Status-Seeking	The Western-led status quo of existing institutions	1.Internationalization efforts to enhance its status 2.Inclusiveness as symbolic power 3.Promotion of Chinese normative ideas

A. Functional Gain-Seeking

At the functional level, if established institutions in a given policy field are perceived as ineffective, parallel institutions may be established with goals similar to existing ones but that aim to enhance performance or achieve higher operational efficiency.⁹⁶

Functional gain-seeking may be one immediate driver for ICDPASO's creation in reaction to criticism of the inefficiency of existing institutions in dispute resolution. Criticisms about its costs and duration in both commercial and investment arbitration have become increasingly prominent.⁹⁷ These

⁹⁵ See discussion *infra* Sections IV.A-D.

⁹⁶ See Paradise, *supra* note 8, at 150.

⁹⁷ See João Marçal Rodrigues Martins da Silva, *An Answer to Criticisms Against the Lack*

concerns raise significant questions about the accessibility and effectiveness of arbitration as a dispute resolution mechanism. ICSID is often criticized for being prohibitively expensive and lengthy.⁹⁸ According to a 2021 empirical study, the average costs incurred by investors in ICSID arbitration proceedings were 7.2 million USD, with a median of 4.1 million USD.⁹⁹ Tribunal costs further added to the financial burden, averaging 0.96 million USD, with a median of 0.76 million USD, based on data from 140 cases.¹⁰⁰ Based on a pool of 287 cases decided before May 2020, ICSID arbitrations, on average, took 4.6 years to conclude.¹⁰¹ Similar critiques apply to international commercial arbitration, which has become “too costly and cumbersome in nature,” contributing to the “crisis of arbitration”¹⁰² and the “banalisation of arbitration.”¹⁰³ ICC arbitration exemplifies this trend, with awards on costs exceeding 1 million USD being “unremarkable” in large cases.¹⁰⁴ Time efficiency has become another concern: the average duration to reach a final award has consistently hovered around 26 to 27 months, with median durations ranging between 21 and 25 months.¹⁰⁵

For parties with limited resources—particularly small and medium-sized enterprises (“SMEs”) and individuals—these high costs and prolonged timelines create significant barriers to justice. According to the officials of the organization, ICDPASO intended to offer an accessible, cost-effective dispute resolution option for SMEs, who may find existing institutions like ICC inaccessible. ICDPASO provides another option in the market, as an international organization “at one’s doorstep,” which meets the practical needs

of Efficiency in Arbitration: Measures to Reduce Time and Costs, 14 *REVISTA BRASILEIRA DE ARBITRAGEM* 23, 23-24 (2017).

⁹⁸ Leon E. Trakman, *The ICSID Under Siege*, 45 *CORN. INT’L L.J.* 603, 616 (2012); Adam Raviv, *Achieving a Faster ICSID*, in *RESHAPING THE INVESTOR-STATE DISPUTE SETTLEMENT SYSTEM* 653, 654 (Jean E. Kalicki & Anna Joubin-Bret eds., 2015).

⁹⁹ MATTHEW HODGSON, YARIK KRYVOI & DANIEL HRCKA, 2021 *EMPIRICAL STUDY: COSTS, DAMAGES AND DURATION IN INVESTOR-STATE ARBITRATION* 11 (2021).

¹⁰⁰ *Id.* at 13.

¹⁰¹ *Id.* at 33.

¹⁰² Russell Thirgood, *A Critique of ICC Arbitration*, 23 *THE ARB. & MEDIATOR* 69, 90 (2004).

¹⁰³ M.J. Mustill, *Comments on Fast-Track Arbitration*, 10 *J. INT’L ARB.* 121, 124 (1997).

¹⁰⁴ W. LAURENCE CRAIG, WILLIAM W. PARK & JAN PAULSSON, *INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION* 395 (3d ed. 2000).

¹⁰⁵ INT’L CHAMBER OF COM., *ICC DISPUTE RESOLUTION 2019 STATISTICS* 16 (2020), <https://www.icc-switzerland.ch/images/2019iccdsstatistics-august2020.pdf> [<https://perma.cc/86XQ-NF67>]; INT’L CHAMBER OF COM., *ICC DISPUTE RESOLUTION 2020 STATISTICS* 19 (2021), <https://jusmundi.com/en/document/pdf/publication/en-2020-icc-dispute-resolution-statistics>; INT’L CHAMBER OF COM., *ICC DISPUTE RESOLUTION 2021 STATISTICS* 14 (2023), <https://jusmundi.com/en/document/pdf/publication/en-2021-icc-dispute-resolution-statistics>; INT’L CHAMBER OF COM., *ICC DISPUTE RESOLUTION 2022 STATISTICS* 14 (2024), <https://jusmundi.com/en/document/pdf/publication/en-2022-icc-dispute-resolution-statistics>; INT’L CHAMBER OF COM., *ICC DISPUTE RESOLUTION 2023 STATISTICS* 15 (2024), <https://jusmundi.com/en/document/pdf/publication/en-2023-icc-dispute-resolution-statistics>.

of Chinese and other regional companies looking for reliable arbitration services close to home.¹⁰⁶

In response to the costs of the arbitration process, ICDPASO integrates services like dispute prevention (encompassing compliance and risk mitigation) and mediation into its core offerings.¹⁰⁷ This blend of accessibility, cost-effectiveness, and operational efficiency illustrates that ICDPASO's establishment is driven by a functional gain-seeking motivation aimed at enhancing the performance and responsiveness of dispute resolution options to meet the growing, diverse needs of the market.

However, this motive alone does not account for the institution's broader strategic purpose. By creating an institution that appears functionally efficient, China simultaneously asserts itself as a provider of alternative governance solutions, with objectives of power redistribution, status-seeking and legitimacy building, to enhance its credibility and influence among BRI countries and beyond.

B. Power Redistribution

From a realist perspective, the rise of parallel institutions like ICDPASO indicates China's attempt to redefine global power structures and challenge the established dominance of Western powers, particularly the United States ("US"). Oliver Stuenkel argues that dissatisfaction with the distribution of political authority—rather than substantive policy content or norms—is the driver of China's institution-building efforts. These new institutions serve as an instrument for China to enhance its leadership capacity and incrementally challenge the institutional centrality of the US.¹⁰⁸ For instance, the initial international response to China's proposal to establish the AIIB was that it represented an attempt by China to create an alternative institution to the US-dominated World Bank and the Japanese-controlled Asian Development Bank.¹⁰⁹ Such initiatives suggest that (relative) power concerns can be one driving force behind China's parallel institutional building.¹¹⁰

ICDPASO reflects its dissatisfaction with the status quo of existing dispute resolution institutions in both ICA and ISDS:

1. Western-centric Norms and Procedures

ICA and ISDS have been criticized for their strong Western-centric orientation. ICA is said to prioritize Western legal principles, procedural norms, and cultural expectations.¹¹¹ ICA procedure is moving towards "offshore-U.S.-

¹⁰⁶ Interview with Interviewee No. 31, in Beijing, China (July 31, 2024).

¹⁰⁷ See Feldman, *supra* note 27, at 2; *ICDPASO Profile*, *supra* note 25.

¹⁰⁸ Oliver Stuenkel, *The BRICS: Seeking Privileges by Constructing and Running Multilateral Institutions*, 2 GLOB. SUMMITRY 38, 39–40 (2016).

¹⁰⁹ Mike Callaghan & Paul Hubbard, *The Asian Infrastructure Investment Bank: Multilateralism on the Silk Road*, 9 CHINA ECON. J. 116, 123 (2016).

¹¹⁰ See Stephen, *supra* note 1, at 824–25.

¹¹¹ Kun Fan, *Arbitration Across Human Faculties and Human Societies: A Three-Dimensional Epistemological Analysis*, in INTERNATIONAL ARBITRATION: A HUMAN

style litigation[.]”¹¹² prioritizing adversarial procedures such as cross-examination, jurisdictional objections, discovery, and witness interviews.¹¹³ ISDS was established during a period when Western multinational corporations sought to protect their investments from expropriation in developing countries and thus inherently reflects a Western, and especially American, approach to dispute resolution.¹¹⁴ But it is now criticized as a legacy of colonialism that structurally disadvantages host states, particularly in the Global South, by imposing norms and legal standards that may not align with their domestic priorities or cultural values.¹¹⁵ In both systems, the Western-dominated procedural rules, norms, and legal standards may not align with the cultural values and norms of non-Western parties.

2. Lack of Diversity in the Appointment of Arbitrators

The arbitration field is dominated by a relatively small, homogenous group of arbitrators who share similar backgrounds in terms of national origin, gender, and educational experience, often white, mal” arbitrators from Western Europe and North America. This homogeneity pervades both ICA¹¹⁶ and ISDS¹¹⁷ and has raised concerns among Chinese and Global South actors about potential bias against non-Western parties and a lack of cultural sensitivity in arbitral decision-making.¹¹⁸

ENDEAVOR 141, 156 (Chiann Bao & Audley Sheppard KC eds., 2025).

¹¹² Elena V. Helmer, *International Commercial Arbitration: Americanized, Civilized, or Harmonized?*, 19 OHIO ST. J. ON DISP. RESOL. 35, 35 (2003); see Eric Bergsten, *Americanization of International Arbitration*, 18 PACE INT’L L. REV. 289, 301 (2006).

¹¹³ Bergsten, *supra* note 112, at 301; Helmer, *supra* note 112, at 35; Roger P. Alford, *The American Influence on International Arbitration*, 19 OHIO ST. J. DISP. RESOL. 69, 82–87 (2003); Kevin T. Jacobs & Matthew G. Paulson, *The Convergence of Renewed Nationalization, Rising Commodities, and Americanization in International Arbitration and the Need for More Rigorous Legal and Procedural Defenses*, 43 TEX. INT’L L.J. 359, 367–68 (2008).

¹¹⁴ Gautami S Tondapu, *International Institutions and Dispute Settlement: The Case of ICSID*, 22 BOND L. REV. 81, 92 (2010) (“[I]t remains questionable how well ICSID, a ‘Western’ institution, using whatever chosen substantive law, would respond to the expectations of the victims with regards to the amount of the award.”); Lukas Schaugg, *A Soft Competition among Arbitral Institutions: The Institutional Oligopoly of Mixed Arbitration* 131–38 (2024) (Ph.D. dissertation, York University) (on file with the Osgoode Digital Commons, York University) (“[T]he first draft of what would become the ICSID Convention was prepared by a group of lawyers at the American Bar Association . . .”).

¹¹⁵ See, e.g., Matthew S. Erie, *The Soft Power of Chinese Law*, 61 COLUM. J. TRANSNAT’L L. 1, 30–31 (2023) [hereinafter Erie, *Soft Power*].

¹¹⁶ YVES DEZALAY & BRYANT GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 95–97 (1996).

¹¹⁷ Sergio Puig, *Social Capital in the Arbitration Market*, 25 EUR. J. INT’L L. 387, 407 (2014).

¹¹⁸ See, e.g., Guiguo Wang, *Chinese Mechanisms for Resolving Investor-State Disputes*, 1 JINDAL J. INT’L AFF. 204, 229–30 (2011) (considering the language in ICSID Tribunal’s award in the 2007 Tza Yap Shun v. Peru case to be “extremely biased and obviously discriminatory”); see also Sergio Puig & Anton Strezhnev, *The David Effect and ISDS*, 28 EUR. J. INT’L L. 731, 739 (2017) (finding conditional evidence of pro-claimant bias in ICSID

In sum, the dominance of Western arbitrators, institutions, and procedural rules creates a structural imbalance, leading to skepticism amongst developing countries regarding the fairness of arbitral proceedings.¹¹⁹ Against this backdrop, ICDPASO's establishment signals not only dissatisfaction with the status quo but also a motivation to change the power distribution in the existing system. ICDPASO officials explicitly commented on the disadvantage faced by Chinese and BRI country investors in arbitration forums dominated by Western arbitrators and procedural rules.¹²⁰ By creating an institution grounded in the cultural, legal, and economic realities of developing countries, ICDPASO provides an alternative option that is more aligned with Chinese/BRI discourse and culture.¹²¹ In doing so, China attempts to assert its influence in a sphere traditionally dominated by Western institutions. This shift reflects China's ambition to emerge as "a leader with substantial influence," a role that was unattainable within the framework of existing institutions.¹²²

C. Legitimacy Building

Beyond power redistribution, emerging powers like China engage in parallel institutions to legitimate their own preferences on the global stage.¹²³ A fundamental question is why China opts to invest in parallel multilateral institutions rather than relying solely on domestic or bilateral mechanisms. Drawing on Matthew Stephen's framework, two interrelated logics of legitimacy help explain this approach.¹²⁴

The first is the logic of self-binding, whereby China signals its benign intentions by voluntarily subjecting itself to rules and shared influence within multilateral frameworks.¹²⁵ This approach reflects a transactional understanding of legitimacy, wherein powerful states gain credibility by engaging less powerful states in shared rule-making processes, fostering an implicit social contract between dominant and less powerful actors.¹²⁶ This strategy is particularly relevant in the context of the BRI, which has faced criticism for its

arbitration, particularly among arbitrators from advanced economies with government backgrounds); Eric, *Soft Power*, *supra* note 115, at 39-40.

¹¹⁹ Leon Trakman, *Enhancing Standing Panels in Investor-State Arbitration: The Way Forward*, 48 *GEO. J. INT'L L.* 1145, 1162 (2017).

¹²⁰ Interview with Interviewee No. 31, in Beijing, China (December 15, 2023).

¹²¹ *Id.*

¹²² Zheng Wang, *China's Institution Building: Leading the Way to Asian Integration*, 2 *GEO. J. ASIA AFF.* 16, 19 (2015).

¹²³ Stephen, *supra* note 1, at 810.

¹²⁴ *See id.* at 824-25.

¹²⁵ *Id.*; G. JOHN IKENBERRY, *AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE REBUILDING OF ORDER AFTER MAJOR WARS* 50-51 (2001); Reinhard Wolf, *Rising Powers, Status Ambitions, and the Need to Reassure: What China Could Learn from Imperial Germany's Failures*, 7 *CHINESE J. INT'L POL.* 185, 187 (2014); Zheng Chen & Yanchuan Liu, *Strategic Reassurance in Institutional Contexts: Explaining China's Creation of the Asian Infrastructure Investment Bank*, 27 *J. CONTEMP. CHINA* 795, 800 (2018).

¹²⁶ *See* Stephen, *supra* note 1, at 810-15; David Lake, *Relational Authority and Legitimacy in International Relations*, 53 *AM. BEHAV. SCI.* 331, 331 (2009).

asymmetrical power structures and risk of economic dependence on China.¹²⁷ By establishing a multilateral institution to deal with BRI disputes, China aims to counter accusations of China-centric dominance.

The second logic emphasizes that multilateralism itself enhances legitimacy. China's preferences will be considered more legitimate if they are pursued through, and receive the blessing of, multilateral institutions.¹²⁸ Multilateralism and institutionalization enhance the credibility and acceptance of the goals of the initiator. In this view, multilateral institutions serve not only as functional tools but also as vehicles for legitimization. By establishing ICDPASO as a multilateral, membership-based organization—rather than a purely China-controlled body—China enhances the perceived credibility and legitimacy of the institution on the global stage.

The legitimacy theory further suggests that if established institutions are widely viewed as credible and legitimate, parallel institutions may replicate their structures and practices to gain similar acceptance. Conversely, when existing institutions are seen as lacking legitimacy, parallel institutions may aim to rectify these perceived shortcomings, offering new frameworks that promise inclusivity, equity, or alternative norms.¹²⁹ ICDPASO appears to pursue both strategies by positioning itself simultaneously as an emulator and a reformer: it draws upon the procedural models and best practices of established institutions to gain legitimacy while also introducing innovations aimed at addressing perceived legitimacy deficits.

1. Legitimacy and Criticisms of ICA

The legitimacy of the ICA is constructed through its presentation as a transnational, autonomous global system of “private justice[.]”¹³⁰ which functions more-or-less autonomously from state control to uphold private commercial agreements.¹³¹ This legitimacy has been reinforced through a combination of legal infrastructure to support global enforceability,¹³² judicial endorsement from major commercial jurisdictions,¹³³ and transnational elite

¹²⁷ LEE JONES & SHAHAR HAMEIRI, DEBUNKING THE MYTH OF ‘DEBT-TRAP DIPLOMACY’: HOW RECIPIENT COUNTRIES SHAPE CHINA’S BELT AND ROAD INITIATIVE 2 (2020); see Deborah Brautigam & Won Kidane, *China, Africa, and Debt Distress: Fact and Fiction about Asset Seizures*, (China Afr. Rsch. Initiative, Policy Brief No. 47/2020, 2020), <https://www.econstor.eu/bitstream/10419/248226/1/sais-cari-pb47.pdf> [<https://perma.cc/84MJ-B33G>].

¹²⁸ Stephen, *supra* note 13, at 32.

¹²⁹ *Id.* at 31-32.

¹³⁰ DEZALAY & GARTH, *supra* note 116, at 3.

¹³¹ Cutler, *supra* note 26, at 154.

¹³² The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has played a foundational role by ensuring that arbitration agreements and awards are legally binding across multiple jurisdictions, thereby cementing ICA's status as a credible alternative to state courts. See Stephan W. Schill, *Developing a Framework for the Legitimacy of International Arbitration*, in 18 INT'L COUNCIL COM. ARB., CONG. SERIES, LEGITIMACY: MYTHS, REALITIES, CHALLENGES 789, 812, 815 (2015).

¹³³ See William W. Park, *National Law and Commercial Justice: Safeguarding Procedural*

networks.¹³⁴ Within this context, the ICC has established itself as a widely accepted arbitration institution for the resolution of commercial disputes by setting internationally recognized arbitration rules and ensuring neutrality, efficiency, and enforceability.¹³⁵

However, ICA now faces extensive criticism that questions both its representativeness and its responsiveness to the public interest. We have already illustrated criticisms of its Western-centric norms and homogeneous arbitrator pool, which raise concerns about potential bias against non-Western parties.¹³⁶ Another critique of the ICA is its perceived detachment from broader public interest.¹³⁷ As Gus Van Harten and Martin Loughlin note, the ICA's conceptualization as a "private form of adjudication authorized by the will of the disputing parties" makes sense only if disputes remain strictly within the private sphere. However, when cases involve significant public interest dimensions, this framework becomes problematic.¹³⁸ Given these concerns, ICA's increasing involvement in disputes with significant public policy implications calls for a reassessment of its legitimacy within global governance.

2. Legitimacy and Criticisms of ISDS

ISDS emerged as a mechanism to depoliticize investor-state disputes and reassure foreign investors.¹³⁹ It obtained legitimacy through a multilateral treaty base, double-consent requirement, the World Bank's active role in promoting ICSID, and the entrenchment of a specialized legal constituency.¹⁴⁰ The ICSID Convention¹⁴¹ created a legally binding, treaty-based framework that framed ISDS as a consensual and rule-based process rather than a geopolitical tool.¹⁴² Another key factor in this process was the double-consent requirement, which

Integrity in International Arbitration, 63 TUL. L. REV. 647, 657–58 (1988).

¹³⁴ YVES DEZALAY & BRYANT G. GARTH, *Constructing a Transatlantic Marketplace of Disputes on the Symbolic Foundations of International Justice*, in CONTRACTUAL KNOWLEDGE: ONE HUNDRED YEARS OF LEGAL EXPERIMENTATION IN GLOBAL MARKETS, 185, 185–86 (Grégoire Mallard ed., 2016) ("[T]he main reason for the enduring success and legitimacy of the ICC and international commercial arbitration relates to the type of alliances that European professors built with American lawyers who had built strong connections both within the US state and with major commercial interests.").

¹³⁵ See C. J. W. Baaij, *Hiding in Plain Sight: The Power of Public Governance in International Arbitration*, 60 HARV. INT'L L.J. 135, 170–172 (2019).

¹³⁶ See *infra* Section IV.B.

¹³⁷ William W. Park, *Private Adjudicators and the Public Interest: The Expanding Scope of International Arbitration*, 12 BROOK. J. INT'L L. 629, 666 (1986); Erie, *Soft Power*, *supra* note 115, at 40.

¹³⁸ Gus Van Harten & Martin Loughlin, *Investment Treaty Arbitration as a Species of Global Administrative Law*, 17 EURO. J. INT'L L. 121, 140–41 (2006).

¹³⁹ BRANDON J. MURRILL, CONG. RSCH. SERV., R43988, ISSUES IN INTERNATIONAL TRADE: A LEGAL OVERVIEW OF INVESTOR-STATE DISPUTE SETTLEMENT 1–2 (2015).

¹⁴⁰ TAYLOR ST. JOHN, THE RISE OF INVESTOR-STATE ARBITRATION: POLITICS, LAW, AND UNINTENDED CONSEQUENCES 6–8, 23 (2018).

¹⁴¹ Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 575 U.N.T.S. 159.

¹⁴² See ST. JOHN, *supra* note 140, at 6–8.

reassured states that arbitration would only apply where they had explicitly agreed.¹⁴³ Additionally, the deliberate diplomatic strategy of framing ICSID as a global institution rather than a tool of capital-exporting states helped secure broader ratification.¹⁴⁴ Over time, a professional ecosystem of law firms, investors, and arbitrators—who benefit from its continued operation—formed a self-sustaining network that made ISDS increasingly difficult to dismantle.¹⁴⁵

However, ISDS now faces a legitimacy crisis driven by critiques that it is unbalanced, lacking in accountability, and incompatible with democratic governance. As discussed earlier, the dominance of Western arbitrators, institutions, and procedural rules led to criticisms against ISDS for the perceived unfairness towards parties from non-Western countries.¹⁴⁶ Furthermore, ISDS has been increasingly criticized for its perceived bias towards investors,¹⁴⁷ inconsistency in tribunal decisions,¹⁴⁸ concerns on impartiality due to “dual hatting” (when arbitrators act as both counsel and adjudicators),¹⁴⁹ and the secrecy of arbitration proceedings limiting public accountability.¹⁵⁰ Concerns also arise as investment arbitrators expand their power from the private sphere into public functions, overriding public interest regulations enacted by elected officials to safeguard the well-being of citizens.¹⁵¹ This has been criticized as undermining democratic principles, as it allows private tribunals to interfere

¹⁴³ *Id.* at 146.

¹⁴⁴ *Id.* at 148.

¹⁴⁵ *Id.* at 235.

¹⁴⁶ See discussion *infra* Section IV.B.

¹⁴⁷ See Arseni Matveev, *Investor-State Dispute Settlement: The Evolving Balance Between Investor Protection and State Sovereignty*, 40 UNIV. W. AUSTL. L. REV. 348, 349 (2015). It should be noted that this is a contested claim. Defenders argue that ISDS remains essential for protecting investors from unfair state actions, particularly in jurisdictions with weak judicial systems. They highlight that investors frequently lose cases or receive reduced damages, challenging claims of systemic bias. See Puig & Strezhnev, *supra* note 118, at 732-33.

¹⁴⁸ See Julius Cosmas, *Legitimacy Crisis in Investor-State International Arbitration System: A Critique on the Suggested Solutions and the Proposal on the Way Forward*, 4 INT’L J. SCI. & RSCH. PUBL’NS 1, 1-3 (2014).

¹⁴⁹ John R. Crook, *Dual Hats and Arbitrator Diversity: Goals in Tension*, 113 AM. J. INT’L L. UNBOUND 284, 284 (2019) (“Critics view dual hatting as highly suspect, rife with potential for arbitrators, whether acting unconsciously or in knowing disregard of their ethical obligations, to render decisions that advance either the interests of their clients or their own interests in attracting or retaining clients. Those with a less harsh view nevertheless see the situation as creating an appearance of impropriety that adds to IIDS’s ill odor among its many critics.”); Matveev, *supra* note 147, at 352.

¹⁵⁰ Susan D. Franck, *The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law through Inconsistent Decisions*, 73 FORDHAM L. REV. 1521, 1544-45 (2005) (explaining how “there is minimal access to the pleadings and evidence, there is little opportunity for amici curiae participation, and often the decisions themselves are confidential and not made available to the public”).

¹⁵¹ Fan Kun, *Expansion of Arbitral Subject Matter: New Topics and New Areas of Law*, in THE EVOLUTION AND FUTURE OF INTERNATIONAL ARBITRATION 299, 316 (Stavros L. Brekoulakis, Julian D.M. Lew & Loukas A. Mistelis eds., 2016).

with policies that should be determined through democratic processes.¹⁵² This also leads to criticisms about “regulatory chill[,]” which can deter states from enacting public interest policies due to fear of investor claims.¹⁵³

In response to these legitimacy concerns, alternative dispute resolution institutions such as ICDPASO have emerged. As a new entrant, ICDPASO must first build its credibility and gain user trust, which it seeks to do by adopting the existing framework and best practices from established institutions. At the same time, ICDPASO also seeks to address the legitimacy deficiencies of existing institutions by offering a model that emphasizes inclusivity and societal impact to make it attractive to potential users, especially parties from the BRI region.

3. Mirroring Existing Institutions to Foster Credibility

In order to foster credibility and gain acceptance from international users, ICDPASO has made efforts through internationalization and adoption of best practices in established institutions. This strategy reflects the legitimacy-seeking logic.

1) Internationalization Effort to Achieve Legitimacy

One defining feature of ICDPASO is its endeavor for internationalization. Although headquartered in China, ICDPASO is formally registered as an “international non-governmental and non-profit organization composed of commercial institutions, trade associations, legal service providers, as well as other entities around the world on a voluntary basis.”¹⁵⁴ This status sets it apart from other domestic arbitration institutions in China, such as the China International Economic and Trade Arbitration Commission (“CIETAC”), which was registered according to a State Council decision in 1954 under the direction of the CCPIT.¹⁵⁵ The CIETAC was established as a government-directed arbitration institution primarily supporting China’s economic trade policies.

In contrast, ICDPASO’s foundations were shaped by an outward-looking design, which was part of China’s strategy of parallel institution-building. Its conceptual groundwork for international orientation was laid by the International Academy of the Belt and Road, which convened over 50 academics and practitioners from over 30 BRI countries and regions.¹⁵⁶ These experts collaborated to design a dispute resolution mechanism that would align with the

¹⁵² Barnali Choudhury, *Recapturing Public Power: Is Investment Arbitration’s Engagement of Public Interest Contributing to the Democratic Deficit?*, 41 VAND. J. TRANSNAT’L L. 775, 778-89 (2008).

¹⁵³ Matveev, *supra* note 147, at 358.

¹⁵⁴ See ICDPASO Charter, *supra* note 36, art. 2.

¹⁵⁵ See China International Economic and Trade Arbitration Commission [CIETA], Articles of Association art. 1, [hereinafter CIETA, Articles of Association], <https://www.cietac.org/en/articles/25086> [<https://perma.cc/S9A4-X5EP>].

¹⁵⁶ See GUIGUO WANG, YUK-LUN LEE & MEI-FUN LEUNG, DISPUTE RESOLUTION MECHANISM FOR THE BELT AND ROAD INITIATIVE, at v (2020); *The Role of Mediation in the Resolution of Belt and Road Initiative Disputes*, Herbert Smith Freehills Kramer LLP (Oct. 17, 2017), https://www.hsfkramer.com/en_US/insights/2017-10/the-role-of-mediation-in-the-resolution-of-belt-and-road-initiative-disputes.

unique legal systems, histories, traditions, and cultural characteristics of BRI countries.¹⁵⁷ Their efforts resulted in the publication of the Blue Book on the Dispute Resolution Mechanism for the Belt and Road in October 2016, which outlined frameworks and guidelines for resolving disputes related to the BRI.¹⁵⁸ Although the Blue Book predated ICDPASO's establishment, the institution appears to align with its recommendations, reflecting a commitment to developing a dispute resolution framework that is responsive to the diverse values and practices of BRI stakeholders.¹⁵⁹

Against this backdrop, ICDPASO was co-established by the CCPIT and the China Chamber of International Commerce ("CCOIC"), "together with the industrial and commercial organizations and legal service agencies from over 30 countries and regions including the European Union, Italy, Singapore, Russia, Belgium, Mexico, Malaysia, Poland, Bulgaria and Myanmar"¹⁶⁰—purposely framing itself as a multilateral initiative, rather than a solely China-led project. Unlike the CIETAC, whose caseload remains largely domestic (with only 12% of its 5,237 accepted cases in 2023 being international),¹⁶¹ all cases handled by ICDPASO so far have international elements, reflecting its global orientation. To date, it has assisted in resolving over 200 cross-border commercial disputes spanning more than 50 countries and regions, including the US, Russia, India, Belgium, and Turkmenistan.¹⁶²

Existing domestic institutions such as the CIETAC may lack perceived neutrality by international users due to their close connection with Chinese authorities. By establishing itself as an international organization and involving a diverse membership and recruitment of international arbitrators, ICDPASO attempts to achieve perceived independence and fairness to gain legitimacy amongst international users. The autonomy of ICDPASO from its initiator—the CCPIT—is also vital for ICDPASO to be perceived as an independent institution in order to build its credibility.

¹⁵⁷ See WANG, LEE, & LEUNG, *supra* note 156, at v; *The Role of Mediation in the Resolution of Belt and Road Initiative Disputes*, *supra* note 156.

¹⁵⁸ See WANG, LEE, & LEUNG, *supra* note 156, at 1-2; *The Role of Mediation in the Resolution of Belt and Road Initiative Disputes*, *supra* note 156.

¹⁵⁹ See Interview with Interviewee No. 82, in Singapore (August 27, 2024).

¹⁶⁰ *List of Deliverables of the Second Belt and Road Forum for International Cooperation*, MINISTRY OF FOREIGN AFFS. OF CHINA (Apr. 27, 2019), https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367382.html [<https://perma.cc/Y7X9-CREB>].

¹⁶¹ See *Statistical Data*, CHINA INT'L ECON. & TRADE ARB. COMM'N (2025), <https://www.cietac.org/articles/25006> [<https://perma.cc/UW72-RZ7A>] (last visited July 9, 2026).

¹⁶² See INT'L COM. DISPUTE PREVENTION & SETTLEMENT ORG., INT'L COM. DISPUTE PREVENTION & SETTLEMENT ORG., 18 (2022) [hereinafter ICDPASO Brochure], <https://www.icdpaso.org/upload/attach/202512/20251209135417975.pdf> [<https://perma.cc/GL8H-FJTH>].

2) *Adoption of Best International Practices*

To further enhance its legitimacy, ICDPASO has aligned its operations with international best practices. For instance, ICDPASO Commercial Arbitration Rules closely align with the model rules proposed by the Expert Group and are substantively consistent with ICC Arbitration Rules, which are widely regarded as a benchmark for international arbitration standards.¹⁶³ In the recruitment of arbitrators and mediators, ICDPASO employs rigorous standards and procedures and endeavors to enlist experts globally. The selection process involves initial selection by the Secretariat, discussion and recommendation by the Advisory Committee, training and assessment, review by the Supervisory Committee, and final approval by the Council.¹⁶⁴ This comprehensive recruitment process signals that ICDPASO maintains high standards of professionalism and integrity in its dispute resolution services.

These institutional efforts are intended to enhance ICDPASO's legitimacy and credibility so that it receives acceptance from the international community as a forum for resolving global commercial and investment disputes. In seeking broader recognition, ICDPASO is also seeking collaboration and endorsement from other international organizations, such as the World Intellectual Property Organization, the United Nations Commission on International Trade Law, the Asian-African Legal Consultative Organization, and the International Organization for Standardization.¹⁶⁵ These partnerships serve as important channels for institutional endorsement, further strengthening ICDPASO's perceived legitimacy as a viable forum for resolving cross-border commercial and investment disputes.

4. Addressing Shortcomings of Existing Institutions

At the same time, ICDPASO seeks to distinguish itself by offering a response to the legitimacy deficiencies in existing institutions, which are often criticized for being overly Western-centric and failing to serve public goods.

1) *Enhancing Inclusiveness to Counter Western-Centric Biases*

While ICDPASO's internationalization efforts seek to mirror the practices of established institutions to gain initial credibility, its emphasis on inclusiveness

¹⁶³ See WANG, LEE, & LEUNG., *supra* note 156, at 25-63; ICDPASO, Commercial Arbitration Rules, *supra* note 38; *ICC Rules of Arbitration*, INT'L CHAMBER OF COM. (Jan. 2021) [hereinafter ICC Rules of Arbitration], <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/> [<https://perma.cc/CL5B-XZLQ>]; *Arbitration*, INT'L CHAMBER COM., <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/> [<https://perma.cc/PW5A-DXDE>] (last visited June 17, 2026).

¹⁶⁴ See Press Release, Int'l Com. Dispute Prevention & Settlement Org., Announcement on the Global Selection and Recruitment of Mediators (Jan. 30, 2022) [hereinafter ICDPASO Jan. 2022 Press Release], <http://en.icdpaso.org/content/2226> [<https://perma.cc/S38J-UK4V>]; Press Release, Int'l Com. Dispute Prevention & Settlement Org., Announcement on the Global Selection and Recruitment of Arbitrators (June 2, 2022) [hereinafter ICDPASO June 2022 Press Release], <http://en.icdpaso.org/content/2265> [<https://perma.cc/T4SY-BUB6>].

¹⁶⁵ See *ICDPASO Profile*, *supra* note 25.

reflects a deeper attempt to address legitimacy deficits left uncorrected by those very institutions.

To address these concerns of Western-centric biases in both ICA and ISDS, ICDPASO emphasizes inclusiveness and cooperation with international stakeholders from diverse backgrounds, especially those from the Global South.¹⁶⁶ Its membership structure includes a diverse array of global business associations, including chambers of commerce from countries like Mongolia and others in the Global South.¹⁶⁷ This model aligns with China's broader discourse of "consultation, joint construction, and shared benefits" (共商、共建、共享, *gongshang, gongjian, gongxiang*),¹⁶⁸ conveying ICDPASO's commitment to shared governance, appealing to the broader international community.

ICDPASO has also launched a global recruitment process for arbitrators to ensure broader representation, particularly from developing countries.¹⁶⁹ As a result, its current panel of arbitrators includes 43 experts from various developing countries across Asia—such as China, India, Malaysia, the Philippines, and Bangladesh—as well as from other regions, including Mexico, Bengal, Uruguay, and Brazil,¹⁷⁰ which are often underrepresented in existing institutions.¹⁷¹ These efforts reflect ICDPASO's commitment to fostering a more inclusive and diverse arbitration landscape to address the legitimacy deficiencies of the existing system.

¹⁶⁶ See ICDPASO Brochure, *supra* note 162, at 4; *List of the Supervisory Committee Members*, INT'L COM. DISPUTE PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/membership/supervisory-committee.shtml> [<https://perma.cc/FW2E-8XYK>] (last visited July 10, 2026); *List of the Advisory Committee Members*, INT'L COM. DISPUTE PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/membership/advisory-committee.shtml> [<https://perma.cc/5HNT-LRM4>] (last visited July 10, 2026).

¹⁶⁷ See Press Release, Int'l Com. Dispute Prevention & Settlement Org., Representatives of the Mongolian Chamber of Commerce and Industry Visited Secretariat of the ICDPASO (Feb. 24, 2025), <https://www.icdpaso.org/en/content/829.html> [<https://perma.cc/687L-F6UK>].

¹⁶⁸ Zhang Yesui, *Jointly Building the "Belt and Road" Initiative to Seek Win-Win Cooperation*, CHINESE PEOPLE'S INST. OF FOREIGN AFFS., <https://www.cpifa.org/cms/book/22> [<https://perma.cc/V4TW-RQTB>] (last visited July 7, 2026); see STATE COUNCIL INFO. OFF., PEOPLE'S REPUBLIC OF CHINA, CHINA AND THE WORLD IN THE NEW ERA 10 (Sept. 2019), <https://www.cscic.it/upload/doc/ChinaAndTheWorldInTheNewEra.pdf> [<https://perma.cc/396M-9LG2>]; further explanations of the concept *infra* Section VII.B.

¹⁶⁹ See ICDPASO Jan. 2022 Press Release, *supra* note 164; ICDPASO June 2022 Press Release, *supra* note 164; *List of the Supervisory Committee Members*, *supra* note 166; *List of the Advisory Committee Members*, *supra* note 166.

¹⁷⁰ *Commercial Arbitration*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/business/arbitrator-directory.shtml> [<https://perma.cc/EEN2-5CCS>] (last visited July 26, 2026).

¹⁷¹ See Richard C. Chen, *The Substantive Value of Diversity in Investment Treaty Arbitration*, 61 VA. J. INT'L L. 431, 435 (2021) (explaining effects of overrepresentation of arbitrators from developed countries).

2) *Incorporating Societal and Developmental Considerations to Address Criticisms of Failing to Serve Public Goods*

Another area of innovation lies in ICDPASO's response to criticisms of the existing framework for the inadequate account of public goods and broader societal effects.

ICDPASO seeks to craft rules that incorporate societal impacts into decision-making and resonate with diverse legal cultures, particularly those of China and other developing countries. Its Mediation Rules uniquely require mediator recommendations and appointments to consider "their understanding of the culture, traditions and overall environment of pertinent countries or regions."¹⁷² Similarly, the Investment Arbitration Rules explicitly incorporate broader considerations by stipulating that "[a]rbitration should uphold the principles of good faith, non-discrimination, impartiality, equality, and sustainable development, and be guided by general obligations of good faith, efficiency and cooperation."¹⁷³ The proposed ICDPASO Rules go even further in requiring arbitrators "to consider the developmental needs of the country and the region concerned in applying the rules while making a decision."¹⁷⁴ Arbitrators and mediators are also required to "consider the culture and traditions of the countries concerned, specifically in terms of their practices in interpreting contracts, rules, laws, or treaties."¹⁷⁵

These proposed provisions are quite distinctive from the rules in existing institutions. They move beyond purely legalistic considerations and encompass societal and development implications of decisions. This spirit is consistent with the general approach of Chinese decision-makers, who often tend to weigh not only the legal implications of a case but also the broader social effects of their decisions.¹⁷⁶ This model resonates particularly with developing countries seeking more equitable treatment and context-aware dispute resolution frameworks, and can address concerns over existing systems' failure to account for public interest and societal impact.

D. *Status-Seeking and Symbolic Effect*

Related to the motivations for building legitimacy, China also aims to assert itself within the global hierarchy and enhance its international reputation. Status-seeking, therefore, cannot be overlooked as an autonomous factor behind China's efforts to establish parallel institutions.¹⁷⁷ Status in this context refers to "collective beliefs about a given state's ranking on valued attributes (wealth, coercive capabilities, culture, demographic position, sociopolitical organization,

¹⁷² ICDPASO, Commercial Mediation Rules, *supra* note 39, at art. 8.3.

¹⁷³ ICDPASO, Investment Arbitration Rules, *supra* note 40, at art. 3.

¹⁷⁴ Wang & Sharma, *supra* note 28, at 26.

¹⁷⁵ *Id.*

¹⁷⁶ See Interview with Interviewee No. 81, in Beijing, China (July 31, 2024). For detailed discussion on the general approach of Chinese decision-makers, see Fan, *supra* note 111, at 154-56.

¹⁷⁷ Stephen, *supra* note 13, at 31.

and diplomatic clout).”¹⁷⁸ Status focuses on cultivating a country’s international image and symbolic effect.

By establishing and supporting new institutions, China signals its capability for global leadership and governance, which can shift other states’ perceptions of its position in the international order. Some scholars argue that status concerns are intrinsic to the foreign policy objectives of rising powers like China, which often pursue institutional building as a means to elevate their standing in the global order.¹⁷⁹

China’s BRI is considered to be highly effective in sparking global interest and stimulating extensive discussions.¹⁸⁰ The establishment of ICDPASO, in this context, reflects a high-visibility effort to enhance China’s international status and project its influence within the global dispute resolution landscape. The status-seeking objectives behind the establishment of ICDPASO are evident in its emphasis on its efforts for internationalization, inclusiveness, and the promotion of culturally embedded Chinese approaches to dispute resolution.

1. Internationalization Efforts to Enhance Its Status

First, in addition to achieving legitimacy, ICDPASO’s efforts towards internationalization also have a signaling effect that China is building truly international platforms for dispute resolution, which aligns with China’s broader strategic goal of enhancing its status as an influential leader in international commercial dispute resolution.

To enhance its international status, ICDPASO has also made significant promotional efforts to reach key stakeholders. Such efforts include promotional events for targeted legal professionals,¹⁸¹ corporate counsel,¹⁸² and business leaders,¹⁸³ as well as university outreach to embed its approach among future legal practitioners.¹⁸⁴ At the international level, ICDPASO has leveraged its

¹⁷⁸ Deborah Welch Larson, T.V. Paul & William C. Wohlforth, *Status and World Order*, in *STATUS IN WORLD POLITICS 7* (T.V. Paul, Deborah Welch Larson & William C. Wohlforth eds., 2014).

¹⁷⁹ See *Id.*; Deborah Welch Larson & Alexei Shevchenko, *Status Seekers: Chinese and Russian Responses to U.S. Primacy*, 34 INT’L SEC. 63, 82-83 (2010).

¹⁸⁰ See Stephen, *supra* note 1, at 816.

¹⁸¹ See *The Singapore Ministry of Law, China Council for the Promotion of International Trade (CCPIT), and the International Commercial Dispute Prevention and Settlement Organization (ICDPASO) Present 5th Singapore-China International Commercial Dispute Resolution Conference*, N.Y. INT’L ARB. CTR. (Oct. 24, 2025), <https://nyiac.org/event/the-singapore-ministry-of-law-china-council-for-the-promotion-of-international-trade-ccpit-and-the-international-commercial-dispute-prevention-and-settlement-organization-icdpaso-present-5th-sin/> [<https://perma.cc/2TU9-WMSB>].

¹⁸² See “Rule of Law and Opening-up Forum” of the Global Business and Law Conference 2024 was Successfully Held in Beijing, CHINA INT’L ECON. & TRADE ARB. COMM., <https://www.cietac.org/en/articles/33510> [<https://perma.cc/CH3H-ASTZ>].

¹⁸³ See *Law Forum of Global Trade and Investment Promotion Summit & Symposium on Building Central Legal District for Achieving Global Sustainability was Successfully Held*, INT’L COM. DISPUTE PREVENTION & SETTLEMENT ORG. (Nov. 18, 2022), <https://www.icdpaso.org/en/content/661.html> [<https://perma.cc/GEK4-R93U>].

¹⁸⁴ See *Workshop Makes Young Entrepreneurs More Aware of Cross-Border Compliance*

extensive membership network—many of whom are business associations with their own ecosystems—to increase awareness of its services through regular meetings, online seminars, and specialized training programs.¹⁸⁵

2. Inclusiveness as Symbolic Power

Second, the “consultation, joint construction, and shared benefits” framework, along with a focus on pooling resources and expertise to advance dispute resolution, highlights China’s effort to create institutions that resonate globally while showcasing its own capacity for leadership in governance. This inclusive approach not only helps ICDPASO to achieve legitimacy but also serves as a powerful symbolic gesture—signaling that China’s approach to institution-building is not only pragmatic and functional but also rooted in principles that appeal to a wide range of international stakeholders. This model resonates with BRI ethos—a “community of common destiny for mankind” (人类命运共同体, *renlei mingyun gongtong ti*),¹⁸⁶ where countries are interconnected and development is shared, and in line with a compelling narrative of harmonious co-development. These efforts have an important symbolic effect on China enhancing its status by demonstrating its ability to build inclusive dispute resolution institutions at the international level.

3. Promotion of Chinese Normative Ideas

Furthermore, institutions can be established to enable the establishment of the norms they wish to advocate.¹⁸⁷ The establishment of ICDPASO embodies a symbolic assertion of China’s normative power in global governance, promoting China-preferred normative ideas. According to ICDPASO officials, ICDPASO prioritizes proactive dispute prevention and practical, non-confrontational problem-solving for businesses.¹⁸⁸ This approach reflects the Eastern philosophy of “preventing problems before they arise” (防患于未然, *fang huan yu wei ran*).¹⁸⁹ The emphasis on dispute prevention as a foundational principle distinguishes ICDPASO from many traditional Western-led arbitration institutions, which typically operate on a reactive basis to provide legal remedies over adversarial proceedings.¹⁹⁰ Instead of adjudicating disputes only after they have escalated, ICDPASO integrates proactive dispute prevention and mediation into its procedural architecture.

Management, CHINADAILY.COM (June 4, 2021), [https://perma.cc/3YT8-LULH].

¹⁸⁵ Interview with Interviewee No. 31, *supra* note 106.

¹⁸⁶ For further explanation of the concepts, *see infra* Section VII.B.

¹⁸⁷ *See* Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L ORG. 887, 899 (1998).

¹⁸⁸ Interview with Interviewee No. 31, *supra* note 106; *see also* ICDPASO Profile, *supra* note 25 (“[T]he business scope of ICDPASO contains services of international commercial dispute prevention including risk pre-warning, legal identification, due diligence, compliance management and building, dialogue and consultation, etc.”).

¹⁸⁹ *See* further explanation *infra* Section VII.B.

¹⁹⁰ *See* ICDPASO, Investment Arbitration Rules, *supra* note 40; ICDPASO, Commercial Mediation Rules, *supra* note 39.

By integrating these culturally resonant practices, ICDPASO not only addresses functional needs but also promotes a distinctively Chinese model of dispute resolution, particularly in its emphasis on dispute prevention and a win-win collaborative framework. This model aligns with broader narratives of China's legal soft power, projecting Chinese normative ideas as valuable contributions to global governance.¹⁹¹ Through ICDPASO, China symbolically asserts its influence by embedding Eastern philosophies within an international institution, thereby enhancing its status as a provider of alternative governance norms and practices.

In sum, ICDPASO's establishment aligns with China's status-seeking ambitions by showcasing its capacity for global leadership through internationalization, inclusivity, and the promotion of distinctive Chinese values. By fostering partnerships across diverse regions and positioning ICDPASO as a global, not solely Chinese, institution, China could potentially advance its image as a "Leader of Global Services[.]" "Defender of International Commerce[.]" "Participant in International Governance[.]" "Bridge of Diplomatic System[s.]" "Neutral of Impartiality[.]" and "Practitioner of Integration of Law and Commerce[.]"¹⁹²

Amongst these four interwoven drivers, legitimacy-building and status-seeking stand out as the most pronounced ones. ICDPASO is more than a functional dispute resolution center competing for business with existing service providers. Instead, it plays a pivotal role in "uploading" China's evolving visions for international governance and legitimizing its alternative governance approach. Legitimacy concerns shape its institutional design, with ICDPASO both mirroring established institutions to foster credibility and addressing perceived legitimacy deficits in existing dispute resolution mechanisms. At the same time, ICDPASO also serves an important symbolic effect to signal China's ambition to enhance its global status, which is evident in its deliberate efforts toward internationalization, inclusivity, and the promotion of Chinese normative concepts, positioning ICDPASO as a global platform rather than a national institution. Crucially, these motivations are not isolated but intersect. China's emphasis on inclusivity and cultural sensitivity—central to its legitimacy-building efforts—also reinforces its status as a global leader in alternative governance. Ultimately, its creation reflects China's strategic efforts to both assert its status and obtain legitimacy.

V. ICDPASO'S GOVERNANCE MODEL AND OPERATIONAL REALITY

Having examined the strategic motivations behind the establishment of ICDPASO, it is crucial to explore *how* these drivers translate into the institution's governance model and operational framework. The design of ICDPASO reflects China's broader approach to parallel institution-building, balancing state influence with an aspiration for international status and

¹⁹¹ Joel Slawotsky, *The Longer Term Ramifications of China's BRI Jurisprudence*, LAW AT THE END OF THE DAY (Apr. 15, 2019), <https://lcbackerblog.blogspot.com/2019/04/joel-slawotsky-longer-term.html> [https://perma.cc/4ZVV-4XSU].

¹⁹² ICDPASO Brochure, *supra* note 162, at 12-13.

credibility. Its governance structure and dispute resolution mechanisms are shaped by these underlying motivations, positioning ICDPASO as a distinctive model within China's evolving legal and economic order. This section delves into how ICDPASO functions in practice, analyzing its governance model and dispute resolution mechanisms.

A. Governance Model

A comparison of ICDPASO and other parallel institutions tasked with dispute settlement in the context of the BRI, such as CICC and CAJAC, indicates that China is experimenting with different governance models to achieve its various objectives.

Table 4: Comparison of CICC, CAJAC and ICDPASO¹⁹³

Name of the Institution	Main Motivation	Main Initiator	Governance Model	Challenges
CICC	Domestic focused: to progress Chinese substantive and procedural law through CICC decision	Supreme People's Court	Centralized, state-led, hard-law model	Its ability to attract international users is constrained
CAJAC	Symbolic: to signal China's soft power influence over international affairs	China Law Society, Forum on China-Africa Cooperation (FOCAC), and African counterparts	Chinese-led "legal cooperation"	Insufficient for market viability China's strategic influence may be diluted
ICDPASO	Functional gain seeking Power redistribution Legitimacy building Status-seeking	CCPIT	Indirect, soft governance	Limited visibility Unintended perceptions from users

¹⁹³ See discussion *infra* Sections V.A-B.

1. CICC: Centralized and State-Led, Hard Law Model

At one end of the spectrum, CICC represents a state-led, centralized model of legal institution-building, with a strong emphasis on judicial authority and hierarchical control. Established in 2018 by the Supreme People's Court of China ("SPC"), CICC was designed as a permanent adjudicative body to resolve international commercial disputes, particularly those arising from the BRI.¹⁹⁴ It operates two branches—in Shenzhen and Xi'an—under the coordination and supervision of the SPC's Fourth Civil Division,¹⁹⁵ thereby embedding CICC within the highest tier of China's judicial architecture. This institutional design enables CICC to exercise jurisdiction over cross-border commercial cases within China's legal system, which strictly adheres to national judicial norms. It reflects what Gu characterizes as China's "concerted top-down efforts"¹⁹⁶ in legal infrastructure capacity-building—a strategic project that aligns with the broader "Rule of Law China" vision and the BRI's normative ambitions.¹⁹⁷

CICC was established entirely through a state directive,¹⁹⁸ without engagement from external actors or international partners. CICC's full integration into SPC reinforces centralized judicial governance. CICC's hard-law orientation is evident in three key aspects: its reliance on detailed SPC-issued procedural rules, the finality of its judgments at first instance, and its unique mechanism for transforming mediated or arbitral outcomes into enforceable court decisions—features that underscore the court's formal and institutional character.¹⁹⁹ Together, these elements signal a major step towards a "dual-track model[.]" which emphasizes rule-based governance and hard-law capacity building, in addition to informal norms and soft-law instruments.²⁰⁰

So far, CICC has not yet been very successful in generating caseloads, and almost all of the cases it receives are transferred from the SPC.²⁰¹ It should be

¹⁹⁴ *A Brief Introduction of China International Commercial Court*, CHINA INT'L COM. CT., (June 28, 2018), <https://cicc.court.gov.cn/html/1/219/193/195/index.html> [<https://perma.cc/4K65-9483>]; *Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court*, CHINA INT'L COM. CT., (Oct. 22, 2024), <https://cicc.court.gov.cn/html/1/219/193/424/12481.html> [<https://perma.cc/ED2S-X8VA>].

¹⁹⁵ *A Brief Introduction of China International Commercial Court*, *supra* note 194.

¹⁹⁶ Gu, *supra* note 71, at 69.

¹⁹⁷ *Id.* at 101.

¹⁹⁸ Xīnhuashē (新华社) [Xinhua News Agency], *Guanyu Jianli Yidai Yilu Guoji Shang Shi Zhengduan Jiejue Jizhi He Jigou de Yijian* (中共中央办公厅、国务院办公厅印发《关于建立“一带一路”国际商事争端解决机制和机构的意见》) [*The General Office of the CPC Central Committee and the General Office of the State Council Issued the "Opinions on Establishing an International Commercial Dispute Resolution Mechanism and Institutions for the Belt and Road Initiative"*], ZHONGYANG RENMIN ZHENGFU (中央人民政府) [CHINA] (June 27, 2018, 9:07 PM), https://www.gov.cn/zhengce/2018-06/27/content_5301657.htm [<https://perma.cc/4Q77-NVCP>].

¹⁹⁹ See Gu, *supra* note 71, 72–86.

²⁰⁰ *Id.* at 71.

²⁰¹ See *id.* at 79–81, 86; Chaisse Julien & Qian Xu, *Conservative Innovation: The Ambiguities of the China International Commercial Court*, 115 AM. J. INT'L L. UNBOUND 17, 17–18 (2021).

emphasized that the main objectives of CICC are not external-facing functions to provide dispute resolution services. Indeed, the institution may not have the capacity to handle large numbers of cases as CICC judges are part-time, and they also have important functions such as judicial interpretation, drafting policy documents, and guiding cases.²⁰² As commented by Susan Finder, a member of the Expert Committee of CICC, the focus of CICC, at least in the short to medium term, is more “domestically focused” on progressing Chinese substantive and procedural law through CICC decisions.²⁰³ For this reason, the state-centered, institutional, and hard law approach is more suitable to achieve CICC’s domestic law-making goals.

2. CAJAC: Collaboration Co-Establishment Model

At the other end of the spectrum, CAJAC represents China’s collaborative approach to institution-building, based on transnational networks that promote “legal cooperation[.]”²⁰⁴ The initial “push” for the establishment of CAJAC came from the Chinese Law Society and FOCAC. In particular, the operation of such a legal institution “require[s] a ‘pull’ from the host state side.”²⁰⁵ So, CAJAC was co-established with China’s African counterparts, following a cooperative model.

It is part of an effort led by “national governments and the respective bars to ensure that Chinese-African commercial contracts use Chinese or African law and Chinese or African languages, and when disputes arise from those contracts, Chinese or African arbitrators resolve those conflicts.”²⁰⁶ Instead of transplanting Chinese law, CAJAC uses transnational networks to achieve its strategic goals. By establishing CAJAC as a joint initiative, China promotes a sense of equal ownership and legitimacy, fostering trust among African countries wary of external influence.²⁰⁷ According to Erie, this model of Chinese-led “legal cooperation” enables China to reinforce its soft power by offering an alternative to Western-dominated arbitration bodies while accommodating local legal traditions and cultural expectations.²⁰⁸ Through CAJAC, China aligns its objectives with African priorities,²⁰⁹ positioning itself as a cooperative partner rather than an external imposer.²¹⁰

The objectives of CAJAC are more symbolic and regional. For this reason, the collaboration co-establishment model fulfils the symbolic object, signaling

²⁰² Virtual Interview with Interviewee No. 85 (Nov. 4, 2024).

²⁰³ Susan Finder, *Brief Comments on the China International Commercial Court*, SUPREME PEOPLE’S CT. MONITOR (Aug. 1, 2021), <https://supremepeoplescourtmonitor.com/2021/08/01/brief-comments-on-the-china-international-commercial-court/> [<https://perma.cc/Z8XD-ANJ6>].

²⁰⁴ Erie, *Soft Power*, *supra* note 115, at 8-9, 12, 61.

²⁰⁵ *Id.* at 48.

²⁰⁶ *Id.* at 41.

²⁰⁷ *See id.* at 47-48.

²⁰⁸ *See id.* at 36, 41, 55-56.

²⁰⁹ *Id.* at 41.

²¹⁰ *See id.*

China's soft power influence over international affairs, even though it may be "insufficient for market viability" for its functional purpose of attracting international cases of dispute resolution.²¹¹

3. ICDPASO: Indirect Influence and Autonomous Operation Model

The ICDPASO governance model sits in the middle of the spectrum, blending elements of autonomy with some broad strategic alignment to its main initiator, the CCPIT. Unlike CICC's centralized and state-led model or CAJAC's partnership co-establishment model, the CCPIT uses an indirect and soft governance model and acts more like an orchestrator that indirectly exerts its soft power influence.

ICDPASO did not adopt CICC's model because its objective is to provide an alternative, internationally viable dispute resolution mechanism.²¹² A state-led, hard-law model would have constrained its ability to attract international users, as foreign parties may be hesitant to engage with a dispute resolution body closely tied to the Chinese judiciary. By choosing an indirect, soft governance approach, ICDPASO avoids being perceived as an instrument of Chinese legal policy, positioning itself instead as a neutral, multilateral organization to obtain legitimacy and enhance its status. ICDPASO also did not opt for CAJAC's partnership model because its ambitions extend beyond a regional framework.²¹³ It aims to be a globally oriented institution, attracting users from diverse legal backgrounds. Furthermore, a partnership model also could have diluted China's strategic influence, while an independent yet CCPIT-aligned approach could allow China to have more influence over the institution's trajectory without direct governmental control. It may also be the reason China decided to have the CCPIT as the initiator rather than the AIIB, which allows it to be better aligned with China's strategic goals.²¹⁴ We will illustrate in this section that ICDPASO's governance model is characterized by CCPIT's indirect and soft influence, an autonomous governance structure, and broad membership participation.

1) *Indirect and Soft Governance: The CCPIT's Role in ICDPASO's Development*

The establishment of ICDPASO involved a strategic collaboration facilitated by CCPIT, leveraging its extensive network resources and logistical capability to support ICDPASO's initial development.²¹⁵

²¹¹ *Id.* at 21-22, 64.

²¹² See ICDPASO Brochure, *supra* note 162, at 6-7.

²¹³ See Jian Zhang (张建), *International Commercial Dispute Prevention and Settlement Organization: A Quick Overview*, CHINA JUST. OBSERVER (Oct. 15 2020), <https://www.chinajusticeobserver.com/a/thing-about-international-commercial-dispute-prevention-and-settlement-organization> [https://perma.cc/N8KL-2Y4S].

²¹⁴ Virtual Interview with Interviewee No. 85, *supra* note 202.

²¹⁵ See Zhang, *supra* note 213 ("Although CCPIT provides talent resources and operation experience for the establishment and operation of ICDPASO, it will not interfere with the specific daily affairs of ICDPASO.").

As a quasi-governmental body, CCPIT has historically bridged the Chinese government with international business communities and plays a crucial role in advancing China's foreign economic policies.²¹⁶ CCPIT took the initiative to coordinate the establishment of ICDPASO, together with CCOIC, and more than 30 participating countries and regions.²¹⁷ This model serves two purposes. Internally, CCPIT provides ICDPASO with an authoritative endorsement, which allows it to achieve its legitimacy among Chinese users, given the well-established status of CCPIT in China. Externally, the status of a multilateral institution helps ICDPASO obtain legitimacy from international users.²¹⁸

CCPIT's influence over ICDPASO operates through an indirect and soft governance mechanism rather than direct and hierarchical control. This approach is manifested in the following aspects.

The first manifestation is in membership recruitment. Unlike CIETAC, which was established under the direction of CCPIT and remains embedded within CCPIT's institutional framework,²¹⁹ ICDPASO was not structurally integrated into CCPIT's organizational hierarchy. Instead, CCPIT played a facilitative role by leveraging its extensive networks to attract a diverse membership base. Domestically, ICDPASO's members include bar associations, law societies, and universities. Internationally, its members comprise chambers of commerce and China-foreign joint business councils.²²⁰ CCPIT's decades-long presence in twenty-nine countries and regions through its representative offices²²¹ could enable it to mobilize support and build transnational connections that contribute to ICDPASO's international reach. However, this influence remains distinct from CICC, which operates under direct judicial oversight within the SPC.²²² It also differs from CAJAC, which functions as a decentralized arbitration network contributed by both Chinese and African arbitration networks. ICDPASO, by

²¹⁶ Zhong Guo Guo Ji Mao Yi Cu Jin Wei Yuan Hui (中国国际贸易促进委员会) [CCPIT], Zhong Guo Guo Ji Mao Yi Cu Jin Wei Yuan Hui Zhang Cheng (中国国际贸易促进委员会章程) [Charter of the China Council for the Promotion of International Trade] Art. 2 (July 19, 2021), <https://www.ccpit.org/a/20210104/20210104jm4s.html> [<https://perma.cc/N73M-YK8Y>].

²¹⁷ See *supra* Section IV.C.

²¹⁸ See *supra* Sections IV.C–D; Zhang, *supra* note 213 (“[T]o gain the parties’ trust, [ICDPASO’s] rules and principles are international-oriented; and to increase substantive fairness, it pays full attention to the interests of developing countries.”).

²¹⁹ See CCPIT, *supra* note 216, art. 25.

²²⁰ *The First General Assembly of International Commercial Dispute Prevention and Settlement Organization (ICDPASO) was Successfully Held*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG. (Sept. 29, 2020), <http://www.icdpaso.org/content/2162> [<https://perma.cc/UHF8-64CD>].

²²¹ Zhong Guo Guo Ji Mao Yi Cu Jin Wei Yuan Hui (中国国际贸易促进委员会) [CCPIT], Ji Gou She Zhi (机构设置) [Organizational Structure], <https://www.ccpit.org/jgsz.html> [<https://perma.cc/D2RC-9KAD>] (last visited July 28, 2026).

²²² See SPC, *CCPIT Set up Coordination Mechanism to Promote Resolution of Commercial Disputes*, THE SUPREME PEOPLE’S CT. OF CHINA (Jan. 13, 2025), https://english.court.gov.cn/2025-01/13/c_1064084.htm [<https://perma.cc/M9YZ-RCA2>].

contrast, operates as an independent international organization governed by its members, rather than under CCPIT's direct authority. CCPIT's indirect influence thus allows it to support ICDPASO's strategic direction without exerting overt institutional control.

Personnel ties between CCPIT and ICDPASO further illustrate this indirect and soft governance model. ICDPASO's leadership positions are institutionally separate from CCPIT's personnel system. However, key figures in ICDPASO's leadership, including past and present Secretaries-General and the Chair of its Council, previously held senior positions within CCPIT's legal affairs department.²²³ As we will illustrate in Section VI, the personnel overlap has caused some concerns about ICDPASO's independence, which ICDPASO acknowledges and endeavors to address in the future.²²⁴ Nevertheless, at the initial stage of ICDPASO's establishment, these personnel connections serve both practical and strategic purposes. Practically, they facilitate access to resources. For instance, CCPIT's legal affairs department played an important role in facilitating expert consultations for the drafting of ICDPASO's dispute resolution rules.²²⁵ By leveraging its established networks, CCPIT helped bring together legal scholars, arbitration specialists, and representatives from relevant institutions to contribute to the formulation of ICDPASO's procedural framework.²²⁶ This illustrates how CCPIT's network resources supported ICDPASO's foundational development while maintaining the latter's institutional independence. Strategically, these personnel ties allow ICDPASO to align broadly with China's commercial and legal diplomacy objectives while preserving a degree of operational autonomy essential to its credibility as an international organization. This model differs from the more hierarchical model of CICC, where judges concurrently serve within the SPC, ensuring direct judicial supervision.

Finally, the financial arrangement exemplifies CCPIT's soft facilitation influence rather than direct financial control. CCPIT, along with its affiliate CCOIC, shared initial office space and other administrative assistance essential to ICDPASO's initial operations.²²⁷ However, this support was transitional and

²²³ See Bernard Dewit, *International Commercial Dispute Prevention and Settlement Organization (ICDPASO)*, EUPLANT BLOG (Nov. 12, 2020), <https://www.qmul.ac.uk/euplant/blog/items/international-commercial-dispute-prevention-and-settlement-organization-icdpaso.html> [https://perma.cc/WAC3-ACZG]; Alison Ross, *An Interview with Yu Jianlong*, Glob. Arbitration Rev. (Sept. 5, 2011), <https://globalarbitrationreview.com/article/interview-yu-jianlong> [https://perma.cc/K4ZA-C5JL].

²²⁴ See *infra* Section VI.B.

²²⁵ *ICDPASO Commercial Mediation Rules (Draft)*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG. (Dec. 27, 2021), <https://www.icdpaso.org/en/content/642.html> [https://perma.cc/JZ6V-DRXL].

²²⁶ *Id.*

²²⁷ See *ICDPASO Announces Its Office Location*, CHINA JUST. OBSERVER (Nov. 27, 2020), <https://www.chinajusticeobserver.com/a/icdpaso-announces-its-office-location> [https://perma.cc/5DEY-P63L] (announcing publicly disclosed office location of ICDPASO at establishment as the 16th Floor, CCOIC Building, No. 2 Huapichang Hutong, Xicheng District, Beijing); Dewit, *supra* note 223; see also Interview with Interviewee No. 31, *supra*

did not translate into ongoing financial dependency or managerial subordination. ICDPASO's Charter provides that the organization's funding sources include membership fees, donations, government grants, and income from activities or services within its approved business scope.²²⁸ According to an interviewed ICDPASO official, at the early stage, the institution's primary income is generated from fees charged for consulting services related to dispute prevention and resolution offered to businesses.²²⁹ Other financial sources include membership fees and indirect financial support from governments, such as rental reduction for its offices in Beijing and Xiamen.²³⁰ At the early stage, these revenues were sufficient to cover its expenses.²³¹ It should be noted that such governmental support in the early stages of establishing a dispute resolution institution is not uncommon. For instance, the Hong Kong International Arbitration Centre also received government support in its early stages, later achieving financial independence through its development.²³² For the future, ICDPASO intends to continue relying on revenue generated through dispute prevention services and, hopefully, mediation and arbitration services.²³³ The financial arrangement reflects CCPIT's role as a facilitator of ICDPASO's operational setup, rather than as a controlling authority.

Overall, CCPIT's role in ICDPASO's development is best understood as one of facilitation rather than direct control. Its influence is exercised through soft, indirect, network-based mechanisms that help align ICDPASO with China's broader strategic goals while allowing the organization to maintain a distinct identity as an independent actor in the international dispute resolution landscape.

2) ICDPASO's Autonomous Operation

Despite CCPIT's indirect and soft influences, ICDPASO's institutional structure and operational mechanisms reflect a clear aspiration toward autonomous operation. This autonomy is embedded in its three-tiered governance framework and reinforced through broad, multi-channel membership participation.²³⁴ Unlike CICC (a judicial organ under the direct supervision of the SPC) and CAJAC (a decentralized network of arbitration centers with limited centralized governance), ICDPASO operates as an independent multilateral organization guided by its members.²³⁵ Its governance

note 106.

²²⁸ ICDPASO Charter, *supra* note 36, art. 30.

²²⁹ See Interview with Interviewee No. 77, in Beijing, China (Aug. 2, 2024).

²³⁰ See Interview with Interviewee No. 31, *supra* note 106.

²³¹ Interview with Interviewee No. 77, *supra* note 229.

²³² See *About Us*, HONG KONG INT'L ARBITRATION CTR., <https://www.hkiac.org/about-us> [<https://perma.cc/R4SD-P92J>] (last visited July 10, 2026) ("So that HKIAC could be set up, the Hong Kong business community and the Hong Kong Government provided funding to the HKIAC. Today, HKIAC is financially self-sufficient and self-governed[.]").

²³³ Interview with Interviewee No. 31, *supra* note 106.

²³⁴ ICDPASO Charter, *supra* note 36, arts. 15, 19, 29; see *ICDPASO Profile*, *supra* note 25.

²³⁵ ICDPASO Charter, *supra* note 36, arts. 2, 10.

model exemplifies a blend of formal legal structures and informal, network-based approaches that align with China's governance philosophy of normative dualism illustrated previously.

a. Three-Tiered Governance Structure

Unlike CICC and CAJAC, ICDPASO adopts a distinct governance structure. CICC, for instance, is centralized within the SPC, with judges selected from senior positions within the court system,²³⁶ ensuring full integration into China's judiciary. In contrast, CAJAC is overseen by a "Guiding Committee[.]" which provides nominal governance but lacks centralized authority.²³⁷ ICDPASO, instead, employs a three-tiered governance system composed of the General Assembly, the Council, and the Secretary-General. These three bodies are tasked with distinct functions intended to ensure the distribution of authority and promote institutional autonomy.

At the top of the governance hierarchy is the General Assembly, composed of all institutional members. It serves as the organization's supreme authority, responsible for setting ICDPASO's strategic direction.²³⁸ The General Assembly holds broad decision-making powers, including adopting and amending the Charter, electing and dismissing Council members, and approving major institutional policies and financial reports.²³⁹ This inclusive structure reflects an aspiration for multilateral representation and collective decision-making, fostering an environment where international members can exercise meaningful influence over the institution's governance.

The Council functions as the executive body of the General Assembly, overseeing organization's work when the General Assembly is not in session.²⁴⁰ Its responsibilities include executing the Assembly's resolutions, electing and dismissing the Chair, Vice-Chairs, and Secretary-General, preparing for General Assembly sessions, managing membership admissions and dismissals, and deciding on the establishment of representative offices and branches.²⁴¹ Furthermore, the Council oversees the appointment of the Deputy Secretaries-General and formulates ICDPASO's internal management systems.²⁴² Although it does not handle day-to-day operations, the Council plays a vital role in providing strategic oversight and institutional continuity.

The responsibility for ICDPASO's day-to-day operations rests with the Secretary-General, who serves as the organization's legal representative and is authorised by the Chair of the Council.²⁴³ The Secretary General carries significant administrative roles, including the implementation of Council resolutions, management of ICDPASO's administrative and human resources,

²³⁶ Gu, *supra* note 71, at 76.

²³⁷ See Erie, *Soft Power*, *supra* note 115, at 53–54.

²³⁸ ICDPASO Charter, *supra* note 36, art. 15.

²³⁹ *Id.*

²⁴⁰ *Id.* art. 19.

²⁴¹ *Id.* art. 20.

²⁴² *Id.*

²⁴³ *Id.* arts. 27, 29.

coordination of activities across representative offices, and supervision of the organization's annual work plan.²⁴⁴

In sum, the formal three-tiered institutional framework ensures a clear division between strategic authority, executive leadership, and administrative management and provides a safeguard for ICDPASO's operational independence.

b. Multi-Channel Membership Participation

In addition to the formal governance structure, ICDPASO reinforces autonomy through a participatory membership model, which enables its members to actively participate in the organization's decision-making processes and day-to-day operations. This framework reflects ICDPASO's institutional intention to foster multilateral engagement, promote inclusivity, and ensure that a broad range of stakeholders contribute to its functioning.

Membership is open to a wide range of stakeholders, including commercial institutions, legal service providers, trade associations, academic organizations, and other relevant entities from various national, regional, and international backgrounds.²⁴⁵ Eligibility criteria include significant influence in their regions and ICDPASO's business fields,²⁴⁶ ensuring that members are well-positioned to facilitate dispute prevention and settlement services.²⁴⁷

Members participate directly in governance through voting rights,²⁴⁸ and indirectly exert influence via specialized bodies, such as the Supervisory Committee and the Advisory Committee.²⁴⁹ These two committees have reportedly contributed to processes such as reviewing dispute resolution rules²⁵⁰ and participating in the selection of arbitrators and mediators.²⁵¹ While the extent of their actual impact on governance decisions or operational practices remains opaque, their existence suggests an institutional effort to incorporate expert input and member feedback into ICDPASO's operations.

Beyond their formal role in the General Assembly and Committees, members also actively engage in various aspects of ICDPASO's institutional building, operations, and dispute prevention services. According to its officials, the Charter, logo, acronym, and even the English pronunciation of ICDPASO were discussed and collectively decided by members.²⁵² Additionally, ICDPASO

²⁴⁴ *Id.* art. 29.

²⁴⁵ *Id.* art. 7.

²⁴⁶ *Id.* art. 8.3.

²⁴⁷ *See infra* Section V.B.1.

²⁴⁸ ICDPASO Charter, *supra* note 36, art. 10.

²⁴⁹ *Structure*, *supra* note 37. According to the interview with Interviewee No. 31, *supra* note 106, both the Supervisory Committee and the Advisory Committee are made up of some institutional members. For a detailed list, *see* Dewit, *supra* note 223; *List of the Supervisory Committee Members*, *supra* note 166; *List of the Advisory Committee Members*, *supra* note 166.

²⁵⁰ *See ICDPASO Commercial Mediation Rules (Draft)*, *supra* note 225.

²⁵¹ ICDPASO June 2022 Press Release, *supra* note 164.

²⁵² Interview with Interviewee No. 31, *supra* note 106.

collaborates with its members to promote the institution, jointly organizing online seminars and professional training programs.²⁵³ Industry associations and bar associations leverage their networks to introduce the institution to their members, including businesses and legal professionals, to enhance ICDPASO's visibility.²⁵⁴ In dispute prevention, members often act as intermediaries, using their networks to assist in connecting disputing parties and facilitating negotiations.²⁵⁵ In dispute resolution, members may recommend mediators or arbitrators and contribute to the diversity of neutrals.²⁵⁶

The multiple channels of member participation reflect ICDPASO's institutional ambition to promote inclusivity and foster international cooperation, demonstrating its active commitment to the principle of "consultation, joint contribution, and shared benefits[.]"²⁵⁷

In summary, ICDPASO's governance model reflects the logic of normative dualism, where formal legal structures co-exist with informal, network-based governance, allowing China to reshape global institutions without overt domination. Its Charter, institutional rules, and three-tiered structure establish procedural legitimacy aligned with international norms, while its relational governance dynamics—shaped by soft influence from CCPIT and active, networked participation by members—reflect a more flexible, participatory ethos grounded in networked collaborations. This model mirrors China's domestic governance ideals and signals a deliberate effort to build parallel institutions that promote its normative vision within global dispute resolution. The next section explores the rationale behind the choice of this governance model.

4. Strategic Logic behind the Model Choice

The choice of ICDPASO's governance model is best understood as a strategic response to the motivations outlined in Section IV.

First, this model serves ICDPASO's power redistribution motivation. By enabling broader participation from stakeholders, particularly those in Asia and the Global South,²⁵⁸ ICDPASO has gained access to stakeholders often

²⁵³ *Seminars*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/important-events/seminar.shtml> [<https://perma.cc/ZDL4-LV5H>] (last visited July 7, 2026); *Upcoming Events and Registration*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/important-events/upcoming.shtml> [<https://perma.cc/TPS3-H4BD>] (last visited July 7, 2026).

²⁵⁴ *Upcoming Events and Registration*, *supra* note 253.

²⁵⁵ For detailed discussions, see *infra* Section V.B.1.

²⁵⁶ See Interview with Interviewee No. 31, *supra* note 106.

²⁵⁷ *International Commercial Dispute Prevention and Settlement Organization Inaugurated in Beijing*, FOREIGN AFFS. OFF. OF BEIJING MUN. GOV'T (Oct. 16, 2020), https://wb.beijing.gov.cn/en/center_for_international_exchanges/events/202103/t20210330_2336399.html [<https://perma.cc/FK6N-PCUY>]

²⁵⁸ Although ICDPASO does not publish a comprehensive list of its members, the publicly available membership lists of the Advisory Committee and Supervisory Committee—which are composed of member institutions—reveal a clear majority from Asia and from developing countries and regions. See *List of the Supervisory Committee Members*, *supra* note 166; see

underrepresented in existing institutions. The diverse channels of membership participation further contribute to a more inclusive governance structure, which can amplify non-Western voices in global dispute resolution.

Second, ICDPASO's structure aligns with legitimacy-building objectives. Its three-tiered governance framework mirrors established institutions like the ICC and ICSID, reinforcing the institution's legitimacy. A governance model that relies on direct state oversight would likely be met with skepticism, limiting its appeal to international users. By contrast, soft and indirect guidance allows China to align ICDPASO with its broader strategic goals without compromising the institution's perceived autonomy. At the same time, its diverse membership, predominantly drawn from Asian and developing countries, helps address legitimacy deficiencies associated with Western-centric governance.

Third, this model serves status-seeking motivations by signaling China's ambition to play a more prominent role in global dispute resolution. Rather than merely replicating the ICC, which was entirely established by private actors, or ICSID, which was created under the auspices of the World Bank, ICDPASO operates under the middle ground. Anchored in multilateral participation, yet indirectly guided by a state-affiliated entity, it enables China to promote its preferred normative ideas while maintaining the formal appearance of institutional independence. In doing so, ICDPASO enhances China's position as a norm setter, advancing its soft power and shaping international norms from within, rather than through direct confrontation.

B. Dispute Resolution Mechanisms and Practice

Having examined the governance model of ICDPASO, it is essential to analyze how these structural features translate into ICDPASO's dispute resolution mechanisms. We will illustrate that ICDPASO's dispute resolution mechanisms reflect the same institutional logic: a strategic blend of formal legal processes and flexible, informal approaches. Unlike established Western-led arbitration institutions, which focus on adjudicative dispute resolution, ICDPASO integrates proactive dispute prevention measures with structured dispute resolution mechanisms, such as mediation and arbitration, within the same institutional framework. This approach of service integration reflects China's approach to normative dualism and aligns with the motivations behind its establishment: functional gain-seeking by offering efficient dispute resolution services, status-seeking through promoting Chinese normative concepts, and legitimacy building by aligning with international norms yet innovating within the BRI context.

1. Informal Dispute Prevention and Mediation Services

ICDPASO prominently positions dispute prevention and mediation at the core of its operational model,²⁵⁹ setting itself apart from traditional institutions like

also List of the Advisory Committee Members, supra note 166.

²⁵⁹ *ICDPASO Profile, supra* note 25 (describing ICDPASO's institutional purpose and functions).

the ICC and ICSID, which primarily engage in formal and adversarial arbitration services.²⁶⁰

a. Dispute Prevention

Dispute prevention is central to ICDPASO's operational identity. It has established nine specialized departments dedicated to dispute prevention, including the Law Ascertainment Centre, Compliance Institute, Intellectual Property Centre, Standard Certification Centre, Due Diligence Centre, Insolvency and Restructuring Centre, Big Data and Risk Warning Centre, Consultation and Lobbying Centre, and Training Center.²⁶¹

While no formal rules explicitly govern dispute prevention services yet, ICDPASO Proposed Rules contain a "clear, transparent, and well-structured system" of good offices and grievance systems, "incorporating the experience of China, Singapore, and other Asian countries, which emphasize dispute prevention."²⁶² The proposed mechanism involves structured, Secretary-General-led consultations, mainly designed for investor-state disputes. The proposed process entails meeting the aggrieved investor to understand grievances, consulting the host state to explore resolution possibilities, and facilitating settlement discussions toward an amicable resolution.²⁶³ According to Wang and Sharma, the Proposed Rules "can help develop the model of a well-structured good offices system as a dispute prevention mechanism, though it will face some operational hurdles[,] such as gaining trust from host states."²⁶⁴

In practice, ICDPASO reports having assisted in resolving over 150 cross-border commercial disputes through dispute prevention measures within its relatively brief operational history.²⁶⁵ However, detailed case information is largely unavailable due to confidentiality, with only eight exemplary cases briefly outlined on ICDPASO's official website and promotional materials.²⁶⁶ An analysis of these cases and interviews with ICDPASO officials reveals distinctive features of ICDPASO's dispute prevention approach.

Adaptive and Pragmatic Approach: According to its officials, ICDPASO adopts a highly adaptive approach to dispute prevention, responding to the specific needs of each case.²⁶⁷ Its dispute prevention services encompass two

²⁶⁰ See *Arbitration*, *supra* note 163 (discussing arbitration as ICC's primary dispute resolution service); *About ICSID*, INT'L CTR. FOR SETTLEMENT OF INV. DISPS., <https://icsid.worldbank.org/About/ICSID> [<https://perma.cc/W7GL-5HNS>] (last visited July 7, 2026) (discussing ICSID's mandate to administer arbitration).

²⁶¹ *Structure*, *supra* note 37.

²⁶² Wang & Sharma, *supra* note 28, at 25.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ ICDPASO Brochure, *supra* note 162, at 18.

²⁶⁶ *Cases*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/cases.shtml> [<https://perma.cc/FU5F-2MC2>] (last visited July 7, 2026).

²⁶⁷ Wang & Sharma, *supra* note 28, at 23 (noting "[t]he ICDPASO therefore provides procedures that cater to the needs of different disputants with diverse dispute resolution preferences").

broad categories: (i) “Small Prevention”: Early-Stage Dispute Management; and (ii) “Big Prevention”: Compliance and Risk Management.²⁶⁸ Small prevention occurs when a dispute has already arisen but has not yet escalated into a formal legal proceeding where ICDPASO can quickly step in to assist parties in analyzing their issues and finding potential solutions.²⁶⁹ Big Prevention happens at the pre-dispute stage to proactively help businesses improve their compliance mechanisms and reduce legal risks before any disputes arise.²⁷⁰ The underlying philosophy of ICDPASO’s dispute prevention service is to help businesses find the most effective solution to their problems by the most appropriate means.²⁷¹ These services are largely non-adversarial, adaptive and case-specific, offering tailored interventions that reflect relational governance principles.²⁷²

Multi-Channel and Non-Consent-Based Case Intake Mechanism: Notably, ICDPASO’s case intake mechanism is flexible, allowing dispute prevention efforts to be triggered by unilateral requests from one party or referrals from embassies, industry associations, or other ICDPASO members.²⁷³ This departs from traditional consensual models of mediation or conciliation and enables ICDPASO to intervene swiftly and proactively to help re-establish contact with disengaged parties or help them re-activate stalled communications. Among the eight publicly disclosed cases labeled as “dispute prevention” all were unilaterally submitted by one of the disputing parties.²⁷⁴ By broadening its intake channels, ICDPASO leverages its networks to address disputes before formal proceedings become necessary, reinforcing its relational and preventive approach.

Secretariat-Led Facilitation: Even though the good offices and grievances mechanisms in the Proposed Rules were initially designed to deal with investor-state disputes and the facilitation role was limited to the Secretary-General, actual practice shows that the Secretariat, including its Secretary-General and other staff, plays a similar role in dealing with commercial disputes. The Secretariat coordinates communications between parties, helps clarify misunderstandings, and facilitates settlement discussions toward an amicable resolution.²⁷⁵ Although this practice resembles mediation services, they deliberately avoid the formality of appointing a mediator or signing an agreement—practices that some businesses, particularly in China, may find too

²⁶⁸ Interview with Interviewee No. 31, *supra* note 106.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *See id.*; Wang & Sharma, *supra* note 28, at 23.

²⁷² Wang & Sharma, *supra* note 28, at 23.

²⁷³ *See* ICDPASO, Commercial Mediation Rules, *supra* note 39 (stating application for mediation will be registered upon filing by one or some of parties); *ICDPASO Receives a Banner for its Dedication and Commitment to its Mandate*, Int’l Com. Disp. Prevention & Settlement Org. (Sept. 4, 2023), <https://www.icdpaso.org/en/content/723.html> [<https://perma.cc/S9SD-WY6U>] (discussing ICDPASO receiving referral from Embassy of the Islamic Republic of Pakistan).

²⁷⁴ *See Cases*, *supra* note 266.

²⁷⁵ Interview with Interviewee No. 31, *supra* note 106.

formal.²⁷⁶ ICDPASO thus offers a softer entry point to conflict resolution, gradually guiding parties toward greater acceptance of their formal mediation services.²⁷⁷

Network-Based Collaboration: Beyond the Secretariat, ICDPASO also strategically collaborates with its members and external networks—including industry associations, chambers of commerce, law associations, and diplomatic missions—to facilitate its dispute prevention services.²⁷⁸ These entities assist by facilitating cross-border communication, providing local information, and helping establish contact with unresponsive parties. For example, in various cases, ICDPASO coordinated with embassies,²⁷⁹ mobilized member institutions to gather information abroad,²⁸⁰ and relied on local partners to re-establish communication channels.²⁸¹ In some instances, member institutions like national bar associations or chambers of commerce played key roles in reconnecting disputing parties and facilitating communication.²⁸² By leveraging these

²⁷⁶ *Id.*

²⁷⁷ *See id.*

²⁷⁸ *Why Choose Us*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG., <https://www.icdpaso.org/en/content/948.html> [<https://perma.cc/ZU9R-7N7N>] (last visited July 7, 2026).

²⁷⁹ For example, in a dispute involving a chemical product supply contract, ICDPASO “fully exchanged the information with the Central Asian Country’s Embassy in China” to clarify the situation and assist the requesting party. *See A Supply Dispute concerning a Chemical Product of a Country in Central Asia*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG. (Aug. 5, 2024), <https://www.icdpaso.org/en/content/1017.html> [<https://perma.cc/9D6L-25YF>]. In a payment dispute between a Chinese state-owned enterprise and a Central Asian company, ICDPASO “[s]ent letters to the embassies and consulates of both sides to convey the claims and obtain effective contact[.]” *See A Payment Dispute between a Chinese Enterprise and an Enterprise in a Central Asian Country*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG. (Apr. 23, 2023), <https://www.icdpaso.org/en/content/1010.html> [<https://perma.cc/Q7A9-CBVF>].

²⁸⁰ For instance, in a contract dispute over the transportation of goods between a Chinese enterprise and a European company, ICDPASO relied on its European member institution to gather information within the jurisdiction of the respondent party. *See A Dispute Concerning a Contract of Transportation of Goods between a Chinese Enterprise and a European Enterprise*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG. (Aug. 5, 2024), <https://www.icdpaso.org/en/content/1016.html> [<https://perma.cc/MJ6J-5KBQ>].

²⁸¹ For example, in a pricing dispute over pandemic-related supplies initiated by a Western European enterprise, ICDPASO contacted a partner institution located in the Chinese company’s business area to establish communication. *See A Dispute over the Price of Epidemic Prevention Supplies of a Western European Company*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG. (Apr. 23, 2023), <https://www.icdpaso.org/en/content/1014.html> [<https://perma.cc/V8JS-CPNB>]. In another case involving the suspension of industrial raw material supply by an East Asian company, ICDPASO utilized its East Asian member. *See The Suspension of Supply Case of Industrial Raw Materials by an East Asia Company*, INT’L COM. DISP. PREVENTION & SETTLEMENT ORG. (Apr. 23, 2023), <https://www.icdpaso.org/en/content/1013.html> [<https://perma.cc/E4QV-94ZD>].

²⁸² To illustrate, in a South Asian power project dispute, ICDPASO “actively coordinated the relevant [sic] work of the Bar Association of the South Asian country (the Member of ICDPASO)” to help the Chinese enterprise re-establish contact with a local employee. *See The Case of a Power Project in a South Asian Country*, INT’L COM. DISP. PREVENTION &

institutional networks, ICDPASO can access a wide range of resources to facilitate dispute resolution in ways that traditional arbitration institutions do not offer. While effective, such reliance on networks may also raise concerns about potential pressure on parties, especially if government entities or embassies are involved. Still, ICDPASO's approach to dispute prevention reflects its core philosophy: to foster trust, build consensus, and prevent disputes through informal but strategically structured governance.

b. Commercial Mediation

ICDPASO has established a dedicated Mediation Entity,²⁸³ and published its Commercial Mediation Rules in May 2022,²⁸⁴ signalling its institutional commitment to formalize mediation services. The Rules broadly align with widely recognized international standards.²⁸⁵ For example, its confidentiality provisions,²⁸⁶ admissibility of evidence in other procedures,²⁸⁷ and disclosure

SETTLEMENT ORG (Apr. 23, 2023), <https://www.icdpaso.org/en/content/1012.html> [<https://perma.cc/T6BP-4PUH>]. In a separate case involving a dispute between an East Asian chamber of commerce and a Chinese food company, ICDPASO conducted in-person and virtual meetings with the chamber (which was also a member) to mediate the dispute neutrally. See *A Dispute between a Chamber of Commerce and Industry of an East Asia Country and a Chinese Food Industry*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG (Apr. 23, 2023), <https://www.icdpaso.org/en/content/1011.html> [<https://perma.cc/8PZT-CWFQ>]. In the payment dispute between a Chinese state-owned enterprise and a Central Asian company, ICDPASO "sent letters to the State-level Chamber of Commerce and Industry in the country of the purchaser to express its concern to prompt the purchaser agent to take the initiative to establish effective communication with the Chinese enterprise again." See *A Payment Dispute between a Chinese Enterprise and an Enterprise in a Central Asian Country*, *supra* note 279. In the payment dispute between a Chinese state-owned enterprise and a Central Asian company, ICDPASO "sent letters to the State-level Chamber of Commerce and Industry in the country of the purchaser to express its concern to prompt the purchaser agent to take the initiative to establish effective communication with the Chinese enterprise again." *Id.*

²⁸³ *Structure*, *supra* note 37.

²⁸⁴ ICDPASO, Commercial Mediation Rules, *supra* note 39.

²⁸⁵ See Tangshan Zhongcai Weiyuanhui (唐山仲裁委员会) [Tangshan Arbitration Commission], *Yanjiu Jiedu Guoji Shang Shi Zhengduan Yufang Yu Jiejue Zuzhi Zuixin Tongguo De Shang Shi Tiaojie Guize* (研究 | 解读国际商事争端预防与解决组织 (ICDPASO) 最新通过的商事调解规则) [Research | Interpreting the Newly Adopted Commercial Mediation Rules of the International Commercial Dispute Prevention and Resolution Organization (ICDPASO)], WEIXIN (微信) [WEIXIN] (May 26, 2022), <https://mp.weixin.qq.com/s/BRPmhhzX710cB7dehcn-aw> [<https://perma.cc/AX5U-TRBE>]; Zhen-an Zhang, *Research / What Highlights ICDPASO Commercial Mediation Rules*, WEIXIN (May 27, 2022), <https://mp.weixin.qq.com/s/boJaZiAm47Z1Jb-2Dh2ggg> [<https://perma.cc/PD5C-XWHQ>].

²⁸⁶ ICDPASO, Commercial Mediation Rules, *supra* note 39, art. 13.

²⁸⁷ *Id.* art. 14.1.

obligations of mediators,²⁸⁸ are consistent with the approach of the Singapore International Mediation Center (“SIMC”)²⁸⁹ and ICC ADR Centre.²⁹⁰

A distinctive feature is its explicit provision for joint mediation with both dispute resolution institutions and non-dispute resolution entities, such as industry associations and chambers of commerce.²⁹¹ This mechanism allows ICDPASO to collaborate directly with these entities in administering and conducting mediation proceedings, leveraging their industry expertise and commercial networks—extending relational governance into formal procedures. Other distinct elements include cultural considerations in mediator selection to ensure alignment with local traditions and cultural sensitivity²⁹² and a mechanism allowing parties to submit a mediated settlement to arbitration and request an award reflecting its terms.²⁹³

ICDPASO’s mediation framework has also begun to operate in practice. In a recently reported case, it mediated two related cross-border commercial disputes referred by Beijing No. 4 Intermediate People’s Court, with the parties’ consent, through the Beijing courts’ one-stop dispute resolution platform.²⁹⁴ The court referral confirms that the multi-channel intake identified above in ICDPASO’s dispute-prevention practice also operates in mediation. Likewise, ICDPASO drew on its professional network to assemble a mediation team consisting of a legal scholar, a former senior diplomat, and an international arbitrator, tailored to the legal and commercial complexities of the disputes, thus reflecting its network-based capacity to administer complex cross-border disputes.²⁹⁵ The Court subsequently issued a Civil Mediation Agreement based on the settlement, rendering it directly enforceable.²⁹⁶ This provides an additional route to enforceability alongside conversion into an arbitral award under ICDPASO’s Mediation Rules,²⁹⁷ while also demonstrating ICDPASO’s capacity to integrate its mediation services with domestic judicial processes.

2. Formal Arbitration Mechanisms

Alongside informal dispute settlement services, ICDPASO also provides formal commercial and investor-state arbitration, respectively administered

²⁸⁸ *Id.* art. 9.

²⁸⁹ *See, e.g.*, SIMC, Mediation Rules, *supra* note 41, arts. 4.5, 9.1,

²⁹⁰ *See, e.g.*, ICC, Mediation Rules, *supra* note 41, arts. 5.3, 9, 10.3.

²⁹¹ ICDPASO, Commercial Mediation Rules, *supra* note 39, art. 5.

²⁹² *Id.* art. 8.3. For a more detailed discussion, *see supra* Section IV.D.2.

²⁹³ ICDPASO, Commercial Mediation Rules, *supra* note 39, at art. 11.5.

²⁹⁴ *See Beijing Si Zhong Yuan Lianheguo Ji Shang Shi Tiaojie Zuzhi Gaoxiao Huajie Chao Yiyuan Kuajing Jiufen* (北京四中院联合国际商事调解组织 高效化解超6亿元跨境纠纷) [Beijing No. 4 Intermediate People’s Court and ICDPASO Jointly and Efficiently Resolve Cross-Border Commercial Disputes Exceeding RMB 600 Million], Beijing Guoji Shang Shi Fating (北京国际商事法庭) [BEIJING INT’L COM. CT.] (July 8, 2026), http://www.bicc.gov.cn/2026-07/08/c_1196151.htm [https://perma.cc/2NH4-GZA4].

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ ICDPASO, Commercial Mediation Rules, *supra* note 39, at art. 11.5.

through the Arbitration Court and the Investor-State Dispute Settlement Court.²⁹⁸ ICDPASO published its Commercial Arbitration Rules in July 2022²⁹⁹ and Investment Arbitration Rules in December 2024.³⁰⁰ However, to date, ICDPASO has not administered any formal arbitration cases under these rules.³⁰¹

ICDPASO's arbitration rules broadly align with international standards,³⁰² clearly reflecting the organization's strategic intent to build legitimacy by mirroring existing dispute resolution institutions. For instance, the arbitrator's disclosure obligations³⁰³ align closely with the IBA Guidelines on Conflicts of Interest in International Arbitration.³⁰⁴ Procedural guidelines concluding

²⁹⁸ See ICDPASO, Investment Arbitration Rules, *supra* note 40, arts. 1.1, 50.1.

²⁹⁹ ICDPASO, Commercial Arbitration Rules, *supra* note 38.

³⁰⁰ ICDPASO, Investment Arbitration Rules, *supra* note 40.

³⁰¹ Interview with Interviewee No. 31, *supra* note 106.

³⁰² See Beijing De He Heng Qingdao Lu (北京德和衡青岛律师事务所) [Beijing Deheheng Qingdao Law Firm] *Lu Shidian Guoji Shang Shi Zhengduan Yufang Yu Jiejue Zuzhi Shang Shi Zhongcai Guize Jiedu* (律师视点 | 《国际商事争端预防与解决组织商事仲裁规则》解读) [Lawyer's Perspective | Interpretation of ICDPASO Commercial Arbitration Rules], WEIXIN (微信) [WEIXIN] (Aug. 5, 2022), https://mp.weixin.qq.com/s/Zxjsm6CN_GSmU9vabLpoxw [<https://perma.cc/9Z2W-N642>]; Huang Zhong Shang Shi Zhongcai (黄钟商事仲裁) [Huanzhong Commercial Arbitration], *Guoji Shang Shi Zhengduan Yufang Yu Jiejue Zuzhi Touzi Zhengduan Zhongcai Guize Liangdian Ping Xi Yi* (《国际商事争端预防与解决组织投资争端仲裁规则》亮点评析 (一)) [Highlights and Analysis of ICDPASO Investment Dispute Arbitration Rules (I)], WEIXIN (微信) [WEIXIN] (Mar. 4, 2025), <https://mp.weixin.qq.com/s/uMz2TYknMTkTmaB2Ip0jsA> [<https://perma.cc/SKR2-C5X4>]; Huang Zhong Shang Shi Zhongcai (黄钟商事仲裁) [Huanzhong Commercial Arbitration], *Guoji Shang Shi Zhengduan Yufang Yu Jiejue Zuzhi Touzi Zhengduan Zhongcai Guize Liangdian Ping Xi Er* (《国际商事争端预防与解决组织投资争端仲裁规则》亮点评析 (二)) [Highlights and Analysis of ICDPASO Investment Dispute Arbitration Rules (II)], WEIXIN (微信) [WEIXIN] (Mar. 5, 2025), <https://mp.weixin.qq.com/s/VxWg554qi5BpB7Ccs0u9gA> [<https://perma.cc/L8NN-XUF2>]; Huang Zhong Shang Shi Zhongcai (黄钟商事仲裁) [Huanzhong Commercial Arbitration], *Guoji Shang Shi Zhengduan Yufang Yu Jiejue Zuzhi Touzi Zhengduan Zhongcai Guize Liangdian Ping Xi San* (《国际商事争端预防与解决组织投资争端仲裁规则》亮点评析 (三)) [Highlights and Analysis of ICDPASO Investment Dispute Arbitration Rules (III)], WEIXIN (微信) [WEIXIN] (Mar. 6, 2025), <https://mp.weixin.qq.com/s/db7FgPNC9S5R1SNYFf2-kg> [<https://perma.cc/4WVT-BZRX>].

³⁰³ ICDPASO, Commercial Arbitration Rules, *supra* note 38, arts. 14.1, 14.3; ICDPASO, Investment Arbitration Rules, *supra* note 40, arts. 13.1, 13.3.

³⁰⁴ See IBA, Guidelines, *supra* note 42, at 7.

hearings,³⁰⁵ the embrace of digital technology,³⁰⁶ and arbitral immunity,³⁰⁷ are consistent with developments in major arbitration centers. Furthermore, the Investment Arbitration Rules adopt comprehensive standards for evidence management³⁰⁸ based on the IBA Rules on the Taking of Evidence in International Arbitration (2020), incorporating disclosure obligations³⁰⁹ and cross-examination procedures³¹⁰ commonly used in Anglo-American arbitration.

At the same time, ICDPASO has introduced procedural innovations that distinguish its model from existing ones.

Negotiation Facilitation within Arbitration: Both ICDPASO's Commercial and Investment Arbitration Rules introduce a unique mechanism for integrating negotiation facilitation within arbitration proceedings.³¹¹ The provisions explicitly allow parties involved in arbitration to engage in additional negotiations either prior to or during arbitration proceedings.³¹² This mechanism aims to mitigate conflicts and prevent further escalation into adversarial arbitration, emphasizing ICDPASO's commitment to amicable and efficient dispute resolution.

Arb-Med: As the combination of arbitration with mediation ("Arb-Med") is a common feature in Chinese arbitration practice,³¹³ ICDPASO Commercial Arbitration Rules and Investment Arbitration Rules both allow for the arbitral

³⁰⁵ ICDPASO, Commercial Arbitration Rules, *supra* note 38, art. 33; ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 37; *see also* ICC Rules of Arbitration, *supra* note 163, art. 27.

³⁰⁶ ICDPASO, Commercial Arbitration Rules, *supra* note 38, art. 50; ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 52. Similarly, the 2022 ICSID Arbitration Rules add provisions for electronic submissions (Rule 4(2)) and electronically signed awards (Rule 59(2)). *See* ICSID, Arbitration Rules, *supra* note 42, at 7, 34. HKIAC launched "HKIAC Case Connect" in October 2021, an online case management platform providing convenient services such as document storage, communication between parties, and case progress tracking. *See HKIAC Launches HKIAC Case Connect*, H.K INT'L ARB. CTR. (Nov. 1, 2021), <https://hkiac.org/news/hkiac-launches-hkiac-case-connect/> [<https://perma.cc/9Y5Y-U4RU>].

³⁰⁷ ICDPASO, Commercial Arbitration Rules, *supra* note 38, art. 51; ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 53. Article 46 of the HKIAC Institutional Arbitration Rules contains a similar provision on "Exclusion of Liability." *See* HKIAC, Arbitration Rules, *supra* note 42, at 60. Article 86 of the newly amended China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules (2024) also has a relevant provision on the immunity of arbitrators. *See* CHINA INT'L ECON. & TRADE ARB. COMM., ARB. RULES art. 86 (2024), <https://www.cietac.org/sfs/cms/dd4ca1bb9e9d4a6d91ffafd87164e480.pdf> [<https://perma.cc/PJK4-T3MZ>].

³⁰⁸ ICDPASO, Investment Arbitration Rules, *supra* note 40, arts. 30, 31.

³⁰⁹ *Id.* art. 30.

³¹⁰ *Id.* art. 31.

³¹¹ ICDPASO, Commercial Arbitration Rules, *supra* note 38, art. 34.1; ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 38.1.

³¹² ICDPASO, Commercial Arbitration Rules, *supra* note 38, art. 34.1; ICDPASO, Investment Arbitration Rules, *supra* note 40, at art. 38.

³¹³ Kun Fan, *An Empirical Study of Arbitrators Acting as Mediators in China*, 15 CARDOZO J. CONFLICT RESOL. 777, 778 (2014); Kun Fan & Gabrielle Kaufmann-Kohler, *Integrating Mediation into Arbitration: Why It Works in China?* 25 J. INT'L ARB. 479, 485 (2008).

tribunal to facilitate settlement during the arbitral proceedings, provided that both parties consent to it.³¹⁴

Sustainable Development Consideration: Furthermore, as illustrated earlier, ICDPASO explicitly incorporates considerations of sustainable development in its investment arbitration rules.³¹⁵ These principles are aimed at ensuring dispute outcomes are aligned with the developmental objectives of involved countries, which is particularly relevant and essential in the context of BRI disputes.

In summary, ICDPASO's dispute resolution model adopts a dual-track approach, combining formal, rule-based arbitration with informal, relationship-based, network-driven, and flexible approaches of dispute prevention and mediation. This dual structure is consistent with China's normative dualism philosophy, offering both procedural legitimacy and proactive approaches through informal channels. The next section explores the rationale behind this dualistic design.

3. Strategic Logic behind the Dual Mechanism Design

ICDPASO's dual mechanism design, integrating informal and formal dispute resolution services, serves multiple strategic motivations outlined in Section IV.

Most immediately, it enhances ICDPASO's functional appeal by offering efficient and flexible solutions for SMEs and BRI-related disputes. Dispute prevention services are often free of charge or with substantial reductions or waivers,³¹⁶ significantly enhancing the affordability and accessibility of dispute resolution compared to traditional arbitration methods. The negotiation facilitation and Arb-Med features enable disputes to transition seamlessly between non-adjudicative and adjudicative processes, which aligns with increasing user demand for mixed-mode dispute resolution.³¹⁷

The dispute resolution mechanisms also serve ICDPASO's legitimacy-building objectives. Adherence to international procedural norms reassures international stakeholders, while its cultural and developmental innovations help address critiques of Western-led institutions.

Finally, the prominence of dispute prevention and mediation support its status-seeking goals. By embedding China's normative vision of dispute resolution, favoring proactive dispute management and relationship-driven, amicable solutions arising from a procedurally legitimate institutional structure, ICDPASO serves as a platform for normative diffusion, signaling China's ambition as a rule-maker in global dispute resolution through innovation rather than confrontation.

³¹⁴ ICDPASO, Commercial Arbitration Rules, *supra* note 38, art. 35; ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 39.

³¹⁵ ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 3. For a detailed discussion, see *supra* Section IV.D.2.

³¹⁶ Interview with Interviewee No. 31, *supra* note 106.

³¹⁷ HERBERT SMITH FREEHILLS, GLOBAL POUND CONFERENCE SERIES: GLOBAL DATA TRENDS AND REGIONAL DIFFERENCES 14 (2018) ("There seems to be a clear consensus that combining processes, or mixed-mode dispute resolution, is the way forward.").

C. Situating ICDPASO within the Typology of Parallel Institutions

To more precisely situate ICDPASO within China's broader strategy of parallel institution-building, this section turns to Stephen's typology of parallel institutions. Rather than relying on binary claims that cast China's parallel institution-building as either supporting or undermining rule-based international order, Stephen's framework introduces a more nuanced analytical lens. As Table 5, reproduced from Stephen's article, indicates, the framework evaluates parallel institutions along two key dimensions: "the distribution of governance functions" (additive v. rivalrous) and "social purpose" (congruent v. distinct).³¹⁸

Table 5: Types of Relationships between New and Incumbent Institutions³¹⁹

Governance Functions Social Purpose	Additive	Rivalrous
Congruent	Complementary	Substitutive
Distinct	Divergent	Competing

1. Governance Functions

The first dimension, the distribution of governance functions, can be additive or rivalrous. Additive functions indicate that new institutions extend governance into previously unaddressed areas, issues, or actors, signifying a "positive-sum relationship."³²⁰ Conversely, rivalrous functions suggest a "zero-sum relationship[.]" wherein new institutions directly compete with existing ones for resources, members, and governance mandates.³²¹

ICDPASO primarily positions itself as additive. It introduces dispute prevention services that expand the functional scope of international dispute resolution.³²² These services supplement, rather than replace, the roles of incumbent institutions, such as the ICC and ICSID, by addressing gaps in early-state conflict management and offering additional venues and mechanisms tailored specifically to the needs of participants from the BRI region.

Nonetheless, the additive nature is not fixed. As Stephen notes, institutional relationships "can change over time. Additive institutions may become more rivalrous[.]"³²³ ICDPASO's broader ambition to provide global commercial dispute resolution services, not limited to the BRI,³²⁴ creates a potential overlap with existing institutions. Its growing network of members and access to underrepresented regions in the Global South may eventually translate into competitive relationships.

³¹⁸ Stephen, *supra* note 1, at 817.

³¹⁹ *Id.* at 820. Reprinted with permission from Matthew Stephen.

³²⁰ *Id.* at 817.

³²¹ *Id.* at 817-18.

³²² See ICDPASO, Investment Arbitration Rules, *supra* note 40, art. 38.1

³²³ Stephen, *supra* note 1, at 823.

³²⁴ Interview with Interviewee No. 31, *supra* note 106.

In practice, ICDPASO's focus on BRI-related services creates a pathway through which China might encourage its use in contracts where it holds substantial influence. An interviewed arbitrator suggested that ICDPASO could be designated as the preferred forum in BRI-related contracts where Chinese actors possess significant bargaining power,³²⁵ creating a pathway for substitutive usage in specific regions. As its recognition and accessibility increase, ICDPASO could displace incumbent institutions in selected jurisdictions where it can offer services more attuned to regional and geopolitical interests.

2. Social Purpose

The second dimension, social purpose, examines the degree to which the objectives and normative foundations of new institutions diverge or align with those of established institutions.³²⁶ Building on John Ruggie's concept of social purpose as the normative underpinning of multilateral institutions³²⁷ and Peter Hall's notion of a policy paradigm as a "framework of ideas and standards" that shapes goals and instruments,³²⁸ Stephen emphasizes that new institutions may either replicate or deviate from established normative principles and policy paradigms.³²⁹

ICDPASO's social purpose reflects a normative orientation that can be both congruent and distinct. On the one hand, it advocates widely accepted international norms such as fairness, neutrality, and procedural integrity, thus reflecting a congruent social purpose with existing institutions. This congruence is manifested in ICDPASO's institutional rules, governance structure, and institutional rhetoric.

On the other hand, ICDPASO's focus on relational governance, trust-building, proactive dispute prevention, and non-confrontational dispute resolution reflects distinct normative principles rooted in China's governance philosophy. Rather than the strictly legalistic adjudication approach, ICDPASO emphasizes long-term cooperation and societal and developmental consideration, which diverges from the liberal legalism embedded in Western-led institutions.

In sum, ICDPASO demonstrates a hybrid institutional feature: in terms of governance function, it performs primarily additive governance functions while retaining latent rivalrous potential; and in terms of social purpose, it blends alignment with prevailing international legal standards and procedures with distinctly Chinese normative features—particularly its emphasis on relational, network-based dispute prevention, and experimental adaptation. This hybridity reflects China's broader strategy of institutional layering: embedding itself

³²⁵ Interview with Interviewee No. 74, in Beijing, China (July 29, 2024).

³²⁶ Stephen, *supra* note 1, at 818.

³²⁷ John G. Ruggie, *International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INT'L ORG. 379, 380–82 (1982).

³²⁸ Peter A. Hall, *Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain*, 25 COMPAR. POL. 275, 279 (1993).

³²⁹ Stephen, *supra* note 1, at 818.

within the existing international order while quietly uploading its normative alternatives.

This hybridity, however, raises an important question: How is ICDPASO's distinct model received by those it aims to serve? The next section turns from structural analysis to examine how ICDPASO is perceived by end users. These perceptions are crucial: they shape not only whether ICDPASO gains traction in practice but also how its normative and functional ambitions are translated, reinterpreted, or contested on the ground.

VI. PERCEPTIONS OF ICDPASO FROM END USERS

The effectiveness and legitimacy of an institution are not determined solely by its founders but are equally shaped by local actors' perceptions of its discourses.³³⁰ At the granular level, end users—lawyers, arbitrators, corporate counsel, and business stakeholders—engage with ICDPASO based on their practical concerns, such as neutrality, enforceability, procedural efficiency, cultural familiarity, and institutional credibility. Their choices, in turn, influence the institution's broader acceptance and uptake. Over time, users' perceptions determine whether ICDPASO can emerge as a viable and influential body or will struggle to gain recognition beyond its symbolic function.

We will now examine how potential users perceive ICDPASO based on interviews with participants in BRI dispute resolution. Our empirical findings reveal key challenges ICDPASO faces in establishing itself as a credible and widely recognized international dispute resolution institution—including limited international visibility and concerns about neutrality—as well as potential opportunities through innovation of services such as dispute prevention and regional diversity.

A. Limited Recognition among Potential Users

Unlike well-established institutions such as the ICC and ICSID, ICDPASO remains largely unknown to international users.³³¹ This comes as no surprise. An institution's credibility is not built overnight. As discussed earlier, with a century's history, the ICC has developed global credibility through its commercial arbitration rules, consistent procedural reliability, global arbitrator network, and the internationalization of its services.³³² Similarly, established in 1966, ICSID's credibility was built through its affiliation with the World Bank, its robust legal framework of enforcement under the ICSID Convention, and its role in shaping investment arbitration jurisprudence over time.³³³ In contrast, ICDPASO was only established in 2020, and is still in the very early stages of building its reputation. Presently, the institution lacks the international visibility

³³⁰ Kiwi et al., *Understanding the Role of Legitimacy During Strategic Change in Public Organizations: A Review and Research Agenda*, 48 PUB. PERFORMANCE & MGMT. REV. 1172, 1175-76 (2025).

³³¹ See Wang & Sharma, *supra* note 28, at 23-24 (describing mediation's "unpopularity" in context of ICDPASO).

³³² For a more detailed discussion, see *supra* Section IV.C.1.

³³³ For a more detailed discussion, see *supra* Section IV.C.2.

needed to gain the trust of a global audience. Even though the Chinese National Committee of the ICC put ICDPASO in its recommended clauses,³³⁴ it has not easily translated into greater acceptance in practice. The vast majority of lawyers or arbitrators we interviewed had not even heard of ICDPASO.³³⁵

Even among the interviewees who were aware of the institution, doubts remained about its ability to attract international users. One interviewee observed that “while local businesses may prefer proximity for convenience, international parties prioritize factors such as neutrality, institutional influence, familiarity, maturity, and diversity over geographic location. Moreover, what parties value when selecting a dispute resolution forum may not align with what arbitrators and institutions consider important. For a new institution to gain acceptance from parties, it will take time.”³³⁶ Another questioned what ICDPASO truly added in practice from a user’s perspective.³³⁷ In the context of the BRI, where the majority of investments are directed toward infrastructure and construction projects,³³⁸ the construction industry already has a well-established dispute resolution framework. This typically follows a multi-tiered process that is widely accepted.³³⁹ According to the interviewee, given the availability of a sophisticated and trusted system within the industry, there seems little incentive for parties to opt for a new, non-specialized institution like ICDPASO.³⁴⁰ At least four interviewees expressed the view that the newly established China-led institutions may struggle to gain immediate market trust, as their neutrality and global reputation have yet to be firmly established. Market

³³⁴ On December 15, 2023, the Arbitration Commission of the ICC in China published the *2023 Model Clauses of Applicable Law and Dispute Resolution for Foreign-Related Transactions*, in which ICDPASO was listed as one of the recommended mediation and arbitration institutions. See Qi Chen (齐宸) [Qi Chen], *Zhongcaiweiyuanhui fabu guanyu qiye shewai jiaoyi de zhengyi jieju jì falu shifan tiaokuan ban* (ICC China 仲裁委员会发布《关于企业涉外交易的争议解决及法律适用示范条款 (2023版)》) [ICC China Arbitration Commission Releases the 2023 Model Clauses of Applicable Law and Dispute Resolution for Foreign-Related Transactions], *Zhongguo Guojishanghui* (中国国际商会) [CCOIC] (Dec. 15, 2023), <http://www.ccoic.cn/cms/content/40221> [<https://perma.cc/8REZ-9BYZ>].

³³⁵ See Interviews with 85 Industry Participants (on file with author).

³³⁶ Interview with Interviewee No. 74, *supra* note 325.

³³⁷ Virtual Interview with Interviewee No. 85, *supra* note 202.

³³⁸ CECILIA JOY-PÉREZ & DEREK SCISSORS, AM. ENTER. INST., BE WARY OF SPENDING ON THE BELT AND ROAD 1 (Nov. 14, 2018), <https://aei.org/wp-content/uploads/2018/11/Updated-BRI-Report.pdf>.

³³⁹ This process typically begins with a determination by an engineer, who is often appointed by the employer. If contested, the dispute escalates to a Dispute Adjudication Board, whose decision is binding unless a notice of dissatisfaction is issued within 28 days. INT’L FED’N OF CONSULTING ENG’RS (FIDIC), CONDITIONS OF CONTRACT FOR CONSTRUCTION FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER 18, 96-97 (1st ed. 1999). In such cases, the parties must attempt amicable settlement before arbitration. If no settlement is reached within 56 days, the dispute may proceed to arbitration. *Id.* at 104.

³⁴⁰ Virtual Interview with Interviewee No. 85, *supra* note 202.

acceptance will take time—at least a decade—before these institutions can gain significant recognition.³⁴¹

B. Perception of Semi-Official Institutions by Chinese Users

Another challenge is the concerns about ICDPASO's neutrality, despite the institution's efforts of internationalization. According to one insider, "any organization must have a hosting or sponsoring entity to be officially registered in China, so CCPIT took on this responsibility as an initiator of ICDPASO."³⁴² However, the lack of clarity about the contour of the relationship between ICDPASO and the CCPIT has raised doubts about its independence. A few legal counsel and arbitrators in China perceived ICDPASO as a semi-official organization, closely affiliated with the CCPIT.³⁴³ Some have even equated ICDPASO with another institution under the CCPIT umbrella, like the CIETAC, raising concerns about its independence.³⁴⁴

One concern about ICDPASO's independence is attributable to personnel appointments. Currently, the leadership positions of ICDPASO are exclusively Chinese. According to its Charter, "[t]he Secretary-General shall be an *ex officio* member of the Council, who shall be a permanent resident in China and of Chinese nationality."³⁴⁵ This explicit nationality requirement may raise concerns regarding ICDPASO's international character, as this restriction could be seen as limiting inclusivity, and may even reinforce perceptions that ICDPASO remains closely tied to Chinese institutional structures.³⁴⁶ This concern is further compounded by the abovementioned leadership overlap between the CCPIT and ICDPASO,³⁴⁷ reinforcing the perception of strong institutional linkages. According to one arbitrator, the early phase of ICDPASO may require Chinese staff, but in the long term, it needs to become more international to build its credibility.³⁴⁸ This concern is echoed by ICDPASO officials. According to one ICDPASO official, as the organization is still at its early stage of development, it makes more sense to have experts who are familiar with both China's legal system and its culture, as well as international cross-border dispute resolution, to lead the organization during its early stages and guide its strategic direction. Once ICDPASO is more established, it needs to internationalize the leadership

³⁴¹ See Interview with Interviewee No. 74, *supra* note 325; see Interview with Interviewee No. 80, in Beijing, China (July 29, 2024); Virtual Interview with Interviewee No. 85, *supra* note 202.

³⁴² Interview with Interviewee No. 77, *supra* note 229.

³⁴³ Interview with Interviewee No. 74, *supra* note 325; Interview with Interviewee No. 80, *supra* note 341.

³⁴⁴ Interview with Interviewee No. 74, *supra* note 325.

³⁴⁵ ICDPASO Charter, *supra* note 36, art. 23.

³⁴⁶ Cf. Wei Yin & Yawen Zheng, *Is a Belt-and-Road Investment Court Feasible? An Evolution of Possible Choices*, 53 H.K. L.J. 757, 769 (2023); see also Halil Rahman Basaran, *Is International Arbitration Universal?*, 21 ILSA J. INT'L & COMPAR. L. 497, 498 (2015) (noting the importance of non-state actors to the inclusivity and universality of international arbitration).

³⁴⁷ See *supra* Section V.A.3.

³⁴⁸ See Interview with Interviewee No. 77, *supra* note 229.

group. The Secretariat plans to recruit foreign staff to further enhance its international character and ensure broader representation.³⁴⁹

Another source of concern among potential users relates to ICDPASO's financial independence. As discussed in Section V, while ICDPASO's funding framework allows for diverse revenue sources,³⁵⁰ the lack of clarity on ICDPASO's financial status has caused concerns from potential users about its independence from CCPIT. While the early-stage assistance is common amongst international dispute resolution institutions, the lack of transparency regarding ICDPASO's current financial status and revenue generation has raised apprehensions among users about its degree of financial autonomy. In particular, uncertainties surrounding fee structures for dispute prevention services and the lack of mediation and arbitration services have contributed to doubts regarding ICDPASO's financial self-sufficiency and independence from CCPIT's influence.³⁵¹

C. *Potential Innovation of Services to Make It Attractive*

Despite the challenges, some lawyers, arbitrators, and international experts are more optimistic about ICDPASO's prospects, given its international nature. While skepticism remains regarding its neutrality and market acceptance in the short term, ICDPASO's ability to provide effective, culturally adapted, and innovative services may help build credibility over time.

According to one interviewee, new institutions may have the opportunity to compete for more discourse in international dispute resolution, but the key to gaining recognition is not necessarily introducing something entirely new. Instead, ICDPASO could attract users by presenting a fresh image, demonstrating improved efficiency, and adopting a client-centered approach to delivering its services.³⁵² According to another, when choosing an arbitration institution, parties typically consider i) whether the institution is neutral and well-known, and ii) whether they perceive the institution to be favorable to their interests.³⁵³ Given some concerns about the potential bias towards the Global South in existing institutions, a new institution with an inclusive approach to delivering its services and regional diversity may be more attractive to non-Western parties.

Compared to CICC, which is centralized and state-centered, ICDPASO, as an international organization, offers greater attractiveness to international users. It will just take time to build its reputation.³⁵⁴ ICDPASO may be particularly appealing to parties from developing countries in the BRI, especially if it takes into account the legal systems, legal environment, legal history, traditions, and

³⁴⁹ Interview with Interviewee No. 31, *supra* note 106.

³⁵⁰ See *supra* Section V.A.3.

³⁵¹ Interview with Interviewee No. 74, *supra* note 325.

³⁵² Interview with Interviewee No. 75, in Beijing, China (Aug. 1, 2024).

³⁵³ Interview with Interviewee No. 81, *supra* note 176.

³⁵⁴ Interview with Interviewee No. 77, *supra* note 229.

cultural characteristics of the countries and regions concerned, as suggested in the Proposed Rules by the Expert Group.³⁵⁵

Feldman portrays opportunities for ICDPASO to develop an innovative model for international dispute resolution through “greater integration of services . . . greater institutionalization . . . and greater regional diversity.”³⁵⁶ Through its innovative service integrating dispute prevention, mediation, and arbitration services, ICDPASO may appear to be more attractive as a one-stop shop to meet users’ needs. Some interviewees also emphasized that ICDPASO’s focus on dispute prevention could be one of its key advantages.³⁵⁷ Another potential avenue for innovation is “greater institutionalization through, potentially, appellate scrutiny of awards.”³⁵⁸ Furthermore, greater regional diversity by ensuring strong representation from Asia, Africa, and other regions involved in the BRI is needed for ICDPASO to build credibility as an institution that reflects the interests and perspectives of its users, particularly those from the BRI region.³⁵⁹

Taken together, the disjunction between official rhetoric and user perception underscores the significant challenge faced by ICDPASO. Building international credibility for any new institution will take significant time and effort. The process requires more than leveraging the CCPIT’s networks; it demands the establishment of a strong track record, the creation of user-centric rules, and the development of a diverse pool of arbitrators and mediators to address global users’ needs.³⁶⁰ ICDPASO must also address concerns about neutrality to enhance its legitimacy. With its innovation of service integration and regional diversity, ICDPASO also has the potential to establish itself as an attractive alternative dispute resolution option for the region and beyond. The real test lies in whether business parties in China and overseas will voluntarily opt into the institution’s dispute resolution mechanisms. The failure of previous attempts of China-led dispute resolution institutions, such as CICC and CAJAC, to attract user participation so far has been described as “legal surrealism”—a gap between the law or institution’s promise and narratives and its reality or practical outcomes.³⁶¹ Without user buy-in, ICDPASO risks becoming another “zombie” institution,³⁶² or “flower vase (*huaping*, 花瓶)”³⁶³—one that manages to maintain some level of semi-regular operation but lacks substantial caseloads or real-world influences.

³⁵⁵ See Interview with Interviewee No. 82, *supra* note 159.

³⁵⁶ Feldman, *supra* note 27, at 2-3.

³⁵⁷ Interview with Interviewee No. 77, *supra* note 229.

³⁵⁸ Feldman, *supra* note 27, at 2.

³⁵⁹ *Id.*

³⁶⁰ See Wang & Sharma, *supra* note 28, at 23, 26; Feldman, *supra* note 27, at 2-3.

³⁶¹ Erie, *Soft Power*, *supra* note 115, at 10-12, 49, 53, 57.

³⁶² See Julia Gray, *Life, Death, or Zombie? The Vitality of International Organizations*, 62 INT’L STUD. Q. 1, 1 (2018) (categorizing three types of international organizations, “live,” “zombie,” and “dead”).

³⁶³ Erie, *Soft Power*, *supra* note 115, at 59-60.

VII. IMPLICATIONS FOR GLOBAL GOVERNANCE

The preceding analysis has examined ICDPASO's design and its reception among end users, offering a micro-level view into how China's parallel institutions function in practice. These ground-level insights reveal both the promise and the challenges of China's efforts to craft an alternative model of dispute resolution. They also prompt a larger question: What are the broader implications of parallel institutions like ICDPASO for global governance?

To address this question, we need to zoom out from the specific case of ICDPASO to examine the macro-level implications of China's parallel institution-building strategy. ICDPASO offers a window into how China is not merely responding to the deficiencies of existing institutions, but actively advancing a normative and institutional alternative grounded in its own governance traditions featured by normative dualism.

This section extends the analysis beyond ICDPASO's motivations and institutional design to explore how China's broader strategy on parallel institution-building and its underlying normative dualism philosophy may generate systemic impacts on global governance over time. While we use ICDPASO as an example, the governance philosophy of normative dualism and parallel institution-building strategy could plausibly influence other regulatory domains such as trade, investment, and environmental governance. However, the scope of this paper is limited to the field of dispute resolution. Further research is needed to assess whether these governance strategies manifest consistently in these adjacent fields and how they may recalibrate the international legal order more generally.

We focus on two key themes: first, how parallel institutions like ICDPASO may have redistributive effects, and second, how they embed and diffuse alternative normative values.

A. *Power-Distribution Effect*

The emergence of parallel institutions such as ICDPASO presents a shift in global governance dynamics, particularly concerning power distribution.³⁶⁴ Unlike historical attempts by earlier rising powers to contest the dominance of Western-led legal institutions through direct opposition,³⁶⁵ China has largely adopted a strategy of coexistence through institutional layering. It establishes alternative venues that complement rather than replace Western-led institutions.³⁶⁶ This strategy reflects not just geopolitical pragmatism but also a dualistic governance tradition: the creation of complementary, layered

³⁶⁴ See Gu, *supra* note 71, at 131.

³⁶⁵ See Cutler, *supra* note 2, at 106.

³⁶⁶ See, e.g., G. JOHN IKENBERRY & DARREN J. LIM, CHINA'S EMERGING INSTITUTIONAL STATECRAFT: THE ASIAN INFRASTRUCTURE INVESTMENT BANK AND THE PROSPECTS FOR COUNTER-HEGEMONY 7-8 (2017), <https://www.brookings.edu/wp-content/uploads/2017/04/chinas-emerging-institutional-statecraft.pdf> [<https://perma.cc/Z9S2-KS2M>] (describing the AIIB as an example of China's "external innovation" in the "competitive institutional marketplace").

institutions that combine formal legal structures—charters, rule-based norms—with informal, flexible, and network-based governance.

In the field of dispute resolution, ICDPASO follows a similar dynamic, which operates as a parallel dispute resolution institution to the ICC and ICSID rather than an outright competitor. Even though it has yet to build its international credibility, ICDPASO's ability to attract participants, particularly from BRI countries,³⁶⁷ signals a potential redistributive impact on global governance over time. The appeal of ICDPASO lies in its contextual flexibility, inclusivity, integration of services, and dualist institutional model, which resonates with stakeholders who perceive existing institutions to be Western-centric, adversarial, or misaligned with their own traditions.³⁶⁸ ICDPASO's dualist design offers a procedural and normative recalibration.

This recalibration emerges at a time when dissatisfaction with the governance structure of Bretton Woods institutions is deepening,³⁶⁹ with some voices advocating for a “new Bretton Woods moment.”³⁷⁰ While initially designed to stabilize international economic relations in the post-1945 order,³⁷¹ these institutions are now widely criticized, especially by the Global South, for power asymmetry and governance inefficiencies,³⁷² and for failing to respect “different national pathways to development.”³⁷³

Within this context, ICDPASO and similar parallel institutions may have a redistributive effect, not necessarily through power struggles but through normative diffusion and institutional diversification. For legal actors from the Global South, ICDPASO offers a venue where relational norms and local legal cultures are not only recognized but structurally embedded into the dispute resolution process, potentially reducing dependence on Western-led institutions that may marginalize their voices.

³⁶⁷ *Dialogue on Promotion of Cooperation for a More Neutral, Impartial, and Friendly International Arbitration Successfully Held in Xiamen*, INT'L COM. DISP. PREVENTION & SETTLEMENT ORG. (Apr. 25, 2025), <https://www.icdpaso.org/en/content/606.html> [<https://perma.cc/L3D3-U9B8>] (“The event . . . attracted participants from over ten countries and regions, including representatives from the arbitration, legal, and business sectors of Belt and Road Initiative (BRI) partners and BRICS nations.”).

³⁶⁸ See Christoph Hasselbach, *Are Western Double Standards Undermining the Global Order?*, DEUTSCHE WELLE (Sept. 21, 2024), <https://www.dw.com/en/are-western-double-standards-undermining-the-global-order/a-70289453> [<https://perma.cc/BD6A-EWKP>].

³⁶⁹ Uri Dadush, *The Decline of the Bretton Woods Institutions*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Sept. 22, 2014), <https://carnegieendowment.org/posts/2014/09/the-decline-of-the-bretton-woods-institutions>.

³⁷⁰ MATTHEW HAMILTON, CARNEGIE ENDOWMENT FOR INT'L PEACE, *WHAT IS BRETTON WOODS? THE CONTESTED PASTS AND POTENTIAL FUTURES OF INTERNATIONAL ECONOMIC ORDER I* (2024).

³⁷¹ *Id.*

³⁷² *Id.* at 6.

³⁷³ *Id.*

B. Normative Effect

Beyond its power redistribution effect, China's new parallel institutions have normative effects on global governance over time.³⁷⁴ An essential aspect of influence in the world order is "the ability of international institutions to establish and disseminate international norms."³⁷⁵ While Western-led institutions have long served as vehicles for the diffusion of Western liberal norms—emphasizing adversarial legalism, rule-based order, and individual rights—China's parallel institutions embody normative dualism that blends formal legal infrastructures with informal, relational, and culturally embedded practices. These parallel institutions offer counterpoints to Western-dominated frameworks.³⁷⁶

This normative vision of China's alternative vision of global governance is encapsulated in key concepts such as "preventing problems before they arise," "consultation, joint construction, and shared benefits," "harmonious society" ("和谐社会", *hexie shehui*), and "community of shared destiny for mankind[.]"³⁷⁷ These concepts are not merely theoretical constructs but serve as the ideological foundation for China's multilateral initiatives, particularly in its attempt to upload its preferred normative notions to parallel institutions such as ICDPASO.³⁷⁸ Individually, these concepts may seem abstract or rhetorical. Together, they inform China's normative values that prioritize proactive conflict avoidance, long-term relational harmony, and inclusive decision-making—values that sharply contrast with the individualistic and rule-centric ethos of many Western-led institutions.

Take, for instance, the emphasis on dispute prevention. The idiom "preventing problems before they arise" originates from the Zhou Dynasty's (1046 BCE – 256 BCE) classic text, *The I Ching (Book of Changes)*, specifically the *Chi Chi* ("既济", *Jiji*) section, which contains the following passage: "[t]hus the superior man [t]akes thought of misfortune [a]nd arms himself against it in advance" ("君子以思患而豫防之", *junzi yi sihuan er yufang zhi*).³⁷⁹ This principle is also deeply rooted in Confucian and Daoist governance traditions. The Confucian concept of prudent foresight is encapsulated in the saying, "[a] man with no concern for the future is bound to worry about the present" ("人无远虑，必有近忧", *ren wu yuan lü, bi you jin you*),³⁸⁰ emphasizing that those who fail to plan

³⁷⁴ Stephen, *supra* note 1, at 825.

³⁷⁵ Maj Daniel W. McLaughlin, *Rewriting the Rules: Analyzing the People's Republic of China's Efforts to Establish New International Norms*, 4 J. INDO-PAC. AFF. 204, 205 (2021).

³⁷⁶ See Stephen, *supra* note 1, at 825.

³⁷⁷ See THE I CHING OR BOOK OF CHANGES 245 (Richard Wilhelm trans., Cary F. Baynes Eng. trans., 19th ed. 1983); Yesui, *supra* note 168; Stephen, *supra* note 1, at 825; SABINE MORKY, MERCATOR INST. FOR CHINA STUD., DECODING CHINESE CONCEPTS FOR THE GLOBAL ORDER: HOW CHINESE SCHOLARS RETHINK AND SHAPE FOREIGN POLICY IDEAS 2 (Oct. 4, 2018), https://merics.org/sites/default/files/2020-05/181008_MERICS_ChinaMonitor_Foreign_Policy.pdf [<https://perma.cc/9VT9-QA3H>].

³⁷⁸ Stephen, *supra* note 1, at 826.

³⁷⁹ THE I CHING OR BOOK OF CHANGES, *supra* note 377, at 129.

³⁸⁰ CONFUCIUS, THE ANALECTS OF CONFUCIUS 76 (Simon Leys trans., 1997).

ahead will inevitably face immediate troubles. The Daoist idea of “[d]eal with a thing while it is still nothing; [k]eep a thing in order before disorder sets in” (“为之于未有，治之于未乱”，*weizhi yu weiyou, zhizhi yu weiluan*), similarly emphasizes the importance of foresight.³⁸¹ While the West has a similar expression, “prevention is better than cure[.]”³⁸² the degree of emphasis on prevention in China is notably higher. In China, preventive governance is a fundamental principle of legal and political thought, systematically integrated into its approach to disputes and legal institutions. As discussed earlier, deploying such ideas in the foundational principle of institution-building, ICDPASO provides a comprehensive commercial legal services chain encompassing pre-dispute prevention, in-dispute management, and post-dispute resolution, with an emphasis on dispute prevention. This differs from Western-led arbitration institutions, which prioritize adversarial proceedings and post-hoc legal remedies over proactive risk management.³⁸³

The principle of “consultation, joint construction, and shared benefits” was articulated in a speech by President Xi Jinping in 2015 for a further interpretation of the BRI, which illustrates China’s new vision and approaches to international cooperation.³⁸⁴ “Consultation” refers to an inclusive decision-making process where diverse perspectives are incorporated. It ensures that all parties contribute “wisdom and creativity” to governance.³⁸⁵ “Joint construction” reflects the idea that all participating nations contribute according to their strengths. With the countries along the BRI having “different national conditions and strengths,” joint construction ensures that each can contribute according to its comparative advantages.³⁸⁶ “Shared Benefits” means “adher[ing] to the principle of mutual benefit and win-win cooperation,” seeking common interests and the broadest consensus for collaboration. The idea is “[e]veryone works together to grow the

³⁸¹ LAO TZU, *TAO TE CHING* 104 (Betty Radice ed., D.C. Lao trans., Penguin Books 1963) (“It is easy to maintain a situation while it is still secure; It is easy to deal with a situation before symptoms develop; It is easy to break a thing when it is yet brittle; It is easy to dissolve a thing when it is yet minute. Deal with a thing while it is still nothing; Keep a thing in order before disorder sets in.”).

³⁸² See *Prevention is Better than the Cure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/prevention%20is%20better%20than%20cure> (last visited July 6, 2026).

³⁸³ See *supra* Section IV.C.3.

³⁸⁴ On March 28, 2015, President Xi Jinping delivered a keynote speech titled “Towards a Community of Shared Future and Creates a New Future for Asia” at the opening ceremony of the Boao Forum for Asia (BFA) annual meeting, emphasizing that the construction of the Silk Road Economic Belt and the 21st Century Maritime Silk Road, i.e., the Belt and Road Initiative, was based on the principle of “consultation, joint construction, and shared benefits”. See Zhang Ye Sui (张业遂) [Zhang Yesui], *Gong Jian Yidai Yilu Mouqiu Hezuo Gongying (共建“一带一路” 谋求合作共赢)* [Jointly Building the Belt and Road Initiative for Mutually Beneficial Cooperation], ZHONGGUORENMIN WAIBIAO XUEHUI (中国人民外交学会) [CHINESE PEOPLE’S INST. OF FOREIGN AFFS.], <https://www.cpifa.org/cms/book/22> [<https://perma.cc/CXG9-N95C>] (last visited July 7, 2026).

³⁸⁵ *Id.*

³⁸⁶ *Id.*

pie” and ensure that it is distributed fairly and equitably.³⁸⁷ Consultation, joint construction, and shared benefits form a three-in-one, mutually reinforcing framework—consultation serves as the “starting point and foundation, joint construction is the core and method, and shar[ed benefits] is the goal and driving force.”³⁸⁸ Such concepts guided ICDPASO’s establishment and governance structure, and are reflected in its inclusive decision-making and active member engagement, which were discussed earlier.³⁸⁹

The concept of “harmonious society,” first formally introduced under the Premiership of Hu Jintao, refers to a governance philosophy that emphasizes social stability, economic balance, and conflict avoidance through state intervention.³⁹⁰ This notion has been seen as an alternative to notions of “good governance” supported by Western governments and Western-led institutions, as well as normative ideas such as “market competition, human rights, democracy, transparency, accountability, and the rule of law[.]”³⁹¹ At the global level, this vision extends to a “harmonious world” (“和谐世界”, *he xie shi jie*),³⁹² which calls for reforming global governance to reduce power politics, economic disparity, and ideological imposition.³⁹³ It advocates “democratization of international relations[.]” “justice and common prosperity[.]” “diversity and tolerance[.]” and “peaceful conflict resolution[.]”³⁹⁴ serving as a framework

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ See *supra* Section V.A.3.

³⁹⁰ *Zhonggongzhongyang Guanyu Goujian Shehuizhuyi Hexieshehui Ruogan Zhongda Wenti De Jueding* (中共中央关于构建社会主义和谐社会若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Major Issues Concerning the Building of a Harmonious Socialist Society], adopted Oct. 11, 2006, THE STATE GAZETTE (GUOWUYUAN GONGBAO), No. 33 (2006), https://www.gov.cn/gongbao/content/2006/content_453176.htm [<https://perma.cc/L293-SNPR>].

³⁹¹ Stephen, *supra* note 1, at 825.

³⁹² “和谐世界” (Harmonious World), first officially articulated by China in a 2004 joint declaration with Russia. See *Zhonghe Lianheshengming* (中俄联合声明) [Joint Declaration Between China and Russia], ZHONGHUA RENMING WAIJIAOBU (中华人民共和国外交部) [MINISTRY OF FOREIGN AFFS. OF CHINA] (Oct. 14, 2004), https://www.mfa.gov.cn/web/zyxw/200410/t20041014_282844.shtml [<https://perma.cc/NC4Z-VCA6>]. This was later emphasized by Hu Jintao in a speech at the celebration of the 60th anniversary of the UN in September 2005, entitled, “Build Towards a Harmonious World of Lasting Peace and Common Prosperity.” See Hu Jintao, President of the People’s Republic of China, Build Towards a Harmonious World of Lasting Peace and Common Prosperity, Remarks at the United Nations Summit (Sept. 15, 2005), <https://www.un.org/webcast/summit2005/statements15/china050915eng.pdf> [<https://perma.cc/QE5P-CS7D>]. This concept was later reiterated and elaborated in a Chinese Government white paper published in Dec. 2005: China’s Passage of Peaceful Development See *White Paper: China’s Peaceful Development Road (English Text)*, Cong. Exec. Comm’n on China (Dec. 22, 2005), <https://www.cecc.gov/resources/legal-provisions/white-paper-chinas-peaceful-development-road-english-text> [<https://perma.cc/DM2C-54NH>].

³⁹³ Hongying Wang & James N. Rosenau, *China and Global Governance*, 33 ASIAN PERSP. 5, 18 (2009).

³⁹⁴ *Id.* at 17–22.

through which China seeks to legitimate its domestic order and expand its influence as a counterbalance to Western dominance in the global order.³⁹⁵ This governance idea has influenced the design and operation of ICDPASO in multiple ways. ICDPASO emphasizes pre-emptive tools for avoiding potential disputes and fosters non-confrontational mechanisms, such as dispute prevention and mediation, that align with the Chinese emphasis on social harmony, stability, and prevention of conflicts.

A similar concept is the idea of a “community of shared destiny[,]” first articulated by President Xi Jinping,³⁹⁶ which builds upon the “harmonious world” vision by emphasizing global interdependence, mutual development, and respect for national sovereignty. The idea of a “community of shared destiny” contests “the claimed normative superiority of liberal democracy[,]”³⁹⁷ positioning China’s approach as an alternative to Western-dominated global governance. ICDPASO embodies China’s preference for win-win cooperation and shared development. As discussed earlier, ICDPASO attempts to signal its commitment to shared governance, embracing values of cooperation and mutual

³⁹⁵ *Id.*; see Stephen, *supra* note 1, at 825.

³⁹⁶ 人类命运共同体 (“Community of Shared Destiny”), was first introduced by Xi Jinping in a speech at the Moscow State Institute of International Relations in 2013. See Xi Jinping, President of the People’s Republic of China, Follow the Trend of the Times and Promote World Peace and Development, Remarks at the Moscow State Institute of International Relations (Mar. 23, 2013), https://www.gov.cn/ldhd/2013-03/24/content_2360829.htm [<https://perma.cc/6AC7-D8J4>]. This was further emphasized at the Boao Forum for Asia in March 2015, where Xi called for fostering a regional order conducive to building a global Community of Shared Destiny. See Xi Jinping, President of the People’s Republic of China, Towards a Community of Shared Future and a New Future for Asia, Keynote Speech at the Boao Forum for Asia Annual Conference (Mar. 28, 2015), https://www.mfa.gov.cn/web/ziliao_674904/zyjh_674906/201503/t20150328_9869508.shtml [<https://perma.cc/CKH5-SB86>]. Later that year, Xi elaborated on the concept at the UN’s 70th-anniversary summit, addressing an international audience of over 190 countries. See Xi Jinping Attends General Debate of 70th Session of the UN General Assembly and Delivers Important Speech, Underlying to Inherit and Advocate Purposes and Principles of the UN Charter, Establish New Type of International Relations with Win-Win Cooperation as Core and Build Community of Shared Mankind Destiny, MINISTRY OF FOREIGN AFFS. CHINA (Sept. 29, 2015), https://www.mfa.gov.cn/eng/zy/jj/2015zt/Xjpdmgjxgswbxcxlhgcl70znxlfh/202406/t20240606_11381579.html [<https://perma.cc/XQP2-3HNV>]. In 2017, he explicitly linked the *Belt and Road Initiative* to the realization of the Community of Shared Destiny. See Xi Jinping, President of the People’s Republic of China, Working Together to Build a Better World, Keynote Speech at the CPC in Dialogue with World Political Parties High-Level Meeting (Dec. 1, 2017), https://www.gov.cn/xinwen/2017-12/01/content_5243852.htm [<https://perma.cc/5KF6-62XL>]. The concept was officially enshrined in the Chinese Communist Party Constitution during the 19th Party Congress in October 2017 and incorporated into the Preamble of the PRC Constitution in 2018, marking its formal institutionalization as a guiding principle of China’s global vision. See *The Constitution of the People’s Republic of China (2018)*, THE NAT’L PEOPLE’S CONG. OF CHINA, <http://en.npc.gov.cn.cdurl.cn/constitution.html> [<https://perma.cc/XE5E-5A7X>] (last accessed July 7, 2026).

³⁹⁷ Stephen, *supra* note 1, at 825.

benefit and considering the different developmental needs of countries and regions concerned to achieve co-development.³⁹⁸

Taken together, these normative principles do not constitute a wholesale replacement for liberal norms, but they do represent a normative recalibration. By embedding these normative principles within ICDPASO's institutional DNA, China could, over time, legitimize its domestic governance model on a global stage and present it as an alternative to the liberal, rule-based order. ICDPASO does not merely replicate existing institutional frameworks—it serves as a “powerful transmitter of China’s alternative vision[,]”³⁹⁹ signaling China’s capacity is not only as a capital exporter but as a “norm-shaper[,]” advancing its soft power and projecting its domestic governance philosophy.⁴⁰⁰

Over time, the diffusion of new norms and practices through parallel institutions may provide a counterbalance to Western-dominated institutions.⁴⁰¹ By institutionalizing its normative ideas, ICDPASO can subtly influence the expectations of dispute resolution actors, encouraging early prevention of disputes, amicable resolution, and flexibility, with emphasis on long-term relationships and sensitivity to broader societal impacts in commercial practices. This approach aligns well with many Global South legal cultures that share skepticism toward rigid legal formalism,⁴⁰² empowering countries that may feel marginalized by established Western-led institutions.

VIII. PROSPECTS AND CONCLUSION

History serves as a mirror for today. To glimpse the future of dispute resolution in the context of the modern BRI, it is helpful to step back for a moment to reflect on the dispute resolution mechanisms that existed along the ancient Silk Road, which arose during the westward expansion of China’s Han Dynasty. The ancient Silk Road is a “trans-Eurasian network of trade routes connecting East and Southeast Asia to Central Asia, India, Southwest Asia, the Mediterranean, and northern Europe, which flourished from roughly 100 BCE to around 1450.”⁴⁰³ As early as the seventh century CE, organized, third-party dispute resolution mechanisms already existed to resolve disputes arising from the ancient Silk Road. Moreover, Chinese courts were open to hearing complaints raised by foreign merchants.⁴⁰⁴ Archaeological discoveries in Turfan have revealed a wealth of historical records, including court documents,

³⁹⁸ See *supra* Section IV.D.2.

³⁹⁹ Slawotsky, *supra* note 191.

⁴⁰⁰ Erie, *Chinese Law and Development*, *supra* note 67, at 59.

⁴⁰¹ See Paradise, *supra* note 8, at 166.

⁴⁰² See Theunis Roux, *The Global South Critique of Liberal Constitutionalism*, AUSTL. PUB. L. (Nov. 5, 2024), <https://www.auspublaw.org/blog/2024/11/the-global-south-critique-of-liberal-constitutionalism> [<https://perma.cc/R4SW-7RWH>].

⁴⁰³ Alfred J. Andrea, *The Silk Road in World History: A Review Essay*, 2 ASIAN REV. WORLD HIST. 105, 105 (2014); see *Silk Road*, in ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Silk-Road-trade-route> (last updated May 19, 2026).

⁴⁰⁴ Crawford, *supra* note 78, at 11–12.

contracts, and trade receipts, demonstrating the sophistication of legal and commercial institutions over a thousand years ago.⁴⁰⁵

One such document details a case from around 670 CE, in which an Iranian merchant sought the recovery of silk owed to his deceased brother. The Chinese court heard the case and ruled in his favor.⁴⁰⁶

Even in the drastically transformed context of modern-day China and the vastly different embodiment of the Road idea, this historical example affirms a simple truth: legitimacy in transnational dispute resolution requires accessibility, neutrality, and effectiveness. As Crawford notes, “the story revealed by the Iranian tomb in Turfan may help to identify what we are looking for: a dispute resolution mechanism that is accessible to all participants all the way down to the individual merchant; a mechanism that is impartial, and one that ensures effective legal protection.”⁴⁰⁷ For new institutions like ICDPASO to gain meaningful traction in an already proliferated field of dispute resolution institutions, they must embody these fundamental qualities.

This paper has shown that ICDPASO, while still in its early stages, is a noteworthy institutional experiment. It mirrors transnational best practices to gain credibility while embedding culturally resonant, informal dispute prevention practices to adapt to user needs. Unlike state-centric institutions like CICC, ICDPASO adopts a softer, more decentralized structure to obtain legitimacy.

Yet significant challenges remain. Interviews with stakeholders reveal concerns regarding the institution’s visibility, neutrality, and perceived independence. These credibility gaps, if unaddressed, could undermine the institution’s practical utility and normative ambitions. To achieve its intended objectives, ICDPASO must overcome these challenges by further internationalizing its leadership, staff, and arbitrators, enhancing visibility, and expanding its user base.

Theoretically, ICDPASO exemplifies China’s normative dualism, a deeply rooted governance logic in Chinese legal thought that blends formal rules with informal, relational practices. This dualist logic is now being scaled to China’s approach to transnational legal ordering. As emerging powers play an increasingly active role in global governance, ICDPASO offers a glimpse into how alternative institutional forms and normative repertoires may evolve.

Looking ahead, ICDPASO has the potential to carve out a meaningful niche in the evolving landscape of dispute resolution, particularly within the BRI framework. The lessons of history suggest that dispute-resolution institutions thrive when they are trusted, adaptable, and responsive to the needs of international commerce. If ICDPASO can uphold these principles while continuing to expand its global engagement and develop its unique culturally adapted practice, it may not only complement existing institutions but also play

⁴⁰⁵ See Valerie Hansen, *The Impact of the Silk Road Trade on a Local Community: The Turfan Oasis, 500-800*, in *LES SOGDIENS EN CHINE* 283, 284, 290 (Etienne de la Vaissiere & Eric Trombert eds. 2005).

⁴⁰⁶ *Id.* at 292-93.

⁴⁰⁷ Crawford, *supra* note 78, at 12-13.

a transformative role in shaping the future of commercial justice along the new Silk Road. However, unless it can resolve challenges around user trust and perceived neutrality, ICDPASO risks becoming another “flower vase” on the shelf of dispute resolution institutions—symbolically appealing but functionally limited.